IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-54028-2023
Date of decision: 23.10.2023

ROHIT SEN ......Petitioner

VERSUS

U.T. CHANDIGARH ....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present: - Mr. Anil Sharma, Advocate and
Mr. Prashant Kumar Sharma, Advocate
for the petitioner.

Mr. Manish Bansal, Public Prosecutor with
Mr. Saksham Parmar, Advocate
for the respondent-U.T. Chandigarh.

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VINOD S. BHARDWAJ, J. (Oral)

1. The instant petition has been filed under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail to the petitioner in case bearing FIR No.93, dated 11.09.2023 (Annexure P-1) under Sections 419, 420 and 120-B of the IPC registered at Police Station Cyber Crime, District Chandigarh, U.T. Chandigarh.

2. The case of the prosecution in brief, registered on the complaint of one Dr. Arshnoor Kaur given to the office of Senior Superintendent of Police, Chandigarh is that she was working as Senior Resident in the Department of Surgery, Govt. Medical College and Hospital, Sector-32,

Chandigarh. She has received a random telephonic call from phone No. 91-963052613 at around 04.29 PM on 01.06.2023 wherein it is stated that they were calling from some package delivery and she was asked to dial extension number ahead to know about the details of package etc. Thereafter, the said call got connected to a person namely Rahul Nath, FEDEX Branch, Mumbai and he asked her that whether she had sent any package from Mumbai to Taiwan. The complainant denied of sending any such parcel, however, the said person disclosed her name, Aadhar card number and phone number correctly by stating that same are mentioned on the parcels. Thereafter, the said person gave details of parcel no. 2289321291 in the name of Mr. Zhang Lin and stated that this parcel contains 2 pairs of shoes, 3 kg Coat, one Laptop, 3 credit cards and 240 grams of weed. The said person further told that this parcel is lying with the Mumbai Customs Department and he will connect her to a person in Narcotics Branch and she needs to tell all these details so that a Fax copy can be sent to FEDEX Branch, Mumbai. Thereafter, she was connected with another person through Skype application where it was told to the complainant to visit the Mumbai Police to lodge online complaint and to resolve the matter. Thereafter, said person threatened the complainant and sent her a certificate in the name of Central Bureau of Investigation (CBI) in the name of Police Officer/In-charge namely Dr. Balsing Rajput (DCP Cyber Crime). The said persons asked the complainant that she had to transfer an amount of 98,426/- and had also told that 3 money laundering accounts are going on from her Aadhar ID and accordingly, he asked about her bank account details. Ultimately, it is stated that the said persons by threatening the complainant in the name of CBI and other Government

Agencies, got transferred from her amount of 98,426/- and 25,000/- in different accounts. She prayed for strict legal action against the unknown culprits.

3. Learned counsel appearing on behalf of the petitioner has vehemently argued that the petitioner has no concern in the entire incident. The money was transferred in the account of one of the co-accused Anuj Kumar, who is already in the police custody. The petitioner works as a Barber and operates a Salon in Rajasthan for last 05 years. There is no allegation that the petitioner ever talked to the complainant or was operating the account in which the money was deposited. Counsel further argues that the mobile number in fact belongs to one Vinod Kumar and that there is no evidence on the basis whereof the petitioner may be connected to the above said fraud. It is further submitted by the counsel for the petitioner that the Additional Sessions Judge, Chandigarh had granted an interim concession so as to enable the petitioner to join investigation, however, on account of the petitioner not being well, he could not join the investigation. It is further averred that he is ready and willing to join investigation as and when called upon to do so and that there are no special or exigent circumstances made out that would mandate custodial interrogation of the petitioner.

4. Learned counsel appearing on behalf of the respondent-State on the other hand argues that the case in hand is tip of an ice berg and is part of the larger conspiracy and crime which has earned the nation a bad name of being the capital of cyber fraud. It is one of such cases where the accused persons impersonated as the officials of the Narcotic Control Bureau as well as the Central Bureau of Investigation. While it is not in dispute that the account in which the money had been transferred was operated by Anuj

Kumar, however, it is submitted that at the stage of the account opening form, a specific mobile No. 7428550401 was mentioned as the linked account number to the above Yes Bank Account. The CDRs of the aforesaid mobile phone number were obtained from the Service Provider and the said mobile number was found to be active in an instrument bearing IMEI No. 35618911293275. The aforesaid suspected IMEI number was put on surveillance and it was noted that one mobile No. 9216229188 was active in the said instrument for the period from 04.06.2023 to 21.06.2023 i.e. during the said period of incident. The CDRs of the aforesaid mobile phone number i.e. 9216229188 were thereafter obtained and the same was found to have been in active mode in instrument bearing IMEI No. 864172060518490 from 20.08.2023 till the date of submission of the response and location of the said phone number was found to be that of Bijay Nagar, near Hanuman Mandir i.e. that of the petitioner. The Customer Application Form of the said mobile No. 9216229188 was found to the name of one Vinod Kumar son of Chotu Lal, resident of Mistri Mohalla, Ambedkar Colony, Gulab Badi, Ajmer, Rajasthan. The arrested co-accused Anuj Kumar revealed that the meeting was organized in Bijay Nagar regarding fake accounts & Sim Cards and on the basis of the disclosure as well as the locations of the above said number, a raid was conducted with the help of local police when the above said mobile number was thereafter switched off. After obtaining technical support and gathering local intelligence, it transpired that the above said mobile number 9216229188 obtained in the name of Vinod Kumar was actually used by the petitioner herein. He has since then been absconding. It is argued that cyber crimes are operated in a well sorted strategy and in a series of forged/fraud documents and that in order to unearth the entire racket, the entire link in the chain of commission of the offence needs to be taken in custody so that gullible citizens can be prevented from being victims of such fraud. It is contended that the very fact that the location of the said mobile number was reflected in the account of the petitioner and has been switched off clearly reflects at the participation of the petitioner and about him being aware. Further, the link of evidence as reflected clearly shows that the mobile numbers as well as the IMEI numbers complete the chain and indicate towards the involvement of the petitioner. The custodial interrogation of an accused in the case of cyber fraud is thus required to know the entire module in which the accused operate and how the system is abused by the accused for committing fraud upon persons and how the forged documents were prepared to obtain the Mobile phone numbers.

5. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present petition.

6. Even though, it is not in dispute that the account where in the amount was transferred was being operated by one accused Anuj Kumar, however, the entire racket cannot be operation of one person alone and has to be run through involvement of different persons. The investigation conducted so far by the police shows that the mobile number mentioned at the stage of account opening was linked to one IMEI No. 35618911293275 in which mobile number 9216229188 was operational. The said mobile number was thereafter being used in a different instrument bearing IMEI No. 864172060518490 and the location was found to be connected to the petitioner notwithstanding that the mobile number had been issued in the

name of some Vinod Kumar son of Chotu Lal. Although it is argued that the phone number from which the call was received by the victim did not belong to the petitioner, however, the amount was transferred to an account which has link to the petitioner. Merely because there is a document travel of forged records does not mean that petitioner is innocent and is unaware. The issues reflect at the scale of operation and how strategically the tracks are being sought to be erased.

7. Cyber crime cannot be equated to ordinary crimes under IPC or other such penal laws. Such crimes are committed by persons who are educated & well conversant with technology, hacking system, forging records, fabricating accounts, siphoning funds and all these persons may be sitting in different locations in country. While some may be mere small beneficiaries, it does not make them innocent. Such cartal/syndicate needs to be taken down as a whole.

8. Arrest of one person may not be sufficient to complete the chain of events and to complete the entire operation and to understand the modus adopted by the accused persons. Even though, the possibility of the petitioner being a victim himself may not be entirely to be ruled out, however, at the same time, the participation of the petitioner in the commission of the offence is also pre-dominant and reflected from the investigation conducted so far. The linkage of the beneficiary account and the registered mobile number and its connect to the petitioner, who surprisingly absconded his arrest even during the raid and despite claiming that he has no link, certainly raises a suspicion that the true genesis is being concealed. Attempt is now being made to weave a web around the maze of forged documents to knit a story of innocence and false implication even

though there is no iota of allegation as to why the investigating agency would implicate the petitioner, who, as it claimed, is only a small pawn for reaching the final planner. I find that custodial interrogation in such like cases is necessary to keep a check on the increasing number of cyber fraud in the country which have caused disrepute to the nation.

9. With these abovesaid findings, there is no merit in the present petition. The same is hence dismissed.

(VINOD S. BHARDWAJ)

OCTOBER 23, 2023 **JUDGE**

Vishal Sharma

Whether speaking/reasoned	**:**	Yes/No
Whether Reportable	:	Yes/No