

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

CRM-M No.27403 of 2021 (O&M)
DATE OF DECISION : 18.01.2022

Ataul Ansari @ Atul Ansari

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Jasjit Singh, Advocate for the petitioner

Mr. H.S. Multani, AAG Punjab

ALKA SARIN, J.:

Heard in virtual mode.

This is the second 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 Resultantly, an amount of Rs.23 lakhs was withdrawn on different dates from her account which led to the filing of the present FIR.

The learned counsel for the petitioner contended that the petitioner is not named in the FIR and has been falsely implicated in the case and that all the allegations were levelled against the co-accused. It was only later that the prosecuting agency suddenly nominated the petitioner in the present FIR after the complainant, Vijay Kumar Chaudhary, during investigation got recorded his statement before CIA Patiala that he had discussed the matter with his friend Dhian Singh, who is running the business of purchase of cattle, who mentioned that during the course of his business he met different merchants dealing in the sale of cattle where he came to know that one Afsar Ali and the petitioner are habitual offenders who defraud people of Punjab, Haryana and Delhi by preparing fake ID proofs. It was thereafter that the complainant got his additional statement recorded on 05.08.2019 and on his statement the name of the petitioner was nominated in the present case. It has further been contended by the learned counsel for the petitioner that the amount of Rs.18 lakhs which was withdrawn has since been recovered. Learned counsel also submitted that the case is a Magisterial Trial and the petitioner has been in custody since

16.08.2019. It was also contended that a co-accused, Noor Ali, has been granted regular bail by this Court vide order dated 09.06.2020.

Status-report dated 24.08.2021 has been filed by way of affidavit of Hemant Kumar, PPS, Deputy Superintendent of Police, City-1, Patiala on behalf of the State wherein it has *inter-alia* been stated that the petitioner has been involved in fraud and that he was a member of a gang who in connivance with the other accused had committed frauds upon innocent people by transferring money online from their bank accounts to different fictitious wallets/accounts. It is further stated in the status report that out of the 23 transactions pertaining to the account of Ms. Parneet Kaur, 5 transactions failed and 18 transactions were operated successfully through 18 mobile phones. Rs.23 lakhs were withdrawn from the account of Ms. Parneet Kaur from 26.07.2019 to 29.07.2019. The *modus operandi* adopted by the petitioner and the co-accused has been mentioned in the status report. As per the status report the complainant, Vijay Kumar Chaudhary, had got recorded his supplementary statement on 30.07.2019. The petitioner was detained in Jharkhand on 03.08.2019 and was brought on production warrants. As per the status report the petitioner had purchased 18 fake bank accounts from the co-accused. 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.

Learned State counsel is not able to deny that an amount of Rs.18 lakhs stands recovered from the accused. He is also not in a position to deny the fact that the present case is a Magisterial trial and the petitioner

has been in custody since 16.08.2019. He has, however, submitted that there are three other cases pending against the petitioner for similar crimes committed by him.

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 three other cases pending against the petitioner in which he has not been granted bail. Out of the three cases one is pending in Jamtara, Jharkhand, one in Patiala and one in Cyberabad, Telengana. All these cases are also of cheating and cyber crime. As per the status report, the petitioner is a member of a gang who in connivance with the main accused, Afsar Ali, 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 petitioner and then withdrawing money through ATM from the bank account. The petitioner is stated to have purchased 18 fake bank accounts from the co-accused Afsar Ali @ Rs.8000/- per 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.

(ALKA SARIN)
JUDGE

22.01.2022
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NOTE : Whether speaking/non-speaking : Speaking Whether reportable : YES/NO
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