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

CRM-M-57426-2022 (O&M)
Date of Decision: 15.03.2023

Ashish Mishra

..... Petitioner

Versus

State of U.T., Chandigarh

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Arjun Kumar Shukla, Advocate
for the petitioner.

Mr. Viranjeet Singh Mahal, Additional Public Prosecutor,
U.T., Chandigarh.

HARSH BUNGER J. (ORAL)

CRM-47609-2022:

Present application is allowed as prayed for, subject to all just exceptions.

CRM-M-57426-2022:

Present petition is filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.28 dated 30.08.2022 (Annexure P-2), under Sections 120-B, 384, 419 and 420 of the Indian Penal Code, registered at Police Station Cyber Crime, Chandigarh.

Succinctly, the abovesaid FIR (Annexure P-2) was registered on the statement of complainant, namely Vinit Kapoor s/o Nand Kishor,

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who stated that he is working with Dainik Sawera News and he was in need of money, therefore one day, while surfing on Facebook, when he found a link of a Loan App, he clicked on the same and installed Gama Limited App from Play Store, having mail ID Kanojiyarish96h517@gmail.com. Thereafter on 15.08.2022, the complainant applied for a loan of Rs.5,000/- and they credited an amount of Rs.2,755/- to the account of complainant, bearing No.3918000100173238 PNB (after deducting processing fee), and they asked to return the said amount of Rs.5,000/- after 7 days. Thereafter, on 21.08.2022, the complainant did a UPI transaction of the said amount of Rs.5,000/- from his Paytm account No.8699173710 to the UPI ID Sarda90887@barodampay. However on the very next day, the complainant started receiving phone calls and WhatsApp calls from Loan App stating that his payment of Rs.5,000/- is due, whereupon the complainant sent some screen-shots on WhatsApp regarding payment of the said amount. It is alleged that thereafter they sent personal information of complainant to him on his WhatsApp and asked him that if money is not deposited to them then the complainant's personal information will be shared with his relatives. It is stated that thereafter they used abusive language against complainant and sent him the morphed photos of complainant and his wife to make them victims. Accordingly, the complainant lodged the present FIR (Annexure P-2).

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present FIR (Annexure P-2). It is submitted that the petitioner belongs to a poor labour class family and resides with his parents, who were working at Mumbai, and pursuing his

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studies. It is further submitted that on 10.08.2022, petitioner's friend Vikash Mahto called him and asked him to join a call centre at Noida as a telecaller, so as to earn good salary and consequent thereto, the petitioner went to the said Company for an interview and got selected there. Thereafter, from 12.08.2022 onwards, the petitioner was on training, however in the meantime, the present FIR (Annexure P-2) was registered against the employees of said Company, including the petitioner. It is stated that the petitioner was arrested only on the basis of disclosure statement of co-accused, namely Neeraj Singh. It is stated that no identification parade was conducted by the police officials in the present case. Learned counsel submits that the petitioner is suffering from the heart problem and he was got admitted by the police officials at PGI, Chandigarh on 18.09.2022 itself, while in judicial custody, whereupon he was discharged on 04.10.2022. The medical receipt of the petitioner is attached as Annexure P-3 with the present petition. It is stated that the application for grant of regular bail moved by the petitioner before the Court of Additional Sessions Judge, Chandigarh, was wrongly declined vide order dated 11.11.2022. It is submitted by learned counsel for the petitioner that the total custody of petitioner is six months and eight days, as on 15.03.2023. It is further submitted that the investigation of case is complete and challan has already been submitted. It is stated that mobile phone of the petitioner is also in custody of the police officials and nothing else is to be recovered from the petitioner. Learned counsel submits that no other case is pending against the petitioner and he is ready to abide by all the conditions as may be imposed by this Court or by the trial Court, accordingly prayer for grant of regular

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bail is made.

Custody Certificate dated 15.03.2023 of the petitioner is filed by learned counsel for the respondent-U.T., Chandigarh in Court today, which is taken on record, subject to all just exceptions.

Learned counsel for the respondent-U.T., Chandigarh opposes the plea of petitioner for grant of regular bail on the ground of seriousness of the offences. However, it is fairly conceded by learned counsel for the respondent-U.T., Chandigarh that as per custody certificate, the total custody of petitioner is six months and eight days, as on 15.03.2023, and no other case is pending against the petitioner.

I have heard learned counsel for the parties and perused the paper book as well as the custody certificate of petitioner handed over by learned counsel for the respondent-U.T., Chandigarh, in Court today.

As per custody certificate dated 15.03.2023, the petitioner has already undergone six months and eight days of custody, as on 15.03.2023. It is also not disputed that investigation in this case is complete and challan stands presented on 31.10.2022 and there are twelve witnesses cited in the challan; and the report of Central Forensic Science Laboratory is still awaited. Hence, trial in the case is likely to take long time and no useful purpose would be served by keeping the petitioner behind bars.

Keeping in view the aforementioned circumstances, the instant petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate concerned. However, the

concerned Station House Officer shall be informed about the release of

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petitioner and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of case/trial and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer. He would also furnish his undertaking to the effect that he will not indulge in any illegal activity.

In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs.50,000/- and submit the same with the trial Court. The same would be liable to be forfeited as per law in case the petitioner remains absent from trial without any sufficient cause.

Nothing expressed hereinabove shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

The petition is accordingly disposed of.

15.03.2023

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No