IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

111+223

CRM-M-22243-2022 (O&M)
Date of decision: 20.07.2022

CHINONSO ROY AKATA ....Petitioner

Versus

STATE OF HARYANA ...Respondent

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

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Present : Mr. Bikram Chaudhary, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G. Haryana

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VINOD S. BHARDWAJ. J. (ORAL)

CRM-23991-2022

The present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 for placing on record order dated 17.02.2022 passed by the Addl. Sessions Judge, Faridabad granting regular bail to co-accused Ajay as Annexure P-4, order dated 25.02.2022 granting regular bail to co-accused Smt Mamta as Annexure P-5, order dated 20.04.2022 granting regular bail to co-accused Ahsan as Annexure P-6, order dated 03.03.2022 granting regular bail to co-accused Usha Srivastav @ Ruman Roy as Annexure P-7 and order dated 12.03.2022 granting regular bail to co-accused Atif Ali @ Punni as Annexure P-8.

Application is allowed as prayed for and Annexure P-4 to

Annexure P-8 are taken on record.

CRM-M-22243-2022 (O&M)

1. 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 bearing FIR No.53 dated 17.11.2021 registered under Sections 419, 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 and Section 14 of the Foreigner Act No.31, 1946 and Section 12, 12-A of the Passport Act No. 15 of 1967 at Police Station Cyber Crime, Faridabad, District Faridabad.

2. In brief, the case of the prosecution is that a complaint was received from Amrik Singh that he has two accounts in ICICI and HDFC banks. He had made a profile on matrimonial site, i.e., Sangam Matrimony and through that site, he came in contact with a girl namely Rongpipi. He started chatting with the said girl through Whatsapp on 03.10.2021. She disclosed that she was a resident of Amsterdam (Netherland). She shared her family photographs and disclosed that she is working as a nurse in Hospital Holland in Netherland. Thereafter, he received a call from said girl through another WhatsApp number disclosing that her mobile phone has broken. Thereafter, they decided to meet so that the matter can proceed further. Her brother namely Chaten Rongpipi also spoken to him through WhatsApp call. Ultimately, they planned to visit India and said girl also sent her flight tickets on his WhatsApp number. They were to reach Chattarpati Shivaji Airport, Mumbai on 15.11.2021. On that day, he received a call from mobile No. 9289013826 that both his guests have come from Netherland along with demand draft of Rs. 88 lacs and in view of the

huge amount, they had been stopped at the airport. The complainant also talked to Shanti Rongpipi and Chetan Rongpipi and they also disclosed that they had been stopped at the airport. The caller of mobile No. 9289013826 disclosed her name as Priyanka Gupta from Immigration Department, Mumbai and directed him to deposit an amount of Rs. 5,78,000/- in different five accounts of UCO Bank, IDFC Bank and Kotak Mahindra Bank. He deposited a total amount of Rs. 5,78,000/-. Thereafter, he again received a call from Priyanka, who was demanding his account number on the ground that said draft is to be deposited in his account as they were not having bank account in India and consequently, said amount has been fraudulently taken away from him. On the basis of this application, FIR was lodged. During investigation, Chinonso Roy Akata and Mamta, who was misrepresenting herself as Priyanka, were apprehended on 19.11.2021. Two passports of different countries were recovered from accused Chinonso Roy Akata.

3. Learned counsel appearing on behalf of the petitioner contends that as per the version of the prosecution, the complainant had himself come in contact with some girl namely Rongpipi claiming to belong to Netherland and that she had stated that she would be coming to India to meet him. A call was received by the complainant from Rongpipi that they had been apprehended at the Mumbai Airport. The complainant purportedly also received a call from some Priyanka Gupta from the Immigration Department, Mumbai directing the complainant to deposit an amount of Rs. 5,78,000/- in five different Bank Accounts. It is alleged that the said amount was deposited by the complainant.

4. He further submits that none of the Bank Accounts belong to the petitioner and that no such amount has been transferred to his Account. Furthermore, the other co-accused who was arrested by the police including the girl who had made a call posing herself from the Immigration Department, Mumbai namely Mamta has already been granted concession of regular bail by the Additional Sessions Judge, Faridabad along with other co-accused. He contends that the only allegation against the petitioner is that he was in possession of a fake passport and that he was acting in collusion with Mamta. He contends that there is no link to establish connectivity of the petitioner with Mamta and that the alleged fake Passport was used for the purposes of executing a rent deed. The same *ipso facto* does not establish the participation of the petitioner in commission of the offence. He points out the sentence which is prescribed under the Passports Act is punishable up to the period of one year along with the offences under the Foreigners Act. It is also urged that there is no evidence to show that the petitioner had impersonated or defrauded the complainant in any manner or induced him to deposit any amount. He is also not the recipient of any money claimed to have been transferred by the complainant.

5. Per contra, learned counsel appearing on behalf of the State contends that the petitioner is the person on whose instance, guidance and help, other persons used to commit the Cyber crimes. He thus argues that the petitioner is the main accused. However, on a pointed query raised to the learned State counsel regarding the manner of the commission of crime and attribution against the petitioner, there is no

definite response. Additionally, the State has failed to point out as to the manner in which the petitioner was actually working for or in conspiracy/collusion with the other co-accused and as to how the sale proceeds were being shared. There is also no detail as to whether the petitioner and other accused had indulged in any other offence or not and as such in the absence of any criminal antecedents, it cannot be assumed that the petitioner was involved in the business of committing Cyber Crime and cheating various persons. He, however, expresses an apprehension that the petitioner is a foreign national and as such there is every possibility of the petitioner absconding from the process of law upon being released on bail. He nevertheless, does not dispute the fact that the petitioner is in custody since 26.11.2021 and that investigation in the case is complete but charge has not been framed so far. It is not disputed that it is a magisterial trial. He, however, asserts that the recovery of the Passports along with Rent Deed and an amount of Rs. 25,000/- is effected from the petitioner.

6. Controverting the aforesaid arguments advanced by the learned counsel appearing on behalf of the respondent-State, learned counsel appearing on behalf of the petitioner contends that even though 03 mobile phone handsets are stated to have been recovered from the possession of the petitioner, however, there is no evidence to link that the said mobile handsets/mobile phone numbers were used in making any call to the complainant. The recovery of the Rent Agreement *ipso facto* does not make out the offence for which the petitioner is being prosecuted i.e. cheating the complainant and inducing him to transfer any money. Furthermore, the recovery of two passports is only to the

extent of entering into a Rent Agreement and does not ipso facto establish the link of the petitioner in commission of the offence as aforesaid. The recovery of a sum of Rs. 25,000/- is not linked to the alleged amount transferred by the complainant in the Account of the accused. Hence, merely because the petitioner was in possession of some money does not mean that the said amount is a proceed of a crime.

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

8. Without examining the merits of the instant case and taking into consideration, the period of custody already undergone, the absence of the prosecution to collect or refer to any evidence to show participation of the petitioner in commission of the offence and clean antecedents of the petitioner, 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/**heavy surety** bond to the satisfaction of the Trial Court/Duty Magistrate, concerned and also subject to the following conditions:

i) he shall surrender his passport before the Court while furnishing his bail/surety bonds.

ii) he shall mark his presence personally before the SHO concerned on the 2 nd and 4th Monday of every month.

iii) he shall always keep his mobile location on and share the same with the number so directed by the S.H.O.

iv) he shall not indulge in any kind of criminal activity.

v) and such other condition(s) as may be imposed by the concerned Chief Judicial Magistrate/Duty Magistrate.

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

JULY 20, 2022
vishal sharma

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