Sr. No. 206

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.52820 of 2021(O&M)
Date of Decision: 07.07.2022

Akshay Sharma

.......Petitioner

Vs.

State of Haryana

........Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. R.S. Cheema, Sr. Advocate, assisted by
Mr. R.K. Trikha, Advocate and
Mr. Kunwar Rajan, Advocate,
for the petitioner.

Mr. Ranvir Singh Arya, Addl. A.G., Haryana.

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<u>JASGURPREET SINGH PURI, J. (ORAL)</u>

The present petition has been filed under Section 438 of the Code of Criminal Procedure for the grant of anticipatory bail to the petitioner in FIR No. 74 dated 02.12.2021, under Sections 420 & 120-B IPC and Sections 66-D & 75 of the Information Technology Act, 2000, registered at Police Station Cyber Crime Gurugram.

Mr. R.S. Cheema, learned Senior counsel assisted by Mr. R.K. Trikha has submitted that this Court while issuing notice of motion had granted interim bail to the petitioner on 17.12.2021, subject to his joining investigation. He submitted that in pursuance of the aforesaid order, the petitioner has joined the investigation for about three times and has fully cooperated with the investigation process. He further submitted that in view of the aforesaid factual position, the interim bail granted to the petitioner may be confirmed. Mr. Cheema has further submitted that the State had earlier filed status report, wherein it was stated that the petitioner is the owner of the call centre, whereas the petitioner had specifically stated before this Court that he is neither the owner nor the business partner nor concerned with this business in any manner whatsoever. Thereafter, this Court had directed the State to again verify and file an additional affidavit with appropriate documents pertaining to the property with regard to the stand taken by the State in the status report. Thereafter, another additional affidavit was filed by the Assistant Commissioner of Police, Cyber Crime, Gurugram, in which again nothing has been stated as to whether the petitioner is the owner/lessee or having any concern with the property nor any such document has been attached except by stating that petitioner used the property. However, the only connection which has been stated in the affidavit with regard to the petitioner was that the petitioner was a part of a WhatsApp group and was using the phone number in the ID of some other person namely Sunil Kumar. Learned Senior counsel has submitted that the mere fact that the petitioner was a group member of some WhatsApp group, would not establish any connection with the business, which was allegedly being conducted. He has further submitted that even as per the allegations, the persons, who were running the business, were sending messages to some foreign nationals by way of pop-up messages with regard to rectification of some defects in their computer/software and in return for the same, some gift vouchers were given to the accused persons. He has submitted that during investigation as well, no victim has come forward nor the police has been able to ascertain or identify any person with whom any connection was established by way of such pop-up messages. He further referred to the contents of the FIR, in which it was stated that at the time when the other co-accused were arrested on the spot, the entire infrastructure pertaining to hardware/software including number of laptops were confiscated by the police and since the entire material is available with the police, the same could have been retrieved by the police to identify the victims, but nobody has been identified till date and nothing has been stated in the two affidavits filed by the police. He has submitted that the petitioner in fact was doing some other business of a travel company regarding which he has also placed on record documents i.e. his own income tax return, bank account details and company's bank account details and he was in fact not associated with the alleged business being conducted by the co-accused. He has further submitted that the other co-accused, who were stated to be owners of the premises namely Deepak and Karan, have been granted anticipatory bail by the learned Sessions Court, Gurugaon, during the pendency of the present petition.

On the other hand, learned State counsel has submitted that it is correct that the petitioner in pursuance of the orders passed by this Court has joined the investigation as and when called by the police officials. However, he has submitted while referring to the affidavit filed by the State that the petitioner did not cooperate to the extent that he did not disclose as to how the gift vouchers were obtained from the foreign nationals and utilized for the purpose of redemption. He has further submitted that the petitioner did not disclose the foreign nationals with whom the contacts were made for the purpose of receiving the gift vouchers.

I have heard learned counsel for the parties.

This Court vide order dated 17.12.2021 had granted interim bail to the petitioner and as per the learned counsel for the parties, the petitioner in pursuance of the aforesaid order, has joined the investigation. The only objection raised by the learned State counsel was that the petitioner has not cooperated with the investigation process. On the query being raised to the learned State counsel as to how the petitioner has not cooperated with the investigation process, he submitted that the petitioner has not disclosed as to how and from whom the gift vouchers were redeemed and also he did not disclose the identity of the persons who were the victims. The plea taken by the learned Senior counsel for the petitioner was that the petitioner is not at all associated with the business and he is running some other business of travel agency and despite the orders passed by this Court, the State has not been able to place on record any document pertaining to the fact that the petitioner was associated with the premises or the business and therefore, no presumption arises in that regard. So far as, the joining of the investigation of the petitioner is concerned, the same has not been disputed by the learned State counsel. The question as to whether the petitioner is associated with the business on the basis of WhatsApp group is a matter of evidence, which can be seen at the time of trial. The other co-accused, who were stated to be owners namely Deepak and Karan, have already been granted anticipatory bail by the learned Sessions Court, Gurugram as per learned counsel for the petitioner.

Therefore, considering the aforesaid facts and circumstances of the case, this Court is of the considered opinion that the petitioner deserves the grant of anticipatory bail. Consequently, the present petition is allowed. Order dated 17.12.2021 is hereby made absolute.

07.07.2022 **(JASGURPREET SINGH PURI)**
monika **JUDGE**

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