IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) ***CRM-M-11939-2023***

UMESH GUPTA @ ISHU …Petitioner

Versus

STATE OF HARYANA …Respondent

(2) ***CRM-M-2325-2023***

AMIT JINDAL …Petitioner

Versus

STATE OF HARYANA …Respondent

(3) ***CRM-M-3700-2023***

Date of decision :August 28th, 2023

AMARJEET KUMAR GUPTA …Petitioner

Versus

STATE OF HARYANA …Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. P.S. Hundal, Senior Advocate assisted by
Mr. Karan Kathyat, Advocate
and Mr. Aakash Bharti, Advocate
for the petitioner (in ***CRM-M-2325-2023***).

Mr. Uday Parkash, Advocate
for Ms. Divya Arora, Advocate
for the petitioner (in ***CRM-M-3700-2023***).

Mr. Rajiv Goel, D.A.G., Haryana.

Mr. Narender Hooda, Senior Advocate assisted by
Mr. Rishab Raj Jain, Advocate
and Mr. Naveen Sharma, Advocate
for the complainant in ***CRM-M-2325-2023***
and ***CRM-M-11939-2023***.

HARSH BUNGER, J.

This order shall dispose of three petitions bearing ***CRM-M-11939-2023*** titled as ***"Umesh Gupta @ Ishu Versus State of***

Haryana", CRM-M-2325-2023 titled as ***"Amit Jindal Versus State of Haryana*"** and ***CRM-M-3700-2023"Amarjeet Kumar Gupta Versus State of Haryana*"** as all of them have emanated from common FIR. However, for the sake of convenience, the facts are being derived from ***CRM-M-11939-2023*** titled as "***Umesh Gupta @ Ishu Versus State of Haryana".***

2. Prayer in all these petitions, filed under Section 439 of the Code of Criminal Procedure (for short `the Cr.P.C.') is for grant of regular bail to the petitioner(s) in case FIR No.27 dated 08.05.2021, under Sections 408, 420, 467, 468, 471, 120-B of the Indian Penal Code, 1860 (for short `the IPC') and Sections 66, 66-D of the Information Technology (Amendment) Act, 2008 (for short `the I.T. Act) registered at Police Station Cyber Crime, Gurugram, District Gurugram (Haryana).

3. Briefly, the afore-said case FIR has been registered on the complaint of one Vivek Rathi, authorized representative of Car Pavillion Private Limited (in short `CPPL'); wherein it was stated that the complainant is a private limited company and is dealing in sale and purchase of used cars, having its registered Office at 8, Baldev Nagar, Khuei Khas, Delhi, with its branch at 3rd Floor, Tower-B, Unitech Cyber Pass, Gurugram. In the complaint, it has been alleged that one of the accused i.e. M/s Bytie Enterprises, sole proprietorship concern of Mr. Shivam Singh (primary accused) has either hacked the bank account of the complainant company or colluded with one or more of the employees of the complainant company (as listed in Annexure `E' of the complaint), who have access to its E-net Banking facility, which resulted in illegal transfer and embezzlement of funds of a sum of Rs.4 crores. As per the complainant, it maintains the

Current Bank Account for its business with ICICI Bank Limited, having its branch at Gurgaon, which is stated to have been opened on 09.07.2020. As per the complainant, it has availed the facility of E-net Banking Services from the said bank to carry out transactions over various channels of communication like the internet including but not limited to the funds transfer facility by giving payment instructions whether through Electronic Clearing Service or otherwise. It is stated that the funds transfer facility can be used to transfer funds to third party i.e. like the primary accused and E-net is a Corporate Internet Banking Portal, which works on Inputter-Authorizer concept in which an Inputter initiates the transaction, using his/her login credentials, which is further approved by an authorizer (approver), using his/her individual login credentials and Digital Certificate. It is stated that E-net can be accessed anywhere by the Inputter-Authorizer, irrespective of the location/time/PC/laptop, having internet link and it requires user's credentials and digital certificate of authorization, which are both requisite for E-net login and transaction, which is stated to have been provided by ICICI Bank, to the complainant-company.

4. As per the complainant-company, for the business purposes and banking transactions, the company as per the internal practice, had given the user ID and password, for the afore-said E-net portal, for both Inputter-Authorizer to a limited number of employees of the Company, who are working in the Finance Department of the complainant-company and certain other authorized persons. As per the complainant, these persons are not only responsible but also accountable for managing the banking transactions and transfer of funds, as per the instructions and requirement. The detail of such persons, having access to the USER ID and Password are provided in

Annexure `E' of the complaint and are referred to as "Secondary Accused". It is further stated in the complaint that the Secondary Accused are carrying out the banking transactions on behalf of the complainant-company on regular basis, using the E-net facility (either individually and/or jointly, using USER ID and Password for both Inputter-Authorizer. As per the complainant, the limit of the employees to use the E-net facility to carry out the transfer of funds to third party was set to maximum of a sum of Rs.25 lacs, per transaction. It is alleged that on 08.04.2021 (at around 14:47:27 p.m.), either individually or jointly, a few of the Secondary Accused carried out 16 illegal transactions of Rs.25 lacs, each by using the afore-said E-net facility and illegally transferred the sum of Rs.4 crores, to the Bank Account bearing No.348805500316, maintained with ICICI Bank Limited, in the name of the primary accused i.e. M/s Bytie Enterprises, sole proprietorship concern of Mr. Shivam Singh. The copy of the Bank Statement of the complainant-company along with supporting E-net Facility Ledger, is attached with the complaint as Annexure `C'. As per the complaint, the complainant-Company is unable to ascertain who exactly in the list of the Secondary Accused, have illegally carried out the afore-mentioned transfer of funds from the CPPL Bank Accounts to the bank account of the Primary Accused i.e. M/s Bytie Enterprises, sole proprietorship concern of Mr. Shivam Singh. It is alleged that the Primary Accused has conspired with one or more of the Secondary Accused and got the funds of Rs.4 crores transferred to his account through a well-crafted *modus operandi*. As per the complainant, the Company does fortnightly re-conciliation of CPPL Bank Accounts and its balance and during such re-conciliation carried out by the company officials on 26.04.2021, it transpired that the said transfer of funds of Rs.4 crores to the Primary Accused i.e. M/s Bytie Enterprises, is not authorized and has been illegally carried out. It is stated that the Primary Accused i.e. M/s Bytie Enterprises, is not the authorized beneficiary of the Company and the funds have been illegally transferred by either jointly or individually or severally by one or more of the Secondary Accused in collusion with the Primary Accused. It was stated that due to prevalent Covid-19 pandemic, the persons listed as Secondary Accused were carrying out the work from home and were not readily available at the office premises of the complainant-company, in order to enable the complainant-company to verify and check with them. It is stated that when the complainant-company became aware of the afore-said fraud on 26.04.2021, then immediately they submitted a letter dated 27.04.2021 to the ICICI Bank Limited, asking them for reversal of the transaction and also the details of the beneficiary/primary accused. The complainant further asked ICICI Bank to provide the I.P Address used for transfer of funds from the bank account of the complainant-company in order to locate the persons in the list of Secondary Accused, who used the E-net facility to carry out the said illegal transfer of Rs.4 crores to the Primary Accused. As per the complainant, it has received a copy of e-mail dated 27.04.2021 from the bank, stating that they shall keep the police informed. According to the complainant, it has been informed by the ICICI Bank that the beneficiary or the Primary Accused i.e. M/s Bytie Enterprises, has transferred the entire amount of Rs.4 crores on 08.04.2021 to two different bank accounts for a sum of Rs.3.9 crores and Rs.10 lakh, respectively, into Axis Bank Account No.919020092548506 and IDBI Account No.0130102000038641. Accordingly, the complainant stated that the Primary Accused has managed to transfer the money to various other bank accounts or may be in the process of illegally withdrawing the same; therefore, the Primary Accused has colluded with one or more of the Secondary Accused (as listed in Annexure `E') and has indulged in illegal transfer and embezzlement of funds of Rs.4 crores and further transferred the funds to various accounts and thereby committing an offence of criminal breach of trust, misappropriation of funds, cheating, embezzlement, resulting in un-lawful gain to themselves and an un-lawful loss to the complainant-company. Accordingly, the above-said case FIR was registered.

5. In the status report (filed in ***CRM-M-11939-2023***), it is mentioned that during the course of investigation of the afore-said FIR, it has come forth that an amount of Rs.4 crore was transferred into the account of firm M/s Bytie Enterprises (firm of accused Shivam Singh). Said Shivam Singh is stated to have been arrested on 22.05.2021; whereupon, during interrogation, he suffered a disclosure statement, stating that co-accused Ankit Singh, had affixed the signatures of Shivam Singh on the cheque used for opening the account of M/s Bytie Enterprises. Accordingly, Sections 467, 468, 471 and 120-B IPC were added in the case. As per the status report, accused Ankit Singh was arrested on 29.05.2021, who also suffered a disclosure statement wherein he named Amarjeet Kumar Gupta (petitioner in ***CRM-M-3700-2023***) and he got recovered a SIM card of Mobile No.96075-11507 (which was registered in the bank account of M/s Bytie Enterprises) and he also demarcated the place where he had withdrawn Rs.1 lac of M/s Bytie Enterprises from the ATM and further got recovered the amount of Rs.1.5 lacs from the amount of Rs.4 lacs, coming to his share. It is stated in the status report that Amarjeet Kumar Gupta

@ Amar @ Ravi Kumar, was arrested on 25.06.2021, who also suffered a disclosure statement and further got recovered an amount of Rs.40,000/- and three cheque books. The challan against accused Amarjeet Gupta, Shivam Singh and Ankit Singh, was submitted in the Court on 18.08.2021.

6. As per the status report, the name of Umesh Gupta @ Ishu (petitioner in ***CRM-M-11939-2023***) came forth during the enquiry conducted from the employees of the complainant-company and accordingly, the Umesh Gupta @ Ishu was arrested on 12.09.2021; whereupon he got recovered an amount of Rs.8 lacs, which had come to his share; accordingly, the offence under Section 408 of the Indian Penal Code, was added in the case on 14.09.2021 as he is the Account Associate of the complainant-company and he had provided the Net Banking User ID and Password to co-accused Anshul Tyagi, Saurabh Sharma, Rahul, Sanjeev and Anant Singh @ Anna and all of them transferred the amount of Rs.4 crores through net-banking. It is further mentioned in the status report that Anshul Tyagi, whose name came forth in the disclosure statement of Umesh Gupta, was arrested on 19.10.2021. Said Anshul Tyagi is stated to have suffered a disclosure statement and it was found that he had purchased a flat in the name of his mother from the amount of fraud; whereupon, the notice was issued to his mother namely, Smt. Rajendari wife of Ashok, to provide the documents pertaining to the said flat. However, it is stated that no such record has been provided. Said Anshul Tyagi, is stated to have further got recovered a laptop, used by him in the crime. Supplementary challan is stated to have been submitted against Umesh Gupta and accused Anshul Tyagi, on 09.12.2021 for the offence under Sections 408, 420, 467, 468, 471, 120-B IPC and Sections 66/66-D of the I.T. Act.

7. As per the status report, the raid was conducted to apprehend accused Hameed Abbas Ali Khan and S. Xavier Susairathinam (beneficiary account holders as the amount of Rs.20 lakhs has been credited in the account of accused Hameed Abbas Ali Khan and the amount of Rs.10 lakhs has been credited in the account of accused S. Xavier Susairathinam). During raid, it came forth that accused S. Xavier Susairathinam is admitted in De-Addiction Cum Rehabilitation Centre, District Kancheepuram, Tamil Nadu since 17.09.2022. However, accused Hameed Abbas Ali Khan could not be found during raid so the proclamation order under Section 82 Cr.P.C was issued against him by the Judicial Magistrate 1st Class, Gurugram on 13.03.2023 for 22.05.2023.

8. It is further mentioned in the status report that accused Amit Jindal (petitioner in ***CRM-M-2325-2023***) was arrested on 16.12.2022, who suffered a disclosure statement that the amount of Rs.10 lacs was received in the account of M/s Bytie Enterprises from the account of the complainant-company and the said amount was transferred from M/s Bytie Enterprises to the merchant account of Paymark Payment Technologies and Service Pvt. Ltd. of accused Amit Jindal. It is further mentioned in the status report that on the asking of one Sarita Bhatnagar, he (Amit Jindal) gave the amount of Rs.9,80,000/- to the girl sent by another accused Anant Singh and he kept Rs.20,000/- as commission at the rate of 2%. Amit Jindal is stated to have got recovered the mobile phone having SIM No.8800510819, from where the WhatsApp chat of Amit Jindal and Sarita Bhatnagar, was extracted and the phone was sent to the DITAC Lab for retrieval of data and the report is stated to be awaited. It is also mentioned in the status report that

the raid was conducted at Delhi to join Sarita Bhatnagar in the investigation; however, she could not be found and is stated to be absconding.

9. As regards accused Ravinder Kumar Raichand Bhai Majethia @ Ravi Thakkar (whose name came forth in the statement of Vipul Natwarlal Dhokalia), is stated to have been arrested on 28.12.2022, who also suffered a disclosure statement and he further got recovered an amount of Rs.32,000/- out of the amount of Rs.72,000/- which came to his share along with two mobile phones. Aforesaid Ravinder Kumar Raichand Bhai Majethia @ Ravi Thakkar, is stated to have been granted bail by the Court of Additional Sessions Judge, Gurugram on 21.01.2023 and on dated 07.02.2022, even his passport was also ordered to be released.

10. It is mentioned in the status report that Ravinder Kumar Raichand Bhai Majethia @ Ravi Thakkar, had further named one Goswami Bhagwat Puri, in his disclosure statement, who was also arrested and he got recovered an amount of Rs.20,000/- out of amount of Rs.36,000/, which allegedly came to his share. Accused-Goswami Bhagwat Puri, is also stated to have been granted bail by the Additional Sessions Judge, Gurugram on 21.02.2023.

11. As regards accused-Vipul Natwarlal Dholakia is concerned, it is mentioned in the status report that he was arrested on 01.01.2023. It is further mentioned that after the arrest of Ravinder Kumar Raichand Bhai Majethia @ Ravi Thakkar, it transpired that an amount of Rs.3,59,00,000/- came to accused Vipul Dholakia and he purchased the gold of the said amount and thereafter, received the cash amount of Rs.3,59,00,000/- by selling the said gold. It is submitted that accused Vipul Natwarlal Dholakia received Rs.72,000/- in his share and he got recovered an amount of

Rs.21,500/- out of the afore-said amount of Rs.72,000/-. Said Vipul Natwarlal Dholakia is also stated to have been granted bail by the learned Additional Sessions Judge, Gurugram on 10.02.2023. It is mentioned that the supplementary challan against accused-Amit Jindal, Ravinder Kumar Raichand Bhai Majethia @ Ravi Thakkar, Goswami Bhagwat Puri and Vipul Natwarlal Dholakia was submitted in the Court on 15.03.2023 for the offence under Sections 408, 420, 467, 468, 471, 120-B of the IPC and Sections 66, 66-D of the I.T. Act. Three other accused namely Anant Singh @ Anna, Hameed Abbas Ali Khan and Saurabh Sharma, are yet to be arrested and proclamation order under Section 82 Cr.P.C already stand issued. Accused-S. Xavier Susairathinam, is still admitted in De-Addition cum Rehabilitation Centre, Kancheepuram District (Tamil Nadu).

12. As regards Anant Singh @ Anna, it is mentioned in the status report that as per information provided by the Immigration Department, he had travelled to U.A.E. on 20.09.2020 and returned to India on 11.10.2020 and thereafter, the Investigating Officer technically examined the e-mail ID of accused-Anant Singh and the IP logs of the said e-mail were found to be of Dubai (U.A.E.) as on 12.12.2022. Ravinder Kumar Raichand Bhai Majethia @ Ravi Thakkar, is stated to have been granted bail by the learned Additional Sessions Judge, Gurugram on 20.01.2023. It is mentioned that there are total 14 accused in the present case at this stage. However, the number of accused may increase as per the investigation being conducted. It is further mentioned that out of total 14 accused, 09 accused namely; Shivam Singh, Ankit Singh, Anshul Tyagi, Umesh Gupta, Amarjeet Kumar Gupta, Amit Jindal, Ravinder Kumar Raichand Bhai Majethia

@ Ravi Thakkar, Goswami Bhagwat Puri and Vipul Natwarlal Dholakia, have been arrested during investigation; whereas proclamation order under Section 82 Cr.P.C stand issued against accused Hameed Abbas Ali Khan, Anant Singh @ Anna and Saurabh Sharma and the other accused namely S. Xavier Susairathinam, is found to be admitted in De-Addiction-cum-Rehabilitation Centre. Accused-Sarita Bhatnagar is stated to be absconding.

13. With regard to Amarjeet Kumar Gupta (petitioner in ***CRM-M-3700-2023***), status report reveals that he has been found involved in two more cases i.e. FIR No.39 of 2018 under Sections 406, 420, 467, 468, 471, 201, 204 IPC and 66 of the I.T. Act, registered at Police Station Cyber, Gurugram and FIR No.88 of 2021, under Sections 420, 467, 468, 471 IPC and Section 66-D of the I.T. Act, registered at Police Station Swarup Nagar, Kanpur Nagar (U.P.).

14. Coming to the individual role of the petitioners i.e. Umesh Gupta (in ***CRM-M-2325-2023),*** Amit Jindal (in ***CRM-2325-2023***) and Amarjeet Kumar Gupta (in ***CRM-M-3700-2023***), it is submitted in the status reports filed in their respective cases that the name of ***Umesh Gupta @ Ishu*** (petitioner in ***CRM-M-11939-2023***) came forth during the enquiry conducted from the employees of the complainant-company and that he is the Account Associate of the complainant-company and he had provided the net-banking User ID and Password of the complainant-company to accused-Anshul Tyagi with the deal of Rs.8 lacs. It is stated that accused-Anshul Tyagi along with Saurabh Sharma, Rahul, Sanjeev and Anant Singh @ Anna, had transferred Rs.4 crores from the complainant-company through Net-banking from accused-Anshul Tyagi's Oye Rikshaw Company laptop to Bytie Enterprises Firm.

Umesh Gupta @ Ishu was arrested on 12.09.2021 and he got recovered an amount of Rs.8 lacs, which had come to his share.

15. So far as the role of ***Amit Jindal*** (petitioner in ***CRM-M-2325-2023***) is concerned, it is submitted that an amount of Rs.10 lakhs, which was lying in the bank account of M/s Bytie Enterprises (transferred from the complainant-company), was received by him in the Merchant Account of Paymark Payment Technologies and Service Pvt. Ltd. However, on the asking of one Sarita Bhatnagar, the petitioner had given the amount of Rs.9,80,000/- to the girl sent by accused Anant Singh and the petitioner had kept Rs.20,000/- as commission @ Rs.2%. The petitioner-Amit Jindal, had also got recovered the mobile phone marka Realme having SIM No.8800510819, during the course of investigation. It is further mentioned that the WhatsApp chats of the petitioner and said Sarita Bhatnagar were also extracted from the said mobile phone and the same were taken into police possession. Amit Jindal is stated to be arrested on 16.12.2022. It is also mentioned that Amit Jindal has not been found to be involved in any other case.

16. The role attributed to petitioner ***Amarjeet Kumar Gupta*** (petitioner in ***CRM-M-3700-2023***) is that he is the friend of accused Ankit. It is alleged that Amarjeet Kumar Gupta along with co-accused Ankit and Shivam got opened a fake account in ICICI Bank, Noida in the name of M/s Bytie Enterprises, firm of co-accused Shivam (brother-in-law of co-accused Ankit). Amarjeet Kumar Gupta is stated to have collected the kit pertaining to the said bank account from co-accused Shivam (through co-accused Ankit) and thereafter, Amarjeet Gupta is stated to have handed over the said kit to the main accused Anant Singh. The transaction OTP was

received in the mobile phone which was possessed by accused Ankit (who used to reside in the same building as of Amarjeet Kumar Gupta). It is stated that Amarjeet Gupta used to obtain OTP from accused Ankit and provide the same to accused Anant Singh. By using these OTPs, accused Anant Singh transferred an amount of Rs.2.49 crores from the abovementioned fake account. It is further mentioned that Amarjeet Gupta had received the amount of Rs.25 lakhs from the representatives of accused Anant Singh on 09.04.2021 at Chandni Chowk, Delhi. Out of the said amount, Amarjeet Gupta kept Rs. 21.5 Lakhs and gave remaining amount to accused Anant Singh and Shivam. Further, out of this share of Rs.21.5 lakhs, Amarjeet Gupta is stated to have given Rs. 50,000/- to Parmod and received three Cheque Books, which were handed over to accused Anant Singh. It is next stated that on 13.04.2021, the accused Anant Singh obtained OTP from Amarjeet Gupta and again transferred Rs.1.5 crores from the abovementioned fake account. On the same day, Amarjeet Gupta again brought Rs.5 Lakhs from the representative of accused Anant Singh at Chandani Chowk, Delhi. Amarjeet Gupta is further stated to have kept Rs.2.5 lakhs with himself and gave remaining to accused Ankit. During the course of investigation, Amarjeet Gupta got recovered the amount of Rs.40,000/- and three Cheque Books.

17. Learned counsel(s) for the petitioner(s) submits that the petitioners are innocent and have falsely been implicated in the present case.

18. In the petition i.e ***CRM-M-11939-2023*** filed on behalf of Umesh Gupta @ Ishu, it is submitted that Umesh Gupta @ Ishu was not named in the FIR and has been nominated as an accused only on the basis of a disclosure statement of co-accused Shivam Singh. It is submitted that the

only role attributed to Umesh Gupta @ Ishu is that he has given his user name and ID to co-accused namely, Anshul Tyagi, who in collusion with other co-accused had transferred a sum of Rs.4 crores in the account of M/s Bytie Enterprises, which is registered in the name of co-accused Shivam Singh. It is contended that not even a single penny of the alleged siphoned amount was credited in the account of Umesh Gupta. It is submitted that the alleged recovery as shown by the Investigating agency of Rs.8 lakhs, does not bring home the guilt of Umesh Gupta as the said recovered money is not the tainted money. It is contended that another co-accused Ankit Singh, who is alleged to help co-accused Shivam Singh (owner of M/s Bytie Enterprises) in opening the bank account after forging the documents, has already been granted the concession of regular bail vide order dated 21.11.2022 passed by this Court in ***CRM-M-46478 of 2022*** (Annexure P-2). It is submitted that nothing is to be recovered from Umesh Gupta. It is next submitted that Umesh Gupta is in custody since 12.09.2021 and investigation qua Umesh Gupta is complete as the challan already stands presented before the trial Court. It is stated that there are 22 prosecution witnesses cited; thus the trial is likely to take some time to conclude and no useful purpose would be served by keeping Umesh Gupta behind the bars. It is also stated that Umesh Gupta @ Ishu is ready to abide by all the conditions as may be imposed by this Court or by the trial Court; accordingly prayer for grant of regular bail is made.

19. The contentions raised by learned senior counsel for Amit Jindal (petitioner in ***CRM-M-2325-2023***) is that Amit Jindal is running an authorized banking point in the name and style of "M/s Shree Radhey Telecom" from the last four years on commission basis, for which, he has

been authorized from various companies i.e. Paymark Payment Technologies Private Limited and Spay India and the said companies are stated to be duly certified under essential services by the Ministry of Home Affairs, Government of India. Learned senior counsel representing Amit Jindal further submits that Amit Jindal received a transaction of Rs.10 lacs on 08.04.2021 in the portal account of Paymark Payment Technologies Private Limited, at the instance of a lady namely Smt. Sarita Bhatnagar, who was known to him since long time being a neighbour of the in-laws' of Amit Jindal. It is stated that on the request and instructions of said Sarita Bhatnagar, Amit Jindal after deducting his commission of Rs.20,000/-, handed over Rs.9,80,000/- after arranging the same from his family members and friends to an un-known person at the instance of Sarita Bhatnagar and at the time of making payment, Amit Jindal got confirmation from said Sarita Bhatnagar. Learned senior counsel contends that Amit Jindal came to know that his bank accounts have been seized and even the portal account of the company was seized by the Investigating Officer of the case and thereafter, Amit Jindal is stated to have joined the investigation on several occasions on the instructions of the Investigating Officer and he had even taken the Investigating Officer to the residence of Sarita Bhatnagar, where she met the Investigating Officer and admitted that the said amount was transferred at her instance in the portal account of the company which was used by the petitioner (Amit Jindal) for his banking point. It is contended that said Sarita Bhatnagar, had admitted that Amit Jindal had paid an amount of Rs.9,80,000/- at her instance. Learned senior counsel further submits that Amit Jindal was arrested on 16.12.2022 and since then, he is in custody. It is submitted that the investigation in this case is already complete qua Amit Jindal and challan stands presented; therefore, the trial is likely to take some time and no useful purpose would be served by keeping Amit Jindal in custody for indefinite period. It is also submitted that another co-accused Ankit Singh has already been granted regular bail vide order dated 21.11.2022 passed by this Court in ***CRM-M-46478-2022.*** It is stated that Amit Jindal is ready to abide by all the conditions as may be imposed by this Court or by the trial Court; accordingly prayer for grant of regular bail is made.

20. Learned counsel representing Amarjeet Kumar Gupta (petitioner in ***CRM-M-3700-2023***) submits that Amarjeet Kumar Gupta has nothing to do with the alleged occurrence since he is not named in the FIR. It is contended that the prosecution has levelled vague allegations against Amarjeet Kumar Gupta just to implicate him in the present case, on the disclosure statement of one Ankit Singh, who is stated to be a known person of Amarjeet Kumar Gupta. It is contended that Amarjeet Kumar Gupta is not known to accused-Shivam Singh (main accused) and he was totally unaware about the alleged cheating of Rs.4 crores. It is submitted that the police has arrested Amarjeet Kumar Gupta only on the basis of disclosure statement dated 29.05.2021 suffered by accused Ankit Singh and apart from the said disclosure statement, there is no other material/evidence to show the involvement of Amarjeet Kumar Gupta in the alleged crime. It is submitted that the investigation in the case is complete and the challan stands presented. It is contended that even as per the final report under Section 173 Cr.P.C., apart from the disclosure statement, there is no other incriminating material against Amarjeet Kumar Gupta. It is submitted that the trial is likely to take some time and no useful purpose would be served

by keeping Amarjeet Kumar Gupta in custody for indefinite period. It is also submitted that another co-accused Ankit Singh has already been granted regular bail vide order dated ***21.11.2022*** passed by this Court in ***CRM-M-46478-2022.*** It is stated that Amarjeet Kumar Gupta is ready to abide by all the conditions as may be imposed by this Court or by the trial Court; accordingly prayer for grant of regular bail is made.

21. Per contra, learned State counsel has opposed the prayer of grant of regular bail to the petitioners namely, Umesh Gupta @ Ishu, Amit Jindal and Amarjeet Kumar Gupta, on the ground that they all three are involved in serious fraud.

22. Learned State counsel submits that petitioner-Umesh Gupta @ Ishu, has been nominated as an accused on the basis of a disclosure statement of Shivam Singh, who is the beneficiary of the illegally transferred amount, being the owner of M/s Bytie Enterprises. Learned State counsel further submits that upon arrest of petitioner-Umesh Gupta @ Ishu and during interrogation, he has got recovered a sum of Rs.8 lacs from his house, situated at Murti Vihar Shikarpur, District Bulandhsahr (U.P.) in pursuance of disclosure statement and he further admitted that he was involved in the commission of crime. It is stated that petitioner-Umesh Gupta @ Ishu was authorized by the complainant-company to use the user ID and password for net-banking of ICICI bank account of the complainant-company and Umesh Gupta @ Ishu had supplied the said user ID and password to co-accused Anshul Tyagi, who in collusion with other co-accused namely, Saurabh Sharma, Rahul, Sanjeev and Anant Singh @ Anna, transferred a sum of Rs.4 crores to the account of M/s Bytie Enterprises, registered in the name of Mr. Shivam Singh.

23. As regards the petitioner-Amit Jindal, learned State counsel submits that an amount of Rs.10 lakhs, which was lying in the bank account of M/s Bytie Enterprises (transferred from the complainant-company), was received by Amit Jindal in the Merchant Account of Paymark Payment Technologies and Service Pvt. Ltd. Learned State counsel further submits that one mobile phone marka Realme having SIM No.8800510819, has also been recovered from Amit Jindal during the course of investigation and from the said mobile phone, WhatsApp chats between Amit Jindal and afore-said Sarita Bhatnagar were also extracted and the same were taken into police possession. Learned State counsel has not disputed that the petitioner is not involved in any other case except the present one.

24. While opposing the bail to Amarjeet Gupta (petitioner in ***CRM-M-3700-2023***), learned State counsel submits that he has been nominated as an accused on the basis of disclosure statement of one Ankit Singh, with whom he and one Shivam got opened a fake account in ICICI Bank, Noida in the name of M/s Bytie Enterprises, firm of co-accused Shivam (brother-in-law of co-accused Ankit). Learned State counsel submits that upon arrest of petitioner-Amarjeet Gupta and during interrogation, he has got recovered an amount of Rs.40,000/- and three cheque books. Learned State counsel further submits that petitioner (Amarjeet Gupta) is also involved in two more FIRs i.e. FIR No.39 of 2018 and FIR No.88 of 2021.

25. Learned State counsel submits that there are serious allegations against Umesh Gupta @ Ishu, Amit Jindal and Amarjeet Kumar Gupta and in case, they are enlarged on regular bail then they may tamper with the evidence and influence the material witnesses or they may abscond and flee

from justice which may delay the trial. It is further submitted that the petitioners may also divert the embezzled money and put the same beyond the reach of the police. Accordingly, prayer for dismissal of these above-mentioned three petitions has been made.

26. So far as the involvement of Amarjeet Gupta (petitioner in ***CRM-M-3700-2023***) in two more cases i.e. ***FIR No.39 of 2018*** and ***FIR No.88 of 2021***, is concerned, learned counsel for the petitioner, in rebuttal, has relied upon the judgment of Hon'ble Supreme Court in ***Maulana Mohd. Amir Rashadi v. State of U.P. and another, 2012(2) SCC 382*** to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. The relevant portion of the said judgment is reproduced herein below :-

> *"As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc."*

27. I have heard learned counsel for the respective parties and have gone through the paper-books as well as status reports (filed in the above-mentioned three petitions).

28. In the above-mentioned three cases i.e. ***CRM-M-11939-2023***, ***CRM-M-2325-2023*** and ***CRM-M-3700-2023,*** petitioners namely, Umesh Gupta @ Ishu; Amit Jindal and Amarjeet Kumar Gupta, were arrested on 12.09.2021, 16.12.2022 and 01.07.2021, respectively and since

then, they are in custody. The investigation in this case is complete qua them as the challan against accused Amarjeet Gupta, was submitted in the Court on 18.08.2021; supplementary challan is stated to have been submitted against Umesh Gupta and Amit Jindal, on 09.12.2021 and 15.03.2023, respectively. As regards the role ascribed to the petitioner is concerned, the same shall be the subject matter of trial where guilt of the accused would be determined on the basis of evidence to be led. The trial is going on, which is likely to take some time to conclude. Another co-accused namely, Ankit Singh, has been granted regular bail by the Co-ordinate Bench of this Court vide order dated 21.11.2022, passed in ***CRM-M-46478-2022.***

29. So far as the apprehension expressed by learned State counsel that the witnesses could be influenced by petitioners namely, Umesh Gupta @ Ishu, Amit Jindal and Amarjeet Kumar Gupta; suffice it to state that in the event of any such conduct, the prosecution can always approach the competent court for cancellation of their bail. Accordingly, it is observed that the State / Prosecuting Agency / State police shall be at liberty to observe the behaviour of the petitioners during bail period, and in case it feels that the petitioners are indulging in influencing any of the witnesses or tampering with the prosecution evidence in any manner or otherwise causing interference with the progress of trial, it shall be open for the State / Prosecuting Agency / State police to move the trial Court for cancellation of bail, which shall be decided by the trial Court on merits.

30. In view of the above, these three petitions i.e. ***CRM-M-11939-2023, CRM-M-2325-2023*** and ***CRM-M-3700-2023***, are allowed and petitioners namely ***Umesh Gupta @ Ishu, Amit Jindal*** and ***Amarjeet Kumar Gupta***, are ordered to be released on regular bail subject to

their furnishing bail/surety bonds to the satisfaction of the Illaqa Magistrate/Duty Magistrate / trial Court concerned.

31. Keeping in view the peculiar facts and circumstances of the case, I deem it appropriate to impose certain conditions upon petitioners ***Umesh Gupta @ Ishu, Amit Jindal*** and ***Amarjeet Kumar Gupta***, as under :-

> *(i) Petitioners shall appear before the trial Court on each and every date of hearing, unless specifically exempted from doing so;*
>
> *(ii) Petitioners shall not leave the country without seeking permission from the Court;*
>
> *(iii) Petitioners shall inform the concerned Station House Officer about their addresses at which they intend to reside during the pendency of the case and any change in their address shall be communicated to the concerned Station House Officer, forthwith;*
>
> *(iv) Petitioners would furnish their telephone number(s) to the concerned Station House Officer and would keep their mobile location on;*
>
> *(v) Petitioners shall appear before the police station concerned once in three months till the conclusion of trial in this case and every time inform in writing that they are not involved in any other crime other than the case(s) mentioned in the present order;*
>
> *(vi) Petitioners will not indulge themselves in extending inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court;*
>
> *(vii) Petitioners (or anyone on their behalf) shall prepare an FDR in the sum of Rs.1 lac (each of the petitioner namely, Umesh Gupta @ Ishu, Amit Jindal and Amarjeet Kumar Gupta) and deposit the same with the trial Court. The same would be liable to be forfeited as*

per law, in case of absence of the petitioners from trial without sufficient cause.

32. Nothing expressed here-in-above shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

33. Petitions bearing ***CRM-M-11939-2023, CRM-M-2325-2023*** and ***CRM-M-3700-2023*** qua petitioners ***Umesh Gupta @ Ishu, Amit Jindal*** and ***Amarjeet Kumar Gupta***, respectively, are accordingly disposed of.

34. All pending application/s, if any, shall also stand closed.

August 28th, 2023 **(HARSH BUNGER)**
gurpreet **JUDGE**

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