

CRM-M-41924-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-41924-2023 (O&M)

Date of decision: August 29, 2023

Nitish Kumar

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Rahul Jaswal, Advocate for petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

ARUN MONGA, J. (ORAL)

After being declined bail by the trial Court, petitioner before this Court seeks his release as undertrial in a case bearing FIR No.16 dated 07.03.2023, registered under Sections 419,420 of the Indian Penal Code, 1860 (for short 'IPC') (Sections 465, 467, 468, 471, 120-B of IPC added later on), at Police Station, Cyber Crime, Yamuna Nagar.

2. Per prosecution version, an FIR was registered at the behest of complainant, namely PreetiJohar alleging that accused persons duped her with Rs.4,54,896/- while deducting the said amount from her bank account. During investigation, petitioner was arrested and is in custody since 28.05.2023.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case, merely on the basis of disclosure statement of co-accused, namely Sanjeet Kumar Gupta.

3.1. Learned counsel for the petitioner also contends that aforesaid co-accused of the petitioner, namely, SanjeetKumar Gupta has already been granted concession of bail by this Court vide order dated 06.07.2023 (Annexure P-1) passed in CRM-M-30745-2023. Petitioner's case is on better footing than him.

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

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3.3. Learned counsel for the petitioner also submits that petitioner is an undergraduate student studying B.Sc. and is also Human Immunodeficiency Virus (HIV) positive patient. He further submits that his continued incarceration is also a threat to other inmates in getting infected, apart from petitioner requiring extra care and attention under serious precautions, so as to not get any other infection, which can be life threatening in his case. The unhygienic condition of the jail is highly detrimental to his health, and his continued custody may prove to be fatal.

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. Petitioner along with his co-accused duped the complainant of a huge amount by deducting the same from her bank account. If enlarged on bail in present case, there is every likelihood that petitioner may tamper with the evidence and/ or influence the witnesses. He however, does not controvert the aforesaid submissions regarding grant of concession of bail to the co-accused as well as petitioner's being a known patient of HIV.

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

6. Challan was filed against petitioner on 26.07.2023, but charges are not framed yet. Petitioner is thus not required for any further custodial interrogation.

7. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations against petitioner are a matter of trial at this stage. On a Court query, learned State counsel, under instructions from SI Vishal Saini, informs that out of 15 witnesses, none has been examined so far since charges are yet to be framed. Conclusion of trial is still likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has already been languishing in jail for the past more than 3 months, being behind bars since 28.05.2023.

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. 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.

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9. Petitioner is also suffering from HIV, and his continued long incarceration may deteriorate his health and is also a health threat to other jail inmates. It is unlikely that he poses any flight risk and/or will flee from trial proceedings.
10. Co-accused of the petitioner is also stated to have been granted concession of bail by this Court.
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 29, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No