

208-2

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

**CRM-M-11420-2021 (O&M)
DATE OF DECISION : 18.01.2022**

Afshar Ali

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. P.S. Ahluwalia, Advocate for the petitioner.

Mr. H.S. Multani, AAG Punjab.

ALKA SARIN, J.

Heard in virtual mode.

This is a petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR No.188 dated 29.07.2019 under Section 420 of the Indian Penal Code, 1860 (IPC) (Sections 419, 467, 468, 471, 120-B IPC were added later on) and Sections 66 and 66-D of the Information Technology (Amendment) Act, 2008 registered at Police Station Civil Lines, Patiala, District Patiala.

The case set up is that the FIR was lodged by Vijay Kumar Chaudhary, who is the Accountant working with Ms. Parneet Kaur, and he was informed that she had received a telephonic call from a person named Rahul Aggarwal claiming himself to be an employee of the State Bank of India. The said Rahul Aggarwal took the information from Ms. Parneet Kaur regarding her savings bank account and the ATM Card. Ms. Parneet Kaur,

taking the said Rahul Aggarwal to be a genuine employee of State Bank of India, shared the details with him. Resultantly, an amount of ₹23 lakhs was withdrawn on different dates from her account which led to the filing of the present FIR.

Learned counsel for the petitioner would contend that the petitioner was neither named in the FIR nor any overt act was attributed to him. It is further argued that it is only on the basis of a supplementary statement of the complainant which came to be recorded on the next day of registration of the FIR i.e. on 30.07.2019 that the petitioner was named. According to counsel, the petitioner was arrested on 07.08.2019 and a false recovery was planted upon him and that the petitioner has been in custody since 07.08.2019. It is contended by learned counsel for the petitioner that the amount of ₹18,00,000/- which was withdrawn has since been recovered. Learned counsel for the petitioner has further contended that the present case is a Magisterial trial and further that the co-accused, Noor Ali, has already been granted regular bail by this Court vide order dated 09.06.2020 passed in CRM-M-3208-2020.

Status report dated 24.08.2021 has been filed in the case of co-accused Ataul Ansari @ Atul Ansari in connected CRM-M-27403-2021 wherein it has *inter-alia* been stated that the statement of account from 26.07.2019 to 29.07.2019 of Ms. Parneet Kaur was obtained and statement of Bank Manager, Parmod Yadav, State Bank of India, Chhoti Baradari was recorded and on examination of the statement of account it was found that ₹23,00,000/- was transferred from the said account in different accounts through an online company Spice Digital Ltd. Out of the 23 transactions, 05 transactions failed and 18 transactions were successful. The said transactions

are stated to have been made through 18 mobile phones. Thereafter, a report was obtained from Cyber Crime Cell, Patiala and on the basis of the supplementary statement of the complainant the present petitioner and the co-accused were nominated as accused in the case. It has further been stated that on checking the database of mobile no.7973696979 it was found that the mobile phone was in the name of Shamsher Ali son of Maqbool Ali which was wrongfully used by the present petitioner. During investigation it is stated to have come to light that the petitioner prepared a fake ID and after transferring the amount in the fictitious wallets/accounts he further transferred this amount in 28 different wallets/accounts through 28 Paytm and further this amount was deposited in the account of Fino Bank. A total of 19 mobile phones alongwith 33 sims and another 410 sims were recovered from the present petitioner. The *modus operandi* adopted by the present petitioner and the co-accused has also been mentioned in the status report. It has further been stated that the challan in the present case was presented on 05.11.2019 and charges were framed on 20.12.2019. However, till the filing of the status report none of the witnesses had been examined. As per the custody certificate, the petitioner has been in custody since 21.08.2019. There are multiple cases for similar crimes pending against the petitioner in Patiala (Punjab), Jamtara (Jharkhand), Gautam Budh Nagar (Uttar Pradesh), Cyberabad (Telangana) and another case in Gautam Budh Nagar (Uttar Pradesh) and one under the Prisons Act, 1894 in Patiala (Punjab).

Learned counsel for the State submitted that the petitioner is currently confined in Divisional Jail Jamtara (Jharkhand). He contended that the petitioner is a habitual offender and has been cheating people and

swindling them of their hard earned money.

Heard.

The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors among which the nature of the offence, the severity of the punishment and a *prima facie* view of the involvement of the accused are important. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a *prima facie* or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused subserves the purpose of the criminal justice system.

In the present case, the petitioner is accused of defrauding innocent people including Ms. Parneet Kaur on whose behalf the complaint was filed. Though the present is a Magisterial trial the petitioner appears to be a habitual offender indulging in cyber crime. There are multiple other cases pending against the petitioner in which he has not been granted bail. Out of the six cases pending against the petitioner, one is in Patiala (Punjab), one in Jamtara (Jharkhand), two in Gautam Budh Nagar (Uttar Pradesh), one in Cyberabad (Telangana), and one under the Prisons Act, 1894 in Patiala (Punjab). Five of these cases are of cheating and cyber crime. As per the status report, the petitioner is the main accused and he used to commit fraud on innocent people by transferring money online from their accounts to fake accounts on the basis of messages sent by the co-accused and then withdrawing money through ATM from the bank account. Further, the name

of the petitioner came up the very next day after lodging of the FIR when on 30.07.2019 the complainant, Vijay Kumar Chaudhary, got recorded his supplementary statement. Though the challan in the present case was presented on 05.11.2019 and charges were framed on 20.12.2019, the trial has not progressed and till the filing of the status-report the matter was still fixed for prosecution evidence. The petitioner cannot claim parity with the case of co-accused, Noor Ali, who has been granted bail as is also clear from the order granting him bail.

In view of the discussion above, I do not deem this to be a fit case for grant of regular bail. However, keeping in view the period of custody of the petitioner, the Trial Court is requested to endeavour to expedite the trial.

Needless to say, any observation made herein shall not be treated as an expression of opinion on the merits of the case.

Dismissed. Pending applications, if any, also stand disposed off.

18.01.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO