

CRM-M-7908-2024
Date of decision: 20.02.2024

....Petitioner

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Siddharth Sihag, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.2 dated 21.02.2023 under Sections 419/420/406/506 of IPC (offence under Section 120-B of IPC was added later on) registered at Police Station Cyber Crime, Hisar.

The present FIR was lodged by the complainant alleging that he has received a phone call on 06.02.2023. The caller impersonated himself to be his relative and asked the complainant for transfer of some amount in the account of his friend in Delhi. Thereafter, he received a call from a person who introduced himself to be friend of his relative and asked the complainant to transfer the amount of Rs.2 lakhs and Rs.1,80,000/- in two different bank accounts. The complainant believed that the mother of his relative is serious and transferred the amount as demanded by the accused. The caller again informed the complainant that his relative has already transferred an amount of Rs.12,80,000/- in his account and said amount will be credited to his account in 24 hours. The complainant also received a receipt on his WhatsApp and in this manner, the complainant was duped of Rs.11,30,000/-.

Learned counsel for the petitioner *inter alia* contends that the petitioner has not received even a single penny from the bank account of the complainant or his son, rather, as per the allegations, he received a sum of Rs.80,002/- and Rs.95,001/- from the bank account of one Sadasiba Pradhan and the aforesaid person has not been made accused in the present FIR. The petitioner is behind the bars since 11.10.2023 and is not involved in any other case.

Per contra, the learned State counsel opposes the prayer made by the petitioner for grant of regular bail on the ground that the active connivance of the petitioner in the fraud, committed by the accused, upon the complainant, has been duly established. However, the learned State counsel could not controvert the arguments advanced by learned counsel for the petitioner that he is not involved in any other case.

A two Judge Bench of Hon'ble Supreme Court in '***Satender Kumar Antil v. CBI***' (2022) 10 SCC 51, with respect to prevailing conditions of undertrial prisoner in India has observed:

“6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure

resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 11.10.2023. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case has not yet commenced as none out of 24 prosecution witnesses has been examined so far. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

In view the above, the present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner-Mithilesh Kumar is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

20.02.2024
Neha

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