

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

214

**CRM-M-9695-2022
Date of decision: 16.05.2022**

AZHARUDEEN ANSARI

....Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Ravinder Bangar, Advocate
for the petitioner.

Mr. Ashish Yadav, Additional A.G. Haryana.

VINOD S. BHARDWAJ. J. (ORAL)

The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case FIR No. 90 dated 03.03.2021 registered under Section 420 of the Indian Penal Code, 1860 at Police Station Ladwa, District Kurukshetra and Section 201, 120-B , 467, 468 and 471 of the IPC were added later at the time of final report, during the trial.

2. The brief facts of the case of the prosecution are that on 03.03.2021, the complainant Manoj Kumar visited Police Station and submitted a complaint about withdrawal of amount from his account from Punjab National Bank. It is contended that Rajni wife of the complainant-Manoj Kumar had got prepared an ATM Card from the Bank on 01.03.2021 and that she had handed over the said card to the complainant Manoj Kumar for generating password. When the complainant went to the ATM of the Bank and tried to generate the password, nothing was shown by the ATM Machine whereafter he

approached the customer care and was informed that he shall operate ATM Card online and on receipt of O.T.P. Number, the same may be informed to them. In good faith, he informed the persons of customer care about the O.T.P number and it was conveyed to him that the ATM Card shall get functional afterward. The complainant claims to have received a message on 02.03.2021 at about 4:05 P.M., that an amount of Rs. 1,97,500/- approximately had been transferred from his bank account to some other account. He had not authorised any such transaction.

3. Learned counsel appearing on behalf of the petitioner contends that the petitioner is not named in the FIR and that he has been arraigned as an accused in the present case in view of the statement of Mukesh Kumar who is the beneficiary of the said amount as the transfer of the same was made into the account of Mukesh Kumar. It is submitted that as per the final report, the allegation against the petitioner is that he along with his associates had withdrawn a sum of Rs. 20,000/- from the account of Mukesh Kumar through an ATM. It is contended that the said version of the prosecution cannot be accepted in as much as every ATM machine is under supervision of a CCTV camera and use of such machine can be duly known. There is no CCTV footage which is available for the prosecution which may establish that the petitioner had ever use the ATM card belonging to Mukesh Kumar for withdrawal of cash from the said account. He further contends that initially a cancellation report against the petitioner was prepared for onward submission, however, the same was later on changed.

4. Furthermore argument was raised by the counsel for the petitioner that he is in custody since 23.07.2021 and has already undergone an actual custody of more than 10 months. It is argued that it is a magisterial trial and that despite completion of the investigation, charge has not been framed in the present case. It is submitted that trial is likely to take a long time.

5. Mr. Ashish Yadav, Additional A.G. Haryana has submitted that there are two more cases against the petitioner which shows that he is a habitual offender. He further submits that the petitioner is a member of a gang that had cheated the complainant for about Rs.1.97 lakh approximately and that there may be various other persons to whom the petitioner along with other co-accused persons may have caused wrongful loss. It is however not controverted that investigation in the case is complete and as such, any such averment of the wrongful loss to other person is concerned, the same should already have been in the knowledge of the Investigating Agency. Furthermore, the trial is a magisterial trial and that charge has not been framed so far, despite the petitioner having suffered an actual custody of more than 10 months. Besides that it is controverted that the Investigating Agency has not seized the CCTV footage qua the ATM card from where the alleged withdrawal was made.

6. A mere registration of the case would not disentitle an accused to be considered for grant of bail. The bar of bail cannot be used as a means of convicting sentence.

7. I have heard learned counsel appearing on behalf of the respective parties and have gone through the record with their

assistance.

8. Taking into consideration the circumstances noticed above, the role attributed to the petitioner, the period of custody and also the stage of trial, I deem it appropriate to enlarge the petitioner on bail to the satisfaction of the trial Court.

9. The instant petition is allowed and the petitioner is ordered to be released on bail on his furnishing requisite bail bond/surety bond to the satisfaction of the Trial Court/Duty Magistrate, concerned.

10. It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

11. The observation made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall decide the case on the basis of available material.

The petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

MAY 16, 2022

<i>vishal sharma</i>	<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
	<i>Whether reportable</i>	:	<i>Yes/No</i>