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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-40182-2023 (O&M)
Date of decision: August 22, 2023

Mohammad Aadil

….Petitioner

versus

State of Haryana

….Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Suvir Sidhu, Advocate,
Mr. Pranshul Dhull, Advocate for petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

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ARUN MONGA, J. (ORAL)

After being declined bail by the trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.025 dated 02.06.2023, registered under Sections43, 66(D), 75 of the Information Technology Act, 2000 (for short 'IT Act') and Sections 419, 420 of the Indian Penal Code, 1860 (for short 'IPC')(Section 66 of the IT Act and Section 120-B of IPC added later on), at Police Station, Cyber South, District Gurugram.

2. According to prosecution's version, on 02.06.2023, Inspector Amit Kumar lodged a written complaint stating that he had received information from an informant about Abhishek Gupta's involvement, along with his accomplice Jafar and a group of employees, in operating an illicit call center at Plot No.1557, Second Floor, Ansal API Essencia, Sector-67 Gurugram. Using this illegal call center, the aforementioned individuals were deceiving citizens in Australia and the USA by falsely presenting themselves as representatives of companies like Paypal, Norton, Amazon, and Geek Squad. The complaint detailed the specific methods used in their criminal activities. These individuals directed foreign nationals to dial a toll-free number, persuading them to buy Crypto currency or gift cards valued between $250 and $500. After purchase, the items were cashed, resulting in numerous foreign nationals being scammed.

Aforesaid information was shared with the Assistant Commissioner of Police, who then authorized a search and organized a raiding team led by Inspector Amit Kumar (the complainant), along with the Station House Officer from the Cyber Crime Police Station in South Gurugram and other officers. During the raid, it was discovered that seven individuals equipped with laptops were making calls to various people in English using the Zoom App. Mohammad Jafar, the main organizer, was present at the scene. However, when the raiding party requested documents such as a Department of Telecommunication (DoT) License, company registration, and information about customer and data sources, the main organizer failed to provide them. Upon further inquiry, it was revealed that he had hired boys on a combination of salary and commission basis. With the help of these individuals, he would contact foreign nationals residing in Australia and the USA through the Telegram App. Under the pretense of facilitating refunds from companies like Paypal, Norton, and Amazon, they gained access to the victims' computer screens and displayed fabricated data showing inflated bank account balances. This deceitful approach earned the victims' trust, allowing the scammers to persuade them to pay service fees in the form of gift cards or BTC. Subsequently, these items were redeemed through online channels, often routed through China.An FIR was registered. Petitioner was arrested as a suspect 02.06.2023 and is in custody ever since.

3. Learnedcounsel for the petitioner submits that petitioner is merely a poor employee of the promoters of the call centre, which is alleged to have been set up by them in violation of provisions of DoT without obtaining any sanction/licence for the same. Petitioner, being an easy target, has been falsely implicated as a scapegoat. He further submits Further submits that only recovery that was required to be made, to establish culpability of the petitioner, is his mobile phone, which has already been seized and sent forforensic test. All the offences are triable by Magistrate. He also points out that challan has already been filed and investigation is complete and no further custodial interrogation is required.

3.1. Learned counsel for the petitioner would further argue that nothing is to be recovered from the petitioner and no useful purpose would be served by keeping him behind bars.

4. On the other hand, learned State counselopposes the petition and submits that petitioner has committed a serious offence.Petitioner along with co-accused indulged in the illegal activities of cheating/ defrauding foreign nationals. If enlarged on bail, there is every likelihood that he will commit similar offence and/or will flee from trial, and he might tamper with evidence or influence/ intimidate the witnesses. However, he admits that there is no other case against the petitioner.

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

6. It is not controverted that petitioner is a low key employee in the alleged call center. He may not therefore have the knowledge regarding alleged violation of running the call centre without any licence/ sanction, by its promoters. Nothing is to be recovered from the petitioner. Offences are triable by the Magistrate.

7. On a Court query, learned State counsel, on instructions from Inspector Shahid Ahmed, informs that challan was presented on 25.07.2023. Investigation *qua* petitioner is complete, he is thus not required for custodial interrogation.Allegations against petitioner are a matter of trial at this stage. There aretotal 18 prosecution witnesses. Commencement/conclusion of trial is likely to take a long time. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has already been languishing in jail for the past more than 2½ months in preventive custody, being behind bars since 02.06.2023.

8. Petitioner is being kept in preventive custody merely on an unfounded suspicion that if he is let out, he may either tamper with evidence and/or influence witnesses. There is no probability of tampering with evidence as the same has already been seized by the investigating agency.

9. Offence allegedly committed by 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.

10. It is stated that petitioner is 32-year old person having wife and a 4-month old infant, who are living in sheer penury in his absence. Being family man and having clean antecedents and fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

11. Considering the overall scenario and without commenting on the merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody.

12. Accordingly, petitioner is ordered to be released on bail, in case not required in any other case, 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 Judge, as the case may be.

13. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for limited purpose of bail hearing alone and learned trial Court shall proceed without being influenced with this order.

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

(ARUN MONGA)
JUDGE

August 22, 2023
mahavir
Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No