IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CRM-M-13729-2023

Date of Decision:-31.05.2023

Suman Sekhar Mohanty.

......Petitioner.

Vs.

State of Haryana.

......Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Gurmandeep Singh Sullar, Advocate,
Ms. Devaki Anand Sullar, Advocate &
Mr. Akun Sheemar, Advocate for the Petitioner.

Mr. Neeraj Poswal, Assistant Advocate General, Haryana.

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JASJIT SINGH BEDI, J.(ORAL)

The prayer in this petition under Section 438 Cr.PC is for grant of anticipatory bail in case FIR No.56 dated 16.09.2022 under Sections 419, 420 IPC and Under Section 66(D) of Information Technology (Amendment) Act, 2008 registered with Cyber Crime Police Station, Gurugram.

2. The brief facts of the case are that a complaint was moved by Vivek Gupta, CFO JBM Group, Sector 4, Gurugram in which it was alleged that on 16.09.2022 at around 2.00 pm he received a WhatsApp text message from a number 91-9162433966 requesting him to transfer certain sums to bank accounts indicated in the messages. The sender claimed himself to be Nishant Arya, his (complainant's boss) and the Vice Chairman of the JBM Group. The profile picture was of Mr. Nishant Arya and even on verifying the number on Truecaller it reflected that the number belonged to Mr. Nishant Arya. However, as the sender of the message informed him (complainant) that he (sender of the message) was busy in an important meeting, he(complainant) could not make a call directly to the purported sender of the message for any further inquiry. Therefore, under a bonafide

impression that instructions had been issued by his superior Mr. Nishant Arya, the sums of money were transferred from two entities of the JBM Group namely JBM Industries and JBM Autos. At the request of the sender the UTR numbers confirming such transfers were also shared on the same WhatsApp chat. He (complainant) had subsequently discovered in the evening that the sender of such messages was not Mr. Nishant Arya and some one had perpetuated a fraud by impersonation and forgery. Thus the JBM Group had been cheated for an amount of Rs.1,11,71,696/-. Legal action was sought leading to the registration of the present FIR.

During the course of investigation an amount of Rs.35,90,005/- out of the above mentioned amount was found to be transferred on 15.09.2022 in the account no.55550122055732 (Federal Bank) of the petitioner-Suman Sekhar Mohanty. The Amount of Rs.99,999/- had been found to be transferred in the said account from one account no.77770121956458 (Federal Bank). It further came forth that the petitioner had transferred money from the said account in another beneficiary account no.55550122015272 (Federal Bank). The said amounts were frozen. Accused Gautam Kumar , Raj Kumar Nanne Singh, Abhishek Singh, Ajay Kumar @ Vishnu were arrested on 19.09.2022. They got recovered the amount of Rs.4000/-, Rs.5000/-, Rs.4200/-, Rs.6000/- and Rs.4000/- respectively. The accused Pradeep Singh, Ramu Jaiswal, Avneesh Singh and Mukesh Maurya were arrested on 20.09.2022. They got recovered the amount of Rs.5300/-, Rs.5000/-, Rs.6000/- and Rs.18,000/- respectively. The accused Nitesh Kumar Arya, Deepak Kumar and Raj Kumar were arrested on 21.09.2022.

3. The Counsel for the petitioner contends that a friend of the petitioner namely Saroj Jena who was serving as a Postman had given a proposal to the petitioner to open an online bank account with Federal Bank to avail a study loan as the petitioner was interested to pursue a B Pharma course. The petitioner supplied his Aadhaar Card and another documents for opening of his bank account in good faith but the said Saroj Jena did not update him about the status of his account. Later, on receiving a notice under Section 41-A Cr.PC the petitioner verified the status of his bank account and came to known that on 15.09.2022 a sum of Rs.35,90.005/- had been credited to his account and within a fraction of time the said amount had been transferred to the account of Saroj Jena. He contends that

immediately on gaining knowledge of the above transaction the petitioner had approached Khunta Police Station Mayur Bhanj on 30.11.2022 to take action against Saroj Jena. The petitioner was a resident of Orissa and had no connection with the commission of offence in Gurugram. Even otherwise, all the co-accused of the petitioner had been granted the concession of regular bail whereas lien had been created on the bank accounts to the extent of 2 Crores thereby ensuring no loss shall be suffered by the complainant. He, therefore, prays that the petitioner was entitled to the concession of anticipatory bail.

4. The Counsel for the State on the other hand contends that as per the investigation account no.55550122055732 of Federal Bank (one of the accounts mentioned in the FIR) was opened by the petitioner and the registered mobile number of the said account i.e. 7978289842 belong to the mother of the petitioner. The e-mail ID mohantysumansekhar@gmail.com registered in the said account also belongs to the petitioner. An amount of Rs.35,90,005/- out of the total defrauded amount had been found to be transferred on 15.09.222 in the said account of the petitioner. Thus, the offence had been *prima facie* established against the petitioner. Even otherwise, merely because co-accused of the petitioner were granted the concession of regular bail did not entitle the petitioner to the grant of anticipatory bail as the parameters for the grant of regular bail and anticipatory bail are completely different. He therefore contends that as a prima facie case was established against the petitioner and his custodial interrogation was needed for the purposes of taking the investigation to the logical conclusion, no case for the grant of anticipatory bail was made out and the present petition ought to be dismissed.

5. I have heard learned Counsel for the parties.

6. The Hon'ble Supreme Court in the case of "***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Livelaw (SC) 870***'', held that merely because custodial interrogation was not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the prima facie case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

> " *It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will*

be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.

Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. ***There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail***".

7. In the instant case, the investigation has clearly revealed that the petitioner opened the account in question, received the money to the extent

of Rs.35,99,005/- and transferred the same to the account of his co-accused. Therefore, the offence is *prima facie* established against the petitioner. Even otherwise, his custodial interrogation is necessary to take the investigation to the logical conclusion.

8. In view of the above observations but without commenting on the merits of the case, the present petition for grant of anticipatory bail stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

May 31, 2023
Vinay

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