IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-18419-2022 (O & M)
Date of decision: 12.09.2022

Kunal Singh …... Petitioner

V/s

U.T., Chandigarh ...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Ankur Malik, Advocate, for the petitioner.

Mr. Shashank Bhandari, Addl.P.P., for respondent-U.T., Chd.

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JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of the regular bail to the petitioner in FIR No.0024 dated 02.02.2022 under Sections 419, 420, 120-B IPC registered at Police Station Sector 36, Chandigarh.

2. The brief facts of the case are that the complainant-Jagbir Singh received a message on 30.01.2022 from mobile phone No.8276943070 asking him to do KYC, otherwise his SIM would be suspended. He was to call on Customer Care Number 8276976470 immediately. On 31.01.2022, a call came from the same number and he (complainant) was asked to install the Anydesk App on his mobile, which he did. He did so as the person who called him (complainant) claimed to be an Airtel employee. The complainant was also asked to pay a sum of Rs.10/- which he did from his HDFC debit card. He (complainant) was thereafter told that the transaction was not successful and he may have to use another debit card. On this, the

complainant asked his son to use his ICICI bank debit card and did a successful transaction of Rs.10/-. Later on, Rs.9000/- was debited from his sons's ICICI bank account No.002901508086. He later received a call from the SBI customer care person, namely, Deepak Kumar from mobile No.8509483197. As the complainant was not a tech savvy person, he asked to call his son and provided him with his son's mobile number. The said person sent a Quick Support App file through Whatsapp on the complainant's mobile number, which was downloaded. When the complainant visited the SBI, Sector 35 Branch, Chandigarh, on 01.02.2022 he found that from his SBI account two transactions of Rs.2,00,000/- and Rs.2,25,000/- were debited. Subsequently, during investigation, it transpired that a loan of Rs.5,65,000/- was taken against a Fixed Deposit of account number 40750281679 in the same bank. In this way, the complainant was cheated of an amount of Rs.9,90,000/-.

During investigation, it was found that the amounts were transferred into a bank account in the name of one Muhammad Misbahuhaque son of Mohammad Rafi Ansari. During the course of further investigation, Muhammad Misbahuhaque was arrested and recovery of money deposit slips, etc. were effected from him. On his disclosure, the name of the present petitioner-Kunal Singh alias Chotu and one Toufique came up and it was stated by him that these two persons opened bank accounts in different banks. These amounts were deposited in the bank accounts and withdrawn by the present petitioner and Toufique. A CCTV footage of the fraud was obtained and it was found that the suspect Tousif Anwer was withdrawing the amount with Muhammad Misbahuhaque. It was found that Tousif Anwer is the mastermind. The amount of

Rs.2,25,000/- was found to be transferred in the amount of Muhammad Misbahuhaque.

3. The learned counsel for the petitioner contends that the petitioner is not named in the FIR and no money has been transferred into his account. In fact, the petitioner was arrested on 16.02.2022 from Patna, Bihar and no recovery was effected from him. No other case is pending against him and since the investigation stands completed and challan filed, the further incarceration of the petitioner is not required since as many as 16 prosecution witnesses are yet to be examined.

4. The learned counsel for the respondent-U.T., Chandigarh, on the other hand, contends that the such kind of cyber crimes are on the rise and the petitioner does not deserve the concession of regular bail. He, however, does not dispute the fact that the case is triable by the Court of Magistrate and the petitioner is in custody since 16.02.2022 and none of the prosecution witnesses have been examined till date.

5. I have heard the learned counsel for the parties at length.

6. Admittedly, the petitioner is in custody since 16.02.2022. There is nothing to suggest that if the petitioner is granted the concession of bail, he shall either abscond from justice, tamper with the evidence or pressurize witnesses. This Court in the case of "**Maninder Sharma versus State Tax Officer, State Tax, Mobile Wing, Jalandhar, Punjab, (CRM-M-24033-2021 decided on 31.08.2022)**, has stated that broadly speaking (subject to any statutory restrictions contained in Special Acts), in economic offences involving the IPC or Special Acts or cases triable by Magistrates once the investigation is complete, final report/complaint filed and the triple test is satisfied then denial of bail must be the exception

rather than the rule”. In the present case, none of the 16 prosecution witnesses have been examined so far. Therefore, the further incarceration of the petitioner is not required.

7. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Kunal Singh, is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

8. The petitioner shall appear on the first Monday of every month before the local police station till the conclusion of the trial and furnish an affidavit each time that he is not involved in any crime other than the present one.

9. In addition, the petitioner shall prepare an FDR in the sum of Rs.2,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from Trial without sufficient cause.

September 12, 2022 **(JASJIT SINGH BEDI)**
sukhpreet **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No