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

CRM-M-44397 of 2022
Date of decision: 24.11.2022

Rahul Samar

...........Petitioner

versus

State of Haryana

.......Respondent

**CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR**

Present: Mr. Shubham Aggarwal, Advocate, for the petitioner.
Mr. Vikrant Pamboo, DAG, Haryana.

**<u>NAMIT KUMAR, J.</u> (ORAL)**

This petition has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.4 dated 16.02.2022 under Section 420 IPC registered at Police Station Cyber Crime, Ambala Range, Ambala Cantt.

Allegations against petitioner-Rahul Samar are that he in his account no.40345499032 maintained with SBI, dishonestly received an amount of Rs.2,59,000/-. On a complaint made by the complainant to the effect that she was dishonestly induced whereunder she was made to part with an amount of Rs.4 lacs in various accounts, the present FIR came into existence.

Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in this case. He further submits that he has not received any money and even his bank account was transferred to Venukonda, Tamil Nadu from his home branch in Patna, Bihar, without his knowledge and consent.

On issuance of notice of motion, reply by way of affidavit of Pooja Dabla, Additional Superintendent of Police, Ambala, has been filed on behalf of the respondent-State, wherein it has been stated as under: -

> *"7. That thereafter, during investigation, the IO collected the CDR of mobile No.73698-09382 of the accused-petitioner, it has been found that the accused-petitioner has received about 150 messages from the SBI Bank w.e.f. 10:44:40 to 11:50:58 on 20.01.2022 which shows that the accused-petitioner was having knowledge of the change of his bank account. Moreoever, the bank branch and mobile number has been changed by the use of internet Banking which can only be used by the registered mobile number. The copy of CAF/CDR of accused-petitioner is annexed as Annexure R-2. Furthermore, any change in the bank account is immediately notified to on the registered number and in this case also the bank notified about change of bank branch and mobile number immediately through sending messages on the registered mobile number of the accused-petitioner (about 150 messages) but the accused-petitioner did not respond/complaint to the bank immediately. Moreover, the accused-petitioner filed a complaint in this regard in the bank on 12.05.2022 after about a period of four month i.e. after registration of present case.*
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> *8. That the accused-petitioner has further taken the stand that the mobile number linked with this account bearing No.73698-09382 has also been changed as 89872-76926 in place of 73698-09382 and hence, he had no knowledge of deposit of amount in his account. It is submitted that the accused-petitioner is trying to mislead this Hon'ble Court by showing him as innocent person whereas, the facts are otherwise as during investigation, I.O. collected CDR of mobile 89872-*

*76926 of Ajay Kumar son of Bangali Parsad resident of Malahi Pakri, Smpat Chak, Kankarbag, Patna, Bihar and also of CDR of Mobile No.73698-09382 of accused-petitioner Rahul Samar son of Vijay Kumar resident of house No.478, Gali No.8, New Jagan Pura, Ram Krishna Nagar, Sampat Chak, Patna, Bihar. The IO examined the CDR of the mobile number 89872-76926 of co-accused Ajay Kumar and it has been found from the perusal of the CDR of the mobile number 89872-76926 (Annexure R-3), that on 12.04.2022 a call has been made from the mobile No.89872-76926 (Ajay Kumar) to the mobile of 73698-09382 of the accused-petitioner. It is further submitted that on further perusal of the Call Detail Records of the co-accused Ajay Kumar, it has been found that the mobile sim No.89872-76926 (Ajay Kumar) has been used in IMEI number 864991054799130 of accused-petitioner in the same slot on 09.05.2022 and 10.05.2022. Hence, the mobile Sim bearing No.89872-76926 shown to be o Ajay Kumar was used in the mobile of accused-petitioner Rahul Samar having IMEI number 864991054799130. The copy of the CAF/CDR of co-accused-Ajay Kumar is annexed as Annexure R-3. Hence, it clearly shows that the accused-petitioner was having link with Ajay Kumar or he himself was using both the mobile Sims to cheat the public at large, which shows that the accused-petitioner is a clever criminal and is trying to mislead this Hon'ble Court by putting wrong and false facts before this Hon'ble Court. It is submitted that the accused-petitioner by using the various mobile numbers has committed the online fraud with the complainant and perhaps with many more persons and therefore to find out the truth and to know the names of other co-accused who have been involved in the commission of present crime, custodial interrogation of the accused-petitioner is required in this case.*

*9. That during investigation of the case, it has been found that usually the accused-petitioner and other co-accused make* *contact with each other by using the WhatsApp call or with other online facilities for which no record is usually available due to the technical difficulty, but in this present case, it is found from the CDR of the accused-petitioner that he may have used both the Sims referred above as it has been reflected in the CDR Annexure R-2, that the mobile Sim number 89872-76926 has been used in the mobile of accused-petitioner having IMEI 864991054799130 on 09.05.2022 and 10.05.2022 and also the accused-petitioner has received voice call from mobile number 89872-76926 on 12.04.2022, hence the present petition of the accused-petitioner is liable to be dismissed."*

Learned State counsel has vehemently opposed the prayer for grant of anticipatory bail to the petitioner keeping in view the gravity of the crime.

Having considered the arguments of both the parties, in the light of the record available, it is clear that petitioner has received a sum of Rs.2,59,000/- in his account.

The contention of the petitioner that his account was transferred to Venukonda, Tamil Nadu, without his consent is totally mis-conceived as it has been clarified in the status report that the petitioner has received about 150 messages from SBI on 20.01.2022 between 10:44:40 to 11:50:58, which shows that the petitioner was having knowledge of the change of his bank account and even the bank branch and mobile number have been changed by use of internet banking which can only be used through registered mobile number. To cover up this, the petitioner submitted a complaint to the bank on 12.05.2022 i.e. after three months of the registration of the present FIR. Such like crimes are on the rise in these days and consequently, such like tendency is required to be curbed in the interest of the society at large. Custodial interrogation is warranted to recover the amount grabbed by the petitioner and unearth the scam of duping other people.

There is no denial from the legal proposition that power under Section 438 Cr.P.C. is extraordinary in character and must be exercised sparingly and only in exceptional circumstances. Petitioner has failed to show any exceptional circumstance for extending him the benefit of pre-arrest bail.

So keeping in view the gravity of the offence, I am of the considered opinion that petitioner is not entitled to the benefit of pre-arrest bail. Hence, the instant bail application stands dismissed.

**(NAMIT KUMAR)**
**JUDGE**

**24.11.2022**
R.S.

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No