

CRM-M-7737-2024
Date of decision: 20.02.2024

Virginus Chinonso NzeamakaPetitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rahul Singh, Advocate for
Mr. Ankit Chahal, 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.34 dated 12.12.2023 under Sections 406/419/420 of IPC (Section 120-B of IPC added later on) registered at Police Station Cyber Crime, District Palwal, Haryana.

Present FIR was lodged on the complaint made by Ajit Kundu on the allegations that he came in contact with a friend on facebook, in connection with finding a job. His facebook friend sought his help on the ground that he has been caught by custom officials and the complainant has paid a sum of Rs. 69,000/- to help his friend. Thereafter, as and when the complainant called his friend, there was no response and on these allegations, the present FIR was lodged.

Learned counsel for the petitioner *inter alia* contends that similarly situated co-accused, namely, Esther Muindi Nzomo, was granted the concession

CRM-M-7737-2024

-2-

of regular bail by this Court vide order dated 02.02.2024 passed in CRM-M-4508-2024. The dispute involved in the present FIR is of Rs.69,000/- which has already been received by the complainant and a compromise has been effected between the parties. The complainant has given his affidavit dated 22.01.2024 in terms of the compromise. He further refers to para 4 of the order granting bail to the co-accused which is reproduced as under:-

‘Mr. Akram Hussain, Advocate has put in appearance and filed his power of attorney. The same is taken on record. Learned counsel for the complainant has produced the photocopy of the affidavit/compromise dated 18.01.2024, which is taken on record. Registry is directed to tag the same at the appropriate place.’

Per contra, the learned State counsel submits that the complicity of the petitioner has been duly established and he has committed the Cyber Crime and the fraud was initiated on the basis of call made by the petitioner.

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 for the last more than two months and similarly situated co-accused, namely, Esther Muindi Nzomo, was granted the concession of regular bail by this Court vide order dated 02.02.2024 passed in CRM-M-4508-2024. 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 made much progress. 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-Virginus Chinonso Nzeamaka 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.

The petitioner is directed to surrender his passport before the Investigating Officer and also not to leave the country without prior permission of the learned trial Court.

CRM-M-7737-2024

-4-

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