__ IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-825-2024 (O&M)
Reserved on: 04.12.2024
Pronounced on: 12.12.2024

Ayush Aggarwal ...Petitioner

Versus

State of U.T.Chandigarh. …Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ashish Deep Verma, Advocate,
Mr. Anmol Gupta, Advocate and
Mr. Arsh Bir, Advocate
for the petitioner.

Mr. Manish Bansal, PP, for respondent-U.T. Chandigarh.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0033	03.09.2022	Cyber Crime, District, Chandigarh	384,420,468,471,509,120-B IPC, 66-D, 67 of the Information Technology Act, 2000 and 14 of the Foreigners Act, 1946 (added subsequently)

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 of the Code of Criminal Procedure, seeking anticipatory bail.

2. In paragraph 27 of the bail petition, the accused declares that he has no criminal antecedents.

3. Although, the petitioner was a proclaimed offender but observing the same, a Coordinate Bench of this Court vide order dated 25.04.2024 had granted interim anticipatory bail to the petitioner.

4. The respondent-U.T. Chandigarh challenged such order by filing Special Leave to Appeal No. 24971-2024 before Hon’ble the Supreme Court of India. However, Hon’ble the Supreme Court of India did not interfere in the interim order and dismissed the abovesaid SLP in the following terms: -

"We are not inclined to interfere with the impugned order.

The Special Leave Petition is accordingly dismissed.

However, the dismissal of the Special Leave Petition will not stand in the way of the petitioner to raise all the requisite pleas before the High Court, either for the dismissal of the anticipatory bail application or for setting aside of the interim order granted.

We request the High Court to expedite the hearing.

Pending applications stand disposed of."

5. The facts and allegations are being taken from the reply dated 18.01.2024 filed by the State, which read as follows:

"The brief facts of the present case are that Mr. Arvind Kumar (complainant) gave a complaint stating that he received a link through SMS on his mobile phone 9216020505 for loan. On clicking the said link, one Hugo Loan Application' got installed on his phone, which at the time of installation sought access to his contacts, gallery etc. and the complainant allowed the same. After having installed the app and giving necessary permissions, the complainant filed in his details in order to check his loan eligibility. Upon doing the same, the app indicated that the complainant was eligible for a loan of INR 3,500/-, however, the complainant chose not to avail the said loan and uninstalled the app. Thereafter, the complainant started receiving threat calls and messages on WhatsApp through numbers +37125218379, +62383146262636, +919910429137. The complainant said that he had not taken any loan from the said app, but he started receiving his nude pictures from the said numbers and was threatened that the same would be circulated amongst his family if he refuses to pay the desired sum of money. Thereafter, the complainant received a call from a mobile number 7015153485 asking him to send money, failing which his and his family's nude pictures would be circulated to all his contacts. On hearing this, the complainant sent Rs.2,045/- on 24.08.2022 and Rs.3,500/- on 30.08.2022, but the threatening messages and demand for money still persisted. With these allegations, the instant FIR no. 33 dated 03.09.2022 U/s 384,420,468,471,509,120-B IPC & 66 D IT Act, P.S. Cyber Crime, Chandigarh was registered against unidentified persons"

6. The petitioner's counsel argued that initially after completion of investigation, the police had filed challan against 13 persons on 31.10.2022. After that, one supplementary challan was filed on 14.11.2022 in which 09 persons were added as accused and further two more persons were added as accused and challan was filed on 21.03.2023.

7. The petitioner's counsel next argument is that the name of the petitioner came up in the disclosure statement of Sunil Kumar Chauhan and another accused person i.e. Daksh Partap Singh and there is no other evidence except disclosure statement. He further submits that the firm involved in cyber-crime was M/s Malista Freight Forwarding and petitioner is neither a proprietor nor has any stake in the said firm. He is

not even a beneficiary of any money. The petitioner's next contention is that the mobile number from which the nude pictures were sent does not belong to him.

8. Mr. Manish Bansal, PP, counsel for respondent-U.T. Chandigarh. opposes the bail and submits that petitioner is not entitled to the regular bail but to speak about anticipatory bail and further given the nature of crime, they need custodial interrogation of the petitioner.

9. In addition to hearing the counsel for the parties at length, I have also gone through the detailed bail petition and its analysis would lead to the following outcome.

10. It would be appropriate to refer to the following portions of the reply filed by the respondent-U.T. Chandigarh which read as follows: -

> *"6. That on 18.09.2022, a raid was conducted in the Ghaziabad area and upon secret information and location of mobile number 8377859521 (associated with Satyam Enterprises bank account IDFC 10093978191), one Sunil Kumar Chauhan was arrested and the mobile phone containing the sim 8377859521 registered with Satyam Enterprises IDFC A/C No 10093978191 was also recovered from him along with other mobile phone and sim. He gave a disclosure stating that he is a tax advocate and is managing the Satyam Enterprises account and is also running some shell firms i.e. M/s Kiara Infracon Pvt Ltd, Satyam Enterprises, Jova Enterprises all of which bank accounts are associated with the same mobile phone 8377859521 which is operated by him. He further disclosed that 1) Rajesh Kumar @ Raju whose phone number 9354661545 and 9315719497 is also having access to accounts of various firms such as Eptosis Sales etc. 2) Daksh Mno. 7017723366, 8218230758, 8929734464 and present petitioner Ayush Mno. 8006560732 are working together and they are also having the access of many firms as Malishta Freight Forwarding and their office was also in Ithum Tower, Noida."*
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> *7. That on 22.01.2022 a raid was conducted in Agra, U.P., where the co-accused Daksh was arrested who disclosed and confirmed the version given by the co-accused Rajesh Kumar that the Yes Bank Account in the name of Malista Freight Forwarding Pvt Ltd (A/c No. 020883300000343) is managed by him and his partner Ayush Agarwal (present petitioner) and they transferred the amount from this account to the account of Shri Balaji Enterprises (A/c No. 023963300001636 Yes Bank) and they are managing several accounts to transfer the cheated amount from one account to another and they convert the cheated Indian money into USDT and send the same to China to their partner Starke (Chinese National)."*

11. The petitioner and his accomplices took advantage of the breaches and vulnerabilities in the weak software and systems. The sly way the petitioner and his accomplices conned, tricked, deceived, swindled, and defrauded the victims itself pointed out the dangerous indicator that the thugee has revived through misuse of vulnerabilities in the systems that have been put in place by the Executive. Any further discussions will likely prejudice the petitioner; this court refrains from doing so. Be that as it may, this court cannot be judgmental. The gravity of the offense would not entitle the petitioner to bail at this stage. Thus, even the petitioner's previous criminal history is not considered strictly at this stage as a factor for denying bail.

12. A perusal of the bail petition and the investigation conducted so far points towards the petitioner's involvement but does not make a case for anticipatory bail. The impact of crime would also not justify anticipatory bail. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.

13. In ***Sumitha Pradeep v Arun Kumar CK, 2022 SCC OnLine SC 1529***, Supreme Court holds,

> [16]. … We have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.

14. In ***State rep. by CBI v. Anil Sharma, (1997) 7 SCC 187***, Supreme Court holds,

> [6]. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconded with a favourable order under Section 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulted by a pre-arrest bail during the time he interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced

> by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in task of disinterring offences would not conduct themselves as offenders.

15. In ***Jai Prakash Singh v. State of Bihar and another (2012) 4 SCC 379***, Supreme Court holds,

> [19]. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. [See D.K. Ganesh Babu v. P.T. Manokaran (2007) 4 SCC 434, State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain (2008) 1 SCC 213 and Union of India v. Padam Narain Aggarwal (2008) 13 SCC 305].

16. In ***P. Chidambaram v. Directorate of Enforcement, 2019 9 SCC 24***, Supreme Court holds,

> [70]. We are conscious of the fact that the legislative intent behind the introduction of Section 438 Cr.P.C., 1973 is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights - safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India.

17. ***In Central Bureau of Investigation v. Santosh Karnani***, Cr.A 1148 of 2023, dated 17-04- 2023, Supreme Court, in an FIR registered under sections under Sections 7, 13(1) and 13(2) of the Prevention of Corruption Act, 1988, holds,

> [24]. The time−tested principles are that no straitjacket formula can be applied for grant or refusal of anticipatory bail. The judicial discretion of the Court shall be guided by various relevant factors and largely it will depend upon the facts and circumstances of each case. The Court must draw a delicate balance between liberty of an individual as guaranteed under Article 21 of the Constitution and the need for a fair and free investigation, which must be taken to its logical conclusion. Arrest has devastating and irreversible social stigma, humiliation, insult, mental pain and other fearful consequences. Regardless thereto, when the Court, on consideration of material information gathered by the Investigating Agency, is prima facie satisfied that there is something more than a mere needle of suspicion against the accused, it cannot jeopardise the investigation, more so when the allegations are grave in nature.
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> [31]. The nature and gravity of the alleged offence should have been kept in mind by the High Court. Corruption poses a serious threat to our society and must be dealt with iron hands. It not only leads to abysmal loss to the public exchequer but also tramples good governance. The common man stands deprived of the benefits percolating under social welfare schemes and is the worst

> hit. It is aptly said, “Corruption is a tree whose branches are of an unmeasurable length; they spread everywhere; and the dew that drops from thence, Hath infected some chairs and stools of authority.” Hence, the need to be extra conscious.

18. In the background of the allegations and the light of the judicial precedents mentioned above in the facts and circumstances peculiar to this case, the petitioner fails to make a case for anticipatory bail.

19. Any observation made here-in-above is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

20. Petition dismissed. Interim orders are recalled with immediate effect. All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

12.12.2024
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Whether speaking/reasoned: Yes
Whether reportable: No.