IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 249 CRM-M-60426-2022 (O&M)

Date of decision : 02.02.2023

Amresh Kumar Mishra ..... Petitioner

VERSUS

State of Punjab ..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.Aashish Chopra, Senior Advocate, with
Mr.Aditya Jain, Advocate,
Ms.Gurpreet Randhawa, Advocate, and
Mr.Gagandeep Singh, Advocate, for the petitioner.

Mr.Arun Luthra, DAG, Punjab.

Dr.Anmol Rattan Sidhu, Senior Advocate, with
Mr.T.S.Attariwala, Advocate, and
Mr.Pranshul Dhull, Advocate, for the complainant.

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DEEPAK SIBAL, J. (ORAL)

An affidavit dated 01.02.2023 of M.S.Sidhu, Commissioner of Police, Ludhiana and a copy of an e-mail dated 23.01.2023 allegedly received by the Punjab Police from co-accused Mayank Goyal, filed in Court today by the State, are ordered to be taken on the record. Copies thereof have been supplied to learned counsel for the petitioner.

Through the present petition the petitioner seeks anticipatory bail in FIR No.0217 dated 29.09.2022 registered under Sections 419, 420, 467, 120-B IPC and Sections 66-C and 66-D of the Information Technology (Amendment) Act, 2008 at Police Station Moti Nagar, Ludhiana.

Briefly stated, the case of the prosecution is that a complaint dated 04.05.2022 was received by the Cyber Crime Cell at Delhi in which the complainant had stated that M/s WTL Garments Pvt. Ltd. (for short, WTL) of which the complainant was a Director, was engaged in the business of exporting readymade garments. To incentivise exports, the Government of India was awarding e-scripts to the exporters. Such e-scripts, which were tradable, could be procured by the eligible company/firm by logging onto the website of the Government of India-ICEGATE. On the basis of exports made by WTL it had become entitled to 07 such e-scripts which were valued at Rs.1,84,14,454/-. However, to procure the said e-scripts, when the complainant tried to log onto ICEGATE she could not do so because the login ID and password of WTL was said to already exist. Thus, the complainant came to know that WTL's e-mail and e-account had been hacked and the 07 e-scripts had been stolen.

The complaint on behalf of WTL was initially investigated by the Cyber Crime Cell, Delhi but since WTL was based at Ludhiana, the complaint, alongwith the collected record, was sent to the Punjab Police at Ludhiana for further investigation.

On 23.08.2022 the complainant filed another complaint in the office of the Commissioner of Police, Ludhiana which was on the same lines as her earlier complaint. Acting on her complaint the police registered the FIR in question. Preliminary investigations conducted by the police revealed that the 07 e-scripts in question had been transferred from WTL's e-account to M/s Rocktek Impex and from the e-account of M/s Rocktek Impex to that of M/s S.M.Enterprises. Thereafter 04 of the 07 e-scripts had been transferred to M/s Anaya Global and the remaining 03 to M/s S.R. Agencies. The police further found Mayank Goyal to be the proprietor of M/s Anaya Global and therefore wrote to him to seek his response. On 05.09.2022, Mayank Goyal, alongwith the petitioner, appeared before the Cyber Crime Cell of the Punjab Police at Ludhiana. To confront them the complainant was also called by the police. The negotiations which followed between the petitioner, Mayank Goyal and the complainant ended up in the signing of a document by all the three as per which the petitioner and Mayank Goyal, to avoid their prosecution, agreed to pay to the complainant the total value of the 07 e-scripts. However, both the petitioner and Mayank Goyal did not live up to their promise and resultantly, they were both arrayed as accused.

On 07.11.2022 the complainant's husband, through text messages received from the petitioner's father, was meted out threats to his life.

Thereafter, the complainant and the petitioner's father entered into another settlement dated 10.11.2022 as per which for the 03 e-scripts which had been transferred to M/s S.R.Agencies the petitioner's father agreed to pay to the complainant an amount of Rs.1 crore. Qua the remaining 04 e-scripts the petitioner's father further agreed to hand over another cheque of Rs.84 lakhs to the complainant as security with a further promise that Rs.84 lakhs shall stand credited in WTL's e-ledger by 31.03.2023. It was still further agreed that after receipt of Rs.1 crore the complainant would co-operate in getting the FIR in question quashed.

The complainant presented for getting encashed the cheques for Rs.1 crore given by the petitioner's father but the same were dishonoured for want of sufficient funds.

On 23.01.2023 co-accused Mayank Goyal sent an e-mail to the Punjab Police at Ludhiana through which he disclosed that 04 of the e-scripts in question had been transferred to his firm on the assurance and representation made by the petitioner that these e-scripts were being lawfully transferred from its original owners. However, when Mayank Goyal found out that the e-scripts were not backed by proper documentation, he had written to ICEGATE that these e-scripts be transferred back to the previous owners and that qua them he would not make any further claim. He further stated in his e-mail that he had later come to know that the petitioner was having several firms registered on the ICEGATE portal like M/s S.M.Enterprises through which he was indulging in fraudulent transfers of e-scripts.

The petitioner apprehended his arrest and therefore sought anticipatory bail through a petition filed before the Sessions Court at Ludhiana on the rejection of which he has knocked the doors of this Court through the instant petition for the same relief which was denied to him by the Sessions Court at Ludhiana.

Learned senior counsel appearing for the petitioner submits that the petitioner has been falsely implicated in this case only for the reason that he was known to Mayank Goyal; when Mayank Goyal was summoned by the police he only accompanied him to the police station at Ludhiana; at the police station he signed a document but since the same was in the Gurmukhi script he was unaware of its contents; the petitioner does not have any other criminal antecedents; the case of the prosecution is that 07 e-scripts of WTL have been transferred to M/s Rocktek Impex and in turn to M/s S.M.Enterprises from where 04 of such e-scripts had been again transferred to M/s Anaya Global and the remaining 03 to M/s S.R.Agencies; there is no evidence whatsoever with the police to link the petitioner with any of the afore firms; in the earlier status report filed by the State the petitioner was shown to be the representative of M/s Rocktek Impex and of M/s S.M.Enterprises as also to be the owner of M/s S.R.Agencies which stand of the State is contradictory to the later status report filed by the State in Court today as in today's status report there is no reference to any link between the petitioner and M/s Rocktek Impex or M/s S.M.Enterprises; the actual proprietors/partners/directors of M/s Rocktek Impex or M/s S.M.Enterprises or M/s S.R.Agencies have not been added as accused in the FIR in question showing unfairness and bias in the investigation being carried out by the State; the petitioner is being made a scapegoat and that no useful purpose would be served in the custodial interrogation of the petitioner especially when he is ready and willing to join and co-operate with the investigation.

Learned State counsel opposes the grant of anticipatory bail to the petitioner by submitting that the petitioner is the kingpin in the fraudulent transfer of e-scripts; the State needs to find out the scale of the racket with respect to transfer of e-scripts as the State believes that the fraudulent transfer of the 07 e-scripts in question is only the tip of the iceberg; there may be many more instances of fraudulent transfers of many other e-scripts by the petitioner; investigations conducted so far have revealed the petitioner's direct involvement; so much so, through a statement made on 05.09.2022 the petitioner has confessed to his involvement in the crime; the agreement dated 10.11.2022 between the petitioner's father and the complainant further shows direct involvement of the petitioner in the crime in question; the dishonest intentions on the petitioner's part are absolutely clear when the cheques amounting to Rs.1 crore given on his behalf by his father to the complainant were not encashed on their presentation; the threat given by the petitioner's father to the complainant's husband through Whatsapp messages also clearly indicates the petitioner's involvement in the crime in question and so does the e-mail dated 23.01.2023 by co-accused Mayank Goyal.

Learned counsel for the parties have been heard and with their able assistance the record of the case has also been perused.

The petitioner is alleged to have hacked into WTL's e-account maintained by WTL at the portal of the Government of India-ICEGATE and then stolen 07 e-scripts. Thereafter, the petitioner is further alleged to have created a web of transfers of such e-scripts.

The above web needs to be cleared.

As per the State when co-accused Mayank Goyal was called for questioning the petitioner came alongwith him and during the course of negotiations which followed an agreement dated 05.09.2022 was entered into between them through which the petitioner agreed to pay the value of the e-scripts to the complainant. The petitioner has admitted his signatures on the said agreement but he denies the contents thereof.

The veracity of the afore document needs to be gone into.

The State has also produced on the record of this Court an e-mail dated 23.01.2023 allegedly sent by co-accused-Mayank Goyal to the Punjab Police as per which 04 of the 07 e-scripts in question had been transferred to Mayank Goyal's firm-M/s Anaya Global on the assurance given by the petitioner that these e-scripts was not tainted. However, when Mayank Goyal came to know that transfer of such e-scripts was a result of fraud played by the petitioner, he wrote to ICEGATE offering the transfer of the 04 e-scripts back to its original owners. As per this e-mail Mayank Goyal knew the petitioner from a long time to be dealing in the liasoning of transfers of e-scripts through several of his firms registered by him on the ICEGATE portal and that M/s S.M.Enterprises was one of such firms.

The veracity of the afore disclosure/claim made by co-accused Mayank Goyal needs to be investigated.

The State also relies on an agreement dated 10.11.2022 allegedly entered into between the petitioner's father and the complainant through which the petitioner's father agreed to pay to the complainant an amount of Rs.1 crore in lieu of the complainant's co-operation in getting quashed the FIR in question. However, the cheques for Rs.1 crore which were given by the petitioner's father to the complainant, were dishonoured.

On 10.11.2022 the petitioner's father was not an accused in the FIR in question and therefore, the only beneficiary under the afore agreement would be the petitioner.

Then there are Whatsapp messages allegedly exchanged between the petitioner's father and the complainant's husband through which the petitioner's father gave threats to the complainant's husband that in case he would not withdraw the FIR in question he would have to pay with his life.

Since at the time when the petitioner's father allegedly meted out the afore threats, he was not an accused it needs to be investigated as to whether these threats were at the petitioner's behest.

In the light of the above, this Court is of the opinion that the petitioner's custodial interrogation is necessary especially when it is the case of the prosecution that the transfer of the e-scripts in question is only the tip of the iceberg.

Dismissed.

It is clarified that the above observations have been made only for the limited purpose of deciding the present bail application and the same would not be construed to be an expression of opinion on the merits of the case.

02.02.2023 [DEEPAK SIBAL]
shamsher JUDGE

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