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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-43841-2023 (O&M)
Date of decision: 11.09.2023

Abhishek Gupta

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Suvir Sidhu, Advocate and
Mr. Pranshu Dhull, Advocate,
For the petitioner.

Mr. Karan Garg, AAG, Haryana.

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 Sections 43, 66 (D), 75 of Information Technology Act, 2000 and Sections 419, 420 of IPC and (Section 66 of 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 centre 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.

2.1 Aforesaid information was shared with the Assistant Commissioner of Police, who then authorized a search and organized a raiding team led by Inspector Amit

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 an online channel, often routed through China. An FIR was registered. Petitioner was arrested as a suspect on 02.06.2023 and is in custody ever since.

3. Learned counsel for the petitioner submits that co-accused namely, Mohammad Aadil has already been granted concession of bail by this Court vide order dated 22.08.2023 (Annexure P-6) in CRM-M-40182-2023.

3.1 Learned counsel for the petitioner submits that just like the co-accused as aforesaid, petitioner is merely an employee at the call center. Place of recovery i.e. Flat No.1557, 2nd Floor Sovereign Floor, Ansal API Essencia, Sector 67, Gurugram is owned by one Lt. Col Charles John Godfrey Scott. Said call center is alleged by the prosecution to have been set up in violation of provisions of DoT without obtaining any sanction/license for the same, for which petitioner is not culpable. Petitioner, being an easy target, has been falsely implicated as a scapegoat. He further submits that there is non-compliance of Section 100 (4) Cr.P.C. as no independent witness was joined while conducting search at the premises of alleged call center. All the offences are triable by

3.2 Learned counsel also submits that nothing is to be recovered now from the petitioner and he is not required for further custodial interrogation. There is no likelihood of petitioner tampering with evidence and/ or influencing prosecution witnesses.

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. Petitioner along with co-accused indulged in the illegal activities of cheating/defrauding foreign nationals. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice. He, however, admits that no other case is pending against him.

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

6. Learned State counsel, on instructions from Inspector Shahid Ahmed, submits that challan *qua* petitioner was filed on 25.07.2023 and charges are yet to be framed. Out of 18 prosecution witnesses, none has been examined so far. Investigation *qua* the petitioner is complete. Petitioner is thus not required for custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Commencement/conclusion of the trial is likely to take quite some time as it is proceeding at a snail pace. Whereas, petitioner has already been in jail for more than 03 months, being in custody since 02.06.2023.

7. 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.

8. 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. In any case, allegations against petitioner are matter of trial.

9. Co-accused Mohammad Aadil has already been granted concession of bail by this Court.

10. Petitioner is stated to be a 35-year old person. His marriage is scheduled

after his parents. His father is suffering from last stage of cancer, and his last wish is to see his son getting married in his life time. Being a family person and fixed abode, it is unlikely that he is flight risk or will flee from the 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, if 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. 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.

14. It is made clear that any observations and/or submissions noted hereinabove 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.

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

(ARUN MONGA)
JUDGE

11.09.2023
vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No