

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

228

1.

2024:PHHC:046465
CRM-M-4357-2024
Date of decision: April 3rd, 2024

Mubarik @ Mubbi

.....Petitioner

Versus

State of Haryana

.....Respondent

2.

CRM-M-4438-2024

Aasif

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Ravinder Malik (Ravi), Advocate
for the petitioner (in CRM-M-4357-2024).

Mr. Manoj Tanwar, Advocate
for the petitioner (in CRM-M-4438-2024).

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

MANJARI NEHRU KAUL, J.

This order shall dispose of the above-mentioned petitions as they arise out of same FIR i.e. FIR No.134 dated 28.04.2023 registered under Section 120-B, 420, 467, 468, 471, of the IPC at Police Station Punhana, District Nuh.

2. Learned counsel for petitioner-Mubarik @ Mubbi has submitted that the petitioner has been falsely implicated in the present case; the petitioner came to be nominated on the basis of a disclosure statement allegedly suffered by co-accused; the evidentiary value of such disclosure statement is of an extremely weak nature. Furthermore, neither any specific role has been attributed to him, nor has the police collected any cogent material to link him with the crime in question,

which is evident from the challan, which stands presented against him. Learned counsel has submitted that the petitioner has been in custody since 28.04.2023 and he deserves to be extended the concession of bail as his case is on a better footing compared to the prime accused from whom the alleged recovery of ATM machine was effected and who has since been enlarged on bail. Learned counsel has also submitted that no doubt there are three criminal cases lodged against petitioner, however, even the co-accused, who had criminal antecedents and had played a major role in the crime in question had already been enlarged on bail by a coordinate Bench of this Court. In support, he has drawn the attention of his Court to the order passed by the coordinate Bench of this Court, wherein he has been enlarged on bail.

3. Learned counsel for petitioner-Aasif, *inter alia*, also contends that he has been falsely implicated in the instant case; as per the prosecution version, the petitioner is shown to have been arrested from the hills of village Luhinga Kalan, whereas in reality, the petitioners were picked up from their home by the police, which fact stands substantiated from the photographs/video footage taken by the family members of the petitioners. It has been further submitted that apart from one mobile handset having SIM No.9813434947, no recovery was effected from petitioner-Aasif and no specific allegations were leveled against him by the police, even in the challan, which stands presented. Learned counsel has submitted that the petitioner has now been in custody for almost one year, having been arrested on 28.04.2023 in a magisterial trial; the petitioner has clean antecedents and he is not involved in any other criminal case. A prayer has, therefore, been made that since the investigation is complete and the

trial will take considerable time to conclude as the prosecution has cited 44 witnesses, further incarceration of the petitioner would serve no useful purpose. Learned counsel has also submitted that the prime accused from whom the alleged recovery of an ATM machine was affected has already been granted bail by this Court vide order dated 09.08.2023 (Annexure P-2).

4. Learned counsel for the State, on the other hand, has opposed the prayer and submissions made by the counsel opposite by urging that there are serious allegations against the petitioners of being part of a racket that had been indulging in online frauds; the accused including the petitioners, had fraudulently transferred ₹1,00,98,500/- from Kotak Mahindra Bank, HDFC Bank and Axis Bank by playing a huge fraud on various innocent persons. A SIM card was recovered from petitioner-Aasif, which had been used by him in the alleged crime and several transactions had been traced to his account; from petitioner-Mubarik, one mobile phone along with nine ATM cards of different banks in the name of different persons, four Aadhaar Cards and a licence too had been covered, which are clearly indicated their complicity in the crime in question. Learned counsel has, however, not been able to dispute that the prime accused in the instant case, who too were involved in some other criminal cases, had already been enlarged on bail by this Court.

5. I have heard learned counsel for the parties and perused the relevant material on record.

6. Petitioners-Mubarik @ Mubbi and Aasif have been in custody since 28.04.2023 in the magisterial trial; the case in hand rests on documentary evidence. The challan stands presented and hence,

there cannot be any likelihood of the petitioners tampering with material evidence.

7. In the facts and circumstances as enumerated hereinabove, the instant petitions are allowed. The petitioners be admitted to bail to the satisfaction of the trial Court/Duty Magistrate concerned. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

8. Needless to say, in case the petitioner misuses the concession of bail granted to him, the State would be at liberty to seek cancellation of the same.

April 3rd, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No