

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

CRM-M-19041-2022 (O&M)
Date of decision: 12.07.2023

Chotu Ram

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Jagmohan Ghumman, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, A.A.G., Haryana.

ARUN MONGA, J. (ORAL)

Petitioner seeks bail in criminal case bearing FIR No.179 dated 27.09.2017, registered under Sections 406, 420 IPC (Sections 380, 403, 201 IPC and Section 66 of Information Technology Act, 2000 added later on), at Police Station Sector 53, Gurugram, District Gurugram.

2. Per FIR, petitioner allegedly duped a company namely M/s One MobiKwik Systems Pvt. Ltd. running the business of an online e-wallet in the name of www.mobikwik.com. Petitioner breached software security wall of the website of the above mentioned company and then illegally transferred a sum of Rs.39,78,100/- in a bank account operated by him.

3. Learned counsel for petitioner contends that petitioner has been falsely implicated in the present case. Defense is that the aforesaid company itself was not able to protect its own App from an inherent glitch so as to permit its user to draw excess money. Money thus got remitted from

company's account to the joint account of his mother account, in which he is also the joint holder, due to the software glitch of the company itself and the petitioner is not responsible for the same. Mother of petitioner not knowing all this, withdrew some money. She alone was operating and maintaining the said bank account details. He would further urge that petitioner has not tampered with the mobile App or its program and is not liable for any alleged fraud committed with the aforesaid company. Mother of the petitioner conversant with the withdrawals died on 01.12.2019. Petitioner has nothing to do with the alleged transactions.

3.1. Learned counsel for petitioner argues that petitioner remained in custody from 18.11.2021 to 29.03.2023, when he was released on interim bail by this Court and he did not misuse the said concession. Final report under Section 173 Cr.P.C. has been presented before learned trial Court. He would further contend that the trial of the case would take a sufficiently long time to conclude. He is no required for any purpose whatsoever.

3.2. Learned counsel for petitioner further states that petitioner is 45 years old and has two minor daughters aged 02 years and 05 years respectively. He is sole breadwinner of his family. His father died long back.

4. On the other hand, learned State counsel on instructions from Inspector Rajender Singh opposes the bail petition. He submits that petitioner has committed serious offence.

5. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

6. Petitioner was earlier released on interim bail by a Co-ordinate Bench of this Court presided over by Harkesh Manuja J., who passed the following order on 29.03.2023:

“By way of present petition filed under Section 439 Cr.P.C., prayer has been made for grant of regular bail during pendency of trial incase FIR No.179, dated 27-09-2017, under Sections 406, 420 IPC (Sections 380, 403, 201 IPC and Section 66 of Information Technology Act, 2000 added later on), registered at Police Station Sector 53, Gurugram, District Gurugram.

On 22.03.2023, this Court passed the following order:

“Learned counsel for the petitioner on instructions from Jogender Dahiya, who happens to be the brother-in-law of the petitioner informs this Court that 50% of the dispute amount i.e. Rs.39,78,100/- shall be deposited on behalf of the petitioner with the trial court within a period of 1 week from today.

List on 29.03.2023.”

In pursuance thereof, the petitioner has deposited a sum of Rs.19,89,050/- vide challan No.0100730182 dated 24.03.2023 before the court of learned Judicial Magistrate First Class, Gurugram. The order dated 27.03.2023 in the aforesaid context has been produced before this Court.

Adjourned to 12.07.2023.

In view of the aforesaid facts and circumstances, the petitioner having deposited 50% of the amount and even willing to deposit the balance, in case, he is afforded an opportunity in this regard as well as considering the fact that the petitioner is in custody for the last 01 year and 4 months now and the investigation stands concluded with the filing of challan, the petitioner is ordered to be released on interim bail on his furnishing bail bonds/surety bonds to the satisfaction of trial court/Duty Magistrate.”

7. Prior to interim bail, petitioner remained in custody in this case from 18.11.2021 to 29.03.2023. He has not misused the said concession. Challan was presented on 12.01.2022, however, the charges are yet to be framed. There are total 6 witnesses and trial is unlikely to conclude any time soon, whereas petitioner has already spent more than 1½ years in preventive custody before being released on interim bail by this Court. Petitioner is not involved in any other case and his antecedents are clean.

8. Be that as it may, offence allegedly committed by the petitioner is of non-violent nature and in that sense his release on bail is not a threat to society at large by committing any violent crime. In any case, allegations against petitioner are a matter of trial at this stage. Considering the overall scenario and without commenting on the merits of the case, I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody. Resultantly, the instant petition is allowed.

9. Accordingly, petitioner is ordered to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court, where his case is being tried and in case he/she is not available, before learned Duty Magistrate, as the case may be.

10. In case, petitioner is found to be involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of his bail in the instant case.

11. It is made clear that any observations and/or submissions noted herein above shall not have any effect on merits of the case as the same are for the limited purpose of hearing the instant bail petition alone and learned Trial Court shall proceed without being influenced with this order.

12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

July 12, 2023
ashish

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No