2024:PHHC:**055473**

101 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-18219-2024
Decided on:-24.04.2024

Arun Sharma ....Petitioner..

vs.

State of Haryana ....Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Kamal Chaudhary, Advocate,
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

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HARKESH MANUJA J. (Oral)

1. By way of present petition filed under Section 438 Cr.P.C., prayer has been made for grant of anticipatory bail to the petitioner in case FIR No.23 dated 21.02.2024, registered under Section 420 IPC (Section 120-B IPC added later on), at Police Station Cyber Crime Central Faridabad, District Faridabad, wherein, the petitioner has been implicated for having duped the complainant for a sum of Rs.1,34,328/- by way of an online banking fraud.

2. Learned counsel for the petitioner submits that there is no direct evidence connecting the petitioner with the alleged offence and the main accused, namely, Gaurav Chauhan has already refunded the amount defrauded by him, to the complainant and a statement to this effect has also been given by the complainant in his favour, which finds mention in the order dated 05.04.2024 passed by the Judicial Magistrate Ist Class, Faridabad while granting regular bail to him.

2.1 Learned counsel also submits that the entire story put forth by the prosecution agency about the petitioner having utilized the amount for placing an order for gold chain on the day/date of fraud and having received the same as depicted from the CCTV footage is a made-up story and thus, the petitioner being not connected with the offence in hand deserves the concession of anticipatory bail.

3. On the other hand, learned State counsel vehemently opposes the prayer made on behalf of the petitioner while submitting that the petitioner is directly connected with the offence in hand, as a CCTV footage from the showroom of Blue Stone Jewellers, Faridabad has been obtained by the Investigating Agency, wherein, the petitioner is clearly visible while receiving the gold chain from the salesman while standing across the counter.

3.1 Learned State counsel also submits that a sum of Rs.1,34,328/- qua which the complainant was duped of by the petitioner with the aid of co-accused (Gaurav Chauhan) was directly transferred to the account of Blue Stone Jewellers, Faridabad. He further points out that all these transactions were made with the help of three different mobile numbers (i.e. 8130418758, 7017489341, 7906538189) being used by the petitioner. He further points out that regarding the latter two mobile numbers (i.e. 7017489341, 7906538189), on verification, it was found that the sims were obtained by the petitioner in a fraudulent manner by misusing the documents of other individuals. He also submits that at the time of purchase of gold chain even the address given by the petitioner was of Police Colony, New Delhi rather than his own address of Village Basi, Bhagpat Uttar Pradesh, which further fortifies his intent to commit fraud and further to escape thereafter from the clutches of the Investigating Agency and thus, he does not deserve the discretionary relief of anticipatory bail in the larger public interest.

4. I have heard learned counsel for the parties and gone through the paper book.

5. A cumulative analysis of the facts and circumstances of the case made out from the records as well as the submissions made on behalf of the parties, I am unable to find substance in the submissions made on behalf of the petitioner.

6. Generally, in cases of online banking frauds, there is no direct evidence available to connect the accused with the offence and it is only the Investigating Agency which through its efforts, involving scientific assistance provided through their expert teams of Cyber Crime is able to connect the dots and reach the perpetrators while locating and connecting them through their mobile numbers, mobile tower locations, CCTV footage/Sim mapping/email-IDs and their banking transactions.

7. In the present case as well, admittedly, the amount of Rs.1,34,328/-, defrauded by the petitioner from the account of the complainant was directly transferred to the account of Blue Stone Jewellers, Faridabad against purchase of a gold chain, which was received by the petitioner as recorded in the CCTV footage of the relevant date and time as made available to the investigating team. Furthermore, out of the three mobile numbers, which were used in the transactions of duping the complainant, two mobile numbers were found to be obtained by the petitioner against the documents of third party individuals by misusing those besides even having provided his fake address to the Blue Stone Jewellers,

Faridabad at the time of purchasing/receiving the gold chain which reflects the dishonest intent and prima facie connects the petitioner with the offence in hand. Mere fact that one of the co-accused, namely, Gaurav Chauhan has reimbursed the defrauded amount and has been granted the concession of regular bail, no where entitles the petitioner for grant of discretionary relief of anticipatory bail in the given facts and circumstances. Reference in this regard can also be made to a decision rendered by the Hon'ble Apex Court in case of ***"Srikant Upadhyay & others vs. State of Bihar and another"*** reported as 2024 INSC 202. Relevant paragraph No.8 of the said judgment is reproduced hereunder:-

> *"It is thus obvious from the catena of decisions dealing with bail that even while clarifying that arrest should be the last option and it should be restricted to cases where arrest is imperative in the facts and circumstances of a case, the consistent view is that the grant of anticipatory bail shall be restricted to exceptional circumstances. In other words, the position is that the power to grant anticipatory bail under Section 438, Cr. PC is an exceptional power and should be exercised only in exceptional cases and not as a matter of course. Its object is to ensure that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. (See the decision of this Court in HDFC Bank Ltd. v. J.J.Mannan & Anr.)"*

8. Moreover, such kind of online frauds through cyber crime are increasing day-by-day wherein innocent individuals are being deceived in order to extract undue financial gains which are potentially affecting their financial, economical and social stability. These incidents are even diminishing the general public trust in the online/digital banking transactions and may lead to uncalled for hesitation to engage in e-commerce or digital

services, thereby, creating doubt upon the entire banking system and its efficacy, resulting into huge economical loss to the Nation at large. Moreover, such kind of fraud through economic transactions is definitely going to result in long term economical as well as emotional distress to the victims and may also encourage the dishonest intents of such perpetrators. In such circumstances, the custodial interrogation of the petitioner is essential in the interest of public at large so as to unearth the *modus operandi* adopted by him in online fraud/cyber crime which definitely and essentially resulted in breach of privacy of the complainant.

9. Resultantly, the present petition is thus, dismissed being devoid of merits.

24.04.2024 **(HARKESH MANUJA)**
sonika **JUDGE**

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