

CRM-M-48189 of 2022

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

CRM-M-48189 of 2022

Date of decision: 06.02.2023

Kaushal Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Rajinder Yadav, Advocate, for the petitioner.
Mr. Vikrant Pamboo, DAG, Haryana.

NAMIT KUMAR, J. (ORAL)

This petition has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.422 dated 31.12.2019 under Sections 406/420 IPC, registered at Police Station Jind Sadar, District Jind.

FIR in the present matter was registered on the basis of application having no. 7590-P dated 21.12.2019 which was received in Police Station Sadar, Jind on 31.12.2019. The application was moved by Vishal Wajwan (BDPO) s/o Sh. Devender Singh (SI HP), r/o Ramrai, wherein he alleged that he booked a vehicle on-line through OLX and the owner of the vehicle disclosed his name as Karan Singh (Indian Army). As a proof of the same, he sent RC of vehicle, his Aadhar card and Canteen Card through WhatsApp. The complainant made the payment of Rs. 93,000/- through Google Pay. During this process he had conversation with three persons having phone no. 7578081215 (Karan Singh) No. 8404074393 and 7467042843

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(Transport Driver) and the third in whose account the amount was deposited was petitioner-Kaushal Kumar No. 8400656024 IFSC Code PYTM0123456 and second 8876990475 (account) Vehicle No. HR26BH-2168 Aadhar No. 628855073483, Chassis MA3EADE1500170621, Engine KION4207318 owner Karan Singh s/o Kharak Singh H. No. 21 Ashok Vihar Gurugram.

This petition came up for hearing before a Co-ordinate Bench on 27.10.2022 and following order was passed: -

“Learned counsel for the petitioner submits that although the phone number in question belongs to the petitioner but the user ID of the account in which the amount was deposited had already been updated and the phone number had subsequently been changed to some other phone number and consequently it cannot be said that it is the petitioner, who is the beneficiary of the amount of Rs.93,000/-.

Learned counsel for the petitioner has passed on certain documents to the learned State counsel in this regard, who has requested for a short adjournment to seek necessary instructions and to file reply.

In view of the aforesaid request, the matter is adjourned to 9.11.2022.

Reply, if any, be filed on or before the next date of hearing.”

In terms of said order, status report by way of affidavit of Ravi Khundia, Deputy Superintendent of Police, Jind-Detective, District Jind, has been filed on behalf of the respondent-State, wherein it has been stated as under: -

7. That on the last date of hearing i.e. 27.10.2022, learned counsel for the petitioner had averred that although the

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phone number in question belongs to the petitioner, but the user ID of the account in which the amount was deposited had already been updated and the phone number had subsequently been changed to some other phone number and consequently it cannot be said that it is the petitioner, who is the beneficiary of the amount of Rs.93,000/-. In support of this averment, the learned counsel for the petitioner had passed on following documents to the learned state counsel:-

i) An affidavit dated 01.08.2022 averring therein that he has got the no. 84006-56024 issued in his name on 27.11.2021. In support of this a document from the service provider i.e. Airtel is also attached depicting the activation date of this no. as 27.11.2021.

*During the course of the investigation of the case, Customer Acquisition form (**hereinafter referred as 'CAF'**) of mobile no. 84006-56024 was obtained and analyzed which shows that the **name of the person to whom this number was issued is Kaushal Kumar- the present petitioner and the same was issued in the name of the petitioner on 11.01.2018 against the Aadhar card No. 465866-584315.** Therefore, the CAF of the mobile no. of the petitioner itself negates the averment of the petitioner that he has got the no. 84006-56024 issued in his name on 27.11.2021. Thus the petitioner is trying to mislead the Hon'ble Court on this point.*

(ii) Bank Statement of Account No. 730310510019501 and 732918210000142 of Bank of India belonging to the petitioner which has no bearing on this case.

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(iii) Details from Paytm pertaining to the A/c No. 918400656024 bearing customer ID 461176178 including user update history depicting a change from 91-8400656024 to 91-7578081215 at 09:31:09 AM on 11.12.2019 and the same was updated by the customer ID 461176178 i.e. the ID of the petitioner himself. This prima facie established that the petitioner had himself updated the mobile numbers and there is nothing to substantiate the averment of alleged hacking.

(iv) An undated letter along with 3 enclosures of the petitioner addressed to SHO Sadar Jind is concerned, it is submitted that this letter has not been received by Investigating Officer

8. That from the investigation conducted so far in this case and the facts mentioned above, it is evident that the petitioner is the prima facie beneficiary of the duped amount of Rs. 93,000/- nevertheless the petitioner may join the investigation and bring his version on record along with producing the documents or evidence he wants.”

Learned counsel for the petitioner contends that the petitioner is innocent and has been falsely implicated in the present case. He further submits that the phone number in question belongs to the petitioner but the user ID of the account in which the amount was deposited had already been updated and the phone number had subsequently been changed to some other phone number and, therefore, the petitioner is not the beneficiary of Rs.93,000/-.

Per contra, learned State counsel has referred to the status report and contended that the petitioner is the beneficiary of the duped

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amount of Rs.93,000/-, therefore, he is not entitled to the concession of anticipatory bail.

I have heard learned counsel for the parties and perused the record.

As per law laid down by the Hon'ble Supreme Court in ***State of Madhya Pradesh v. Pradeep Sharma (2014) 2 Supreme Court Cases 171***, power exercisable under Section 438 Cr.P.C. is somewhat extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his/her liberty.

There are specific allegations against the petitioner that he is the beneficiary of alleged duped amount of Rs.93,000/-. The allegations are serious in nature. Custodial interrogation of the petitioner may provide information leading to discovery of material facts. Curtailing of his freedom is necessary in order to enable the investigation to proceed without hindrance and to protect witnesses.

Reliance can be placed upon the Hon'ble Supreme Court dictum passed in ***Prem Shankar Prasad v. The State of Bihar and another, 2021(4) RCR (Crl.) 598*** and ***Anil Kumar Singh v. High Court of Judicature at Patna through its Registrar General and another, (2020)19 Supreme Court Cases 364*** whereby the Hon'ble Apex Court had denied the concession of anticipatory bail in view of the gravity of offences and the conduct of the petitioner.

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Keeping in view the facts and circumstances of the case, conduct of the petitioner, role attributed to him, gravity of offence, *modus operandi* as well as settled proposition of law by the Hon'ble Supreme Court, petitioner does not deserve the concession of anticipatory bail.

The present petition is accordingly dismissed.

However, anything observed hereinabove shall not be construed as an expression of opinion on the merits of the case.

06.02.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No