

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-44240-2022 (O & M)

Date of decision: 09.02.2023

Md. Misbahu Haque

..... Petitioner

V/s

State of U.T., Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sumit Dua, Advocate, for the petitioner.

Mr. Shashank Bhandari, Addl.P.P., for respondent-U.T., Chd.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of the regular bail to the petitioner in FIR No.24 dated 02.02.2022 under Sections 419, 420, 120-B IPC registered at Police Station Sector 36, Chandigarh.

2. The brief facts of the case are that the complainant-Jagbir Singh received a message on 30.01.2022 from mobile phone No.8276943070 asking him to do KYC, otherwise his SIM would be suspended. He was to call on Customer Care Number 8276976470 immediately. On 31.01.2022, a call came from the same number and he (complainant) was asked to install the Anydesk App on his mobile, which he did. He did so as the person who called him (complainant) claimed to be an Airtel employee. The complainant was also asked to pay a sum of Rs.10/- which he did from his HDFC debit card. He (complainant) was thereafter told that the transaction was not successful and he may have to use another debit card. On this, the

complainant asked his son to use his ICICI bank debit card and did a

successful transaction of Rs.10/-. Later on, Rs.9000/- was debited from his sons's ICICI bank account No.002901508086. He later received a call from the SBI customer care person, namely, Deepak Kumar from mobile No.8509483197. As the complainant was not a tech savvy person, he asked to call his son and provided him with his son's mobile number. The said person sent a Quick Support App file through Whatsapp on the complainant's mobile number, which was downloaded. When the complainant visited the SBI, Sector 35 Branch, Chandigarh, on 01.02.2022 he found that from his SBI account two transactions of Rs.2,00,000/- and Rs.2,25,000/- were debited. Subsequently, during investigation, it transpired that a loan of Rs.5,65,000/- was taken against a Fixed Deposit of account number 40750281679 in the same bank. In this way, the complainant was cheated of an amount of Rs.9,90,000/-.

During investigation, it was found that the amounts were transferred into a bank account in the name of Muhammad Misbahu Haque (petitioner) son of Mohammad Rafi Ansari. During the course of further investigation, Muhammad Misbahu Haque was arrested and recovery of money deposit slips, etc. were effected from him. On his disclosure, the name of his co-accused -Kunal Singh alias Chotu (since granted bail vide order dated 12.09.2022 passed in CRM-M-18419-2022) and one Toufique came up and it was stated by him that these two persons opened bank accounts in different banks. These amounts were deposited in the bank accounts and withdrawn by Kunal Singh and Toufique. A CCTV footage of the fraud was obtained and it was found that the suspect Tousif Anwer was withdrawing the amount with Muhammad Misbahu Haque (petitioner). It

Rs.2,25,000/- was found to be transferred in the amount of Muhammad Misbahu Hhaque.

3. The learned counsel for the petitioner contends that the petitioner is not named in the FIR. The recovery effected from him has been foisted upon him. He is in custody since 11.02.2022 and one of the 15 prosecution witnesses had been examined so far. Since the case is triable by the Court of a Magistrate, he be granted the concession of bail, moreso, when one of his co-accused, namely, Kunal Singh has been granted the concession of bail by this Court vide order dated 12.09.2022.

4. The learned counsel for the respondent-U.T., Chandigarh, on the other hand, contends that the such kind of cyber crimes are on the rise. He further contends that the petitioner does not deserve the concession of regular bail as he has criminal antecedents with one other case bearing FIR No.23 dated 18.02.2022 under Sections 471, 419, 420 IPC and Section 66 IT Act at Police Station Shahpur Kandi, Pathankot registered against him. He, however, does not dispute the fact that the case is triable by the Court of a Magistrate, the petitioner is in custody since 11.02.2022 and one of the prosecution witnesses have been examined till date.

5. I have heard the learned counsel for the parties at length.

6. Admittedly, the petitioner is in custody since 11.02.2022. There is nothing to suggest that if the petitioner is granted the concession of bail, he shall either abscond from justice, tamper with the evidence or pressurize witnesses. This Court in the case of “Maninder Sharma versus State Tax Officer, State Tax, Mobile Wing, Jalandhar, Punjab, (CRM-M-24033-2021 decided on 31.08.2022), has stated that broadly speaking (subject to any

involving the IPC or Special Acts or cases triable by Magistrates once the investigation is complete, final report/complaint filed and the triple test is satisfied then denial of bail must be the exception rather than the rule". In the present case, none of the 16 prosecution witnesses have been examined so far. Therefore, the further incarceration of the petitioner is not required, moreso, when his co-accused, namely, Kunal Singh has been granted the concession of bail by this Court vide order dated 12.09.2022.

7. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Md. Misbahu Haque, is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

8. The petitioner shall appear on the first Monday of every month before the local police station till the conclusion of the trial and furnish an affidavit each time that he is not involved in any crime other than the present one.

9. In addition, the petitioner shall prepare an FDR in the sum of Rs.2,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from Trial without sufficient cause.

February 09, 2022
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No