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

CRM-M-59590-2022

Date of decision : 20.12.2022

Sahil Joshi

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Jasjeet S. Dhaliwal, Advocate for the petitioner.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

Mr. Munish Kumar Garg, Advocate alongwith
Mr. Saurabh Kansal, Authorized person for the complainant.

VIKAS BAHL, J. (ORAL)

This is the second petition filed under Section 438 of Cr.P.C. for grant of anticipatory bail to the petitioner in FIR No.168 dated 02.10.2022 registered under Sections 406, 420, 120-B of Indian Penal Code, 1860 and Section 66(D) of the Information and Technology Act, 2000 at Police Station Division No.6, Police Commissionerate Jalandhar, District Jalandhar.

The brief facts of the present case are that the FIR was registered on a complaint made by Saurabh Kansal, who is the authorized representative of M/s Pearson India Education Services Private Limited,

with the allegations that the company is engaged in the business of conducting various computer based tests across the globe and one such test is the Pearson Test of English (PTE Academic) which is a computer based English language test which is conducted by the complainant company and the same is conducted at its various centers located across the globe and one such center is located in the Eminent Mall Complex, Plot No.261, Lajpat Nagar, Model Town Road, Jalandhar. It is further stated that the tests conducted by the company, being of very high quality and value, are highly sought-after and are recognized across the globe, and on account of the fact that large number of persons/aspirants are trying to shift to foreign countries, some people resort to illegal means to manipulate these exams. It is also stated that the complainant company had received an e-mail on 03.06.2022 mentioning that a fraud has been committed in the said test center at the time when the present petitioner was the Test Center Administrator (TA) under whose supervision, the said test was conducted. It is further stated in the FIR that the entire process gets recorded on a CCTV cameras and after the test is completed, an encrypted Candidate Result File (CRF) is auto generated which bears the time stamp of the work station, which is also time synced with the installed cameras and records every movement of the candidate such as a mouse clicks etc. and thus, the activity of every candidate as recorded on the CCTV cameras, is also bound to match with his/her CRF, unless there is some fraud being played, as has happened in the present case and thus, to put it simply, if a candidate is typing or using his/her mouse at a

particular time as per their CRF, then, he would also be bound to be seen doing the exact same movement in CCTV footage at the same time unless some fraud is being played and thus, after receiving the said email-complaint, an internal inquiry was conducted by the complainant-company and during the course of investigation, it was found that eight persons had colluded with the present petitioner, who was the Test Center Administrator (TA) and had conducted proxy testing at the center and all the proxies were planned for the time slot of 7.15 pm i.e. the time when the present petitioner was on duty. In the FIR, details of the fraud, which has been committed under the supervision and in collusion with the present petitioner, have been given. The first instance, which has been mentioned is with respect to two candidates namely Parth Kumar and Parth Pravinbhai Patel, who appeared on 03.05.2022 for the PTE test scheduled for the time slot of 7.15 pm and showed their passports and the present petitioner had pretended to check the passports, which is visible from the CCTV footage and thereafter, launched a wrong test on their systems i.e., at the work station of Parth Kumar, test of Parth Parvinbhai Patel was launched and vice versa. In the inquiry, it surfaced that the Candidate Result File (CRF) shows that physical movements/actions of Parth Kumar, as recorded in CRF, matches with the physical movements of Parth Pravinbhai Patel as recorded in the CCTV footage inasmuch as at the time when Parth Kumar's CRF records a mouse click, said Parth Kumar could be seen typing, while at the said time, it is Parth Pravinbhai Patel who is seen clicking the mouse. It is further stated that while the

said Parth Pravinbhai Patel sat at work station 8A, his CRF recorded him sitting at work station 07 and vice versa for Parth Kumar and both the candidates had booked the test using the same VISA card bearing last digits '3543' and the registration of both the candidates had been initiated within a gap of only 22 minutes and both the candidates entered the center at the same time and completed test also at the same time. To a similar effect, are the allegations against the three other set of candidates i.e., Gagandeep Singh and Gagandeep Singh Brar who had appeared for the test on 04.05.2022 at 7.15 pm when the present petitioner was the Test Administrator, Parminder Singh and Rishi Kapil who had appeared on 11.06.2022 at 7.15 pm when, again the present petitioner was the Test Administrator and Jagroop Singh and Vicky Kumar Singla, who had appeared on 11.06.2022 at 7.15 pm when the present petitioner was the Test Administrator. The investigation, in the present case, was conducted by the Assistant Commissioner of Police, Special Branch, Jalandhar and even the opinion from DA Legal was obtained and then the FIR was registered against the petitioner and other accused.

Learned counsel for the petitioner has submitted that the petitioner was the “ON CALL TEST ADMINISTRATOR” and was a part-time contractual employee and did not have a permanent job and had the responsibilities which have been enlisted in para 6 of the petition and the same are reproduced hereasunder:-

“a. Check in candidates and verify identification per guidelines provided by Pearson VUE.

b. Explain the test process briefly.

- c. Help candidates to place all personal belongings in a personal locker.*
- d. Escort examine to assigned test station.*
- e. Help the examinee begin the tutorial/test.*
- f. Answer any questions before the timed portion of the test begins.*
- g. Monitor examinees.*
- h. Record and report all problems or discrepancies in a timely and efficient manner that arise in connection with an exam, a candidate or the testing center itself*
- i. Print the test results after the candidate completes the test”*

It is further submitted that two persons i.e. Sahil Luthra and Shashank Bahugana were senior to the petitioner in their job post and were permanent employees and although, everything has been done at their behest but the said persons have not been arrayed as accused persons.

On the other hand, learned State Counsel and learned counsel for the complainant have vehemently opposed the present petition for grant of anticipatory bail to the petitioner and have submitted that the petitioner is the main accused in the present case inasmuch as he was the Test Administrator at the relevant time when the above mentioned eight persons had colluded with one another and had committed fraud, as has been detailed in the FIR. It is further submitted that the involvement of the petitioner is proved beyond reasonable doubt from the CCTV Footage and also from the documents which have been collected during the internal inquiry conducted by the company and by the police during the investigation. It is contended that in addition to the fact, that the

petitioner had permitted the students to take the test by launching wrong test on their systems and instead of checking any malpractices, helped the said persons in giving the test, has committed a grave illegality, cheating and has indulged in “proxy testing”. It is further contended that Sahil Luthra and Shashank Bahugana, against whom the allegations were levelled by the petitioner, are not the persons who had launched the test of the said eight persons who had indulged in “proxy testing” and it is the present petitioner who had launched the wrong test on their systems and this fact is apparent from the CCTV footage collected. It is argued that the investigation is still pending and in case, the involvement of any person is also made out then appropriate action against them would also be taken. It is also submitted that the involvement of the petitioner in the commission of the crime has been shown to be proved beyond any shadow of reasonable doubt on account of the material that has already been collected.

This Court has heard learned counsel for the parties and has perused the paper book.

A perusal of the FIR and the case as set up by the prosecution would show that at the time when the petitioner was the Test Center Administrator, eight persons had colluded with each other and had indulged in “proxy testing” (one person appearing for another). The details of the said eight persons who have indulged in the said proxy testing are as under:-

- 1) Parth Kumar and Parth Pravinbhai Patel who both appeared on

03.05.2022 for the test scheduled at 7.15 pm, at the time when the present petitioner was the Testing Administrator.

- 2) Gagandeep Singh and Gagandeep Singh Brar who had appeared on 04.05.2022 for the test scheduled at 7.15 pm at the time when the present petitioner was the Testing Administrator.
- 3) Parminder Singh and Rishi Kapil who had appeared on 11.06.2022 for the test scheduled at 7.15 pm at the time when the present petitioner was the Testing Administrator.
- 4) Jagroop Singh and Vicky Kumar Singla who had appeared on 11.06.2022 at 7.15 pm at the time when the present petitioner was the Testing Administrator.

From the internal inquiry carried out by the company and the preliminary investigation carried out by the police under the supervision of Assistant Commissioner of Police, Special Branch, Jalandhar and after seeing the CCTV Footage and upon comparison of the same with the encrypted Candidate Result File (CRF), *prima facie*, it has surfaced that the petitioner had launched the wrong test on the systems for example; on the work station of Parth Kumar, test of Parth Parvinbhai Patel was launched and vice versa and similarly, even with respect to the other candidates, the petitioner had launched the wrong tests. The said fact has *prima facie* been established from the physical movements/actions of one candidate when compared with the Candidate Result File (CRF) of the said candidate. It is, thus, apparent that the petitioner who was employed as the Test Administrator and was required to check malpractices, if any, has, in

fact, helped the said eight candidates who committed the said malpractice. The question as to whether the petitioner was a permanent employee or was a part-time contractual employee, would not make a difference in view of the material which has already been collected against him.

In view of the abovesaid facts, the petitioner does not deserve the concession of anticipatory bail. Moreover, the custodial interrogation of the petitioner is necessary in order to ascertain the persons who had indulged in the said malpractices and to assess the modus operandi of the accused persons and grant of anticipatory bail to the petitioner would seriously prejudice the case of the prosecution.

Keeping in view the abovesaid facts and circumstances, the present petition is dismissed.

However, nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

20.12.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**