IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-22364-2024
Decided on: 16.05.2024

Manish ...Petitioner

Versus

State of Haryana …Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Meenakshi Saroop, Advocate
for the petitioner.

Mr. Rajat Gautam, Addl. AG, Haryana.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0146	10.04.2023	Police Civil Lines, Hisar	406 & 420 IPC (Later on added Sections 467, 468, 471 & 120B IPC)

1. The petitioner, who is in custody for 08 months & 15 days in the FIR captioned above on the allegations of doing thugee i.e. cheating with the complainant , has come up before this Court under Section 439 of Code of Criminal Procedure, 1973 (CrPC) seeking bail.

2. In paragraph 15 of the bail petition, the accused declares the following criminal antecedents:

Sr. No.	FIR No.	Date	Offences	Police Station
1	0533	05.09.2023	34, 406, 420, 467 & 468 IPC	Hisar Civil Lines, District Hisar

3. Petitioner's counsel prays for bail by imposing any stringent conditions and is also voluntarily agreeable to the condition that till the conclusion of the trial, the petitioner shall keep only one mobile number, which is mentioned in AADHAR card, if any, and within fifteen days undertakes to disconnect all other mobile numbers. The petitioner contends that the further pre-trial incarceration would cause an irreversible injustice to

the petitioner and family.

4. While opposing bail, the State contends that given the criminal past, the accused is likely to indulge in crime once released on bail.

5. In Maulana Mohd Amir Rashadi v. State of U.P., (2012) 3 SCC 382, Hon'ble Supreme Court holds,

> [10] It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.

6. While considering each bail petition of the accused with a criminal history, it throws an onerous responsibility upon the Courts to act judiciously with reasonableness because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included. Although crime is to be despised and not the criminal, yet for a recidivist, the contours of a playing field are marshy, and graver the criminal history, slushier the puddles.

7. Prosecution's case is being taken from the reply dated 15.05.2024, which reads as under:-

> *"That briefly stated facts of the case are that on 10.04.2023 a complaint bearing No. CM/OFF/N/2023/022264 dated 21.02.2023, 159-CM Window and 1495-PU-Date 01.03.2023 received in the Police Station through SP Office after investigation from the office of DSP, Detective Hisar. In the application it is alleged by complainant Punit Kumar that post of Peon was advertised in GJU, Hisar for which he filed form. One day he received a call from MISSIhfurther told that he will get him selected on the post of Peon in GJU Manish son of Krishan through mobile number 8708282366 who told his name as Manish (present petitioner/accused) and also sent his Aadhar Card on his Whatsapp number 70821217441. He as he has a known working on higher post namely Shiv Kumar and also provided his mobile number. Thereafter, on 04.02.2023 they called him in the*

University for appointment on the post of Peon. When he went in the University, they stated the difficulty of server down. They got transferred Rs.70,000/- in the bank account of which he is having receipt. Thereafter, they made him go around in the name of providing a job and started demanding more money. They again demanded Rs.70,000/- and told that they will get his work done in total Rs.1,50,000/- and if he did not give him the remaining Rs.70,000/- then he would not return his Rs.80,000/-. So he came to know that they have committed fraud and cheating in the name of providing a job and Rs.80,000/- has been looted from him. He is having Aadhar Card, Bank Accounts and Mobile numbers. After that he gave a complaint regarding fraud to SP, Hisar which was marked to Police Post GJU, Hisar and ultimately it came in Police Station Agroha. He wanted to get registered FIR in PS Agroha, but SHO and ASI Lakha Singh are not lodging FIR. They have taken a complaint from him and on that basis they are talking to accused. Accused Manish Kumar and Shiv Kumar admitted in conversation with ASI Lakha Singh that they will return his money after visiting his house. He waited next day i.e. 15.02.2023, but no one came. On 16.02.2023, he again went to Police Station Agroha and requested ASI Lakha Singh to register FIR as accused did not seem to return his money. ASI Lakha Singh in collusion with accused did not register the FIR and made him go around 5-6 times. He is not fed up. Accused have looted Rs.70,000/- by fraud, case under Section 406 and 420 of IPC be registered against them. He is a poor person and does labour work. Rs.70,000/-is a big amount for him. He is now under depression. He has not told this incident to his parents. Police of Agroha Police Station especially Lakha Ram harassed him and insulted him by calling in Police Station and mentally tortured him. In case he will not get justice he will be forced to commit suicide. He mentioned the names, mobile numbers and bank account number of accused and he will produce the record as and when he will be called by investigation committee. Group of cheaters in the name of providing job is operative in Hisar, but police administration is not taking any proceedings. Police of Agroha did not take any step for apprehension of accused rather he is being insulted by calling time and again. He requested that a case under Section 406 and 420 of IPC be registered against accused Manish and others as well as against ASI who tortured him by calling him in the police station time and again on the pretext of lodging FIR. On these allegations, present FIR was registered under section 406 & 420 of IPC.

4 That it is relevant to mention here that after registration of FIR the investigation of the case was carried out by the investigating officer and during investigation on 10.05.2023 total 7 pages of WhatsApp Screen shot having exchange of ID card, Bank account details petitioner/accused conversation other and mobile from between the No.87082-82366 through WhatsApp with complainant were taken into police possession by the Investigating officer.

5. That during further investigation of the case on 21.06.2023 *record from the Guru Jambheshwar University regarding advertisement for post of peon vide ADVT. No. 02/2022 were obtained and the same were taken into police possession by the investigating officer in the present case. On 16.07.2023 the complainant recorded his supplementary statement wherein he stated that in this fraud accused namely Manish, Aarti and Anoop are Indulge and accordingly section 120-B of IPC was added in the present case on 16.07.2023.*

6. That in accordance with supplementary statement of the complainant on 16.07.2023 the owner of Kittu Stationary Shop, sector 16/17 Hisar namely Kavita wife of Sandeep, resident of house No.3486, Housing Board Colony, Sector ¼ Hisar was joined into investigation of the case who on saying of complainant transferred an amount of Rs.69,300/- on 30.01.2023 through Paytm in the account No.9247343918 of petitioner/accused Manish Kumar, 3 pages of said transactions produced by the witness Kavita were taken into police possession by the investigating officer and her statement was recorded.

7. That on 22.08.2023 the petitioner/accused was arrested in the present case and the petitioner/accused produced his bag which having one mobile phone make VIVO V 25Pro, colour Blue containing Sim No.85719-32895, IMEI No. 1-8685190654187716/00 & 2-8685190654228798/00, One HP ELITE BOOK 840G 6 Colour Silver, 92 Notes of Rs.500/-, 300 Notes of Rs.200/- i.e. total 1,06,000/- beside this there was clothes & tooth brush which alongwith other articles were taken into police possession by the investigating officer in the present case.

8. That in police custody the petitioner/accused recorded his disclosure statement wherein he disclosed that he in connivance with other accused persons used to prepare fake joining letter to grab the money from unemployed persons, on the basis of same sections 467, 468, 471 of IPC were added in the present case.

9. That during further investigation of the case on 23.08.2023 the petitioner/accused was produced before the Ld. Trial Court and 5 days police remand of the petitioner/accused was approved by the Ld. Trial Court. During further investigation of the case the following evidence were gathered against the petitioner/accused by the investigating officer:-

1 Mobile phone make Realme having Sim No. 90343-14807 (Airtel)
2. One Sim bearing No. 89011-02147 (BSNL)
3. Sim No. 8340003400, 8708282366, 9350835214 make Jio 4. Sim No. 9499289993 make BSNL
5. Sim No. 9992412553 make VI
6. Sim No. 8008256800 make Airtel

That besides aforesaid Sim cards one fake Aadhar Card of petitioner/accused having 870828236695, fake driving license baring No. HR-20 20200022544, fake identity card of Bar Council *of Punjab and Haryana bearing enrollment No. HSR-46-234-34 one visiting card of Mor Manpower Placement Agency. That it is pertinent to mention here that aforesaid documents and Sim cards were used by the petitioner/accused to commit fraud with the lay mans and the same were recovered from his possession during the investigation of the case and were taken into police possession vide separate seizure memo.*

*10. That on 06.09.2023 the bank account details of account No.9247343918, Kotak Mahindra Bank, Red Sequare Market Hisar details were obtained by the investigating officer which belongs to the petitioner/accused. That as per record it was transpired that the fraud amount of Victim Puneet deposited an amount of Rs.69,300/-, Victim Sanjeev deposited an amount of Rs.2,00,000/, Victim Mohan Lal deposited an amount of Rs.60,000/-, Victim Manohar deposited an amount of Rs. 1,50,000/-. That in total there was an amount of Rs * 0.6 ,43,446/ deposited and there was withdrawal of Rs * 0.6 ,43,447/- from the account of petitioner/accused. That, the record of bank account of petitioner/accused was taken into police possession by the investigating officer vide separate seizure memo. Copy of Bank account statement is appended herewith as Annexure R-1.*

11. That during further investigation of the case on verification of the ID Card issued by the petitioner/accused in the name of different victims were verified and the same were found to be fraud."

8. Petitioner seeks bail on the ground that pre-trial incarceration is of 08 months & 15 days. Petitioner's counsel on instructions submits that within 15 days of release from jail, petitioner shall disconnect all his prepaid mobile sims except the one postpaid sim which is linked with Aadhar Card and shall not obtain any pre-paid sim and shall also not re-apply for pre-paid sim card till pendency of the trial. He further submits that he shall also handover the details of said sim cards to the concerned Investigator within 15 days and if he does not do that, the concerned Investigator may issue instructions to all the mobile phone providers and get all the sim cards issued in his name except one postpaid number linked with Aadhar card. Petitioner's counsel further submits that the petitioner shall not repeat the offence and in case, he does so, they will not object that State shall file for cancellation of bail.

9. Counsel for the State opposes the bail and submits that the petitioner used to target unemployed persons and then issue fake ID cards to them and obtain money. He further submits that in case, he is released on bail there is likelihood that he will again indulge in crime.

10. An analysis of the above said arguments would lead to the conclusion that considering the petitioner's custody of 08 months and 15 days and coupled with the fact that petitioner has made undertaking to disconnect his sim cards as mentioned above and not to repeat the offence, this Court is inclined to grant bail. This is to ensure that petitioner does not cheat people by obtaining sim cards every time. Petitioner is also directed not to keep sim cards in any other name and if he does so, this shall be another ground for recalling the bail order.

11. As per paragraph 6 of the bail petition, the petitioner is in custody since 22.08.2023. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the primafacie analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability for further pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order. Thus, the previous criminal history of the petitioner is not being considered strictly at this stage as a factor for denying bail.

12. In Gurbaksh Singh Sibbia v State of Punjab, 1980 (2) SCC 565, (Para 30), a Constitutional Bench of Supreme Court held that the bail decision must enter the cumulative effect of the variety of circumstances justifying the grant or refusal of bail. In Kalyan Chandra Sarkar v Rajesh Ranjan @ Pappu Yadav, 2005 (2) SCC 42, (Para 18) a three-member Bench of Supreme Court held that the persons accused of non-bailable offences are entitled to bail if the Court concerned concludes that the prosecution has failed to establish a prima facie case against him, or despite the existence of a prima facie case, the Court records reasons for its satisfaction for the need to release such person on bail, in the given fact situations. The rejection of bail does not preclude filing a subsequent application. The courts can release on bail, provided the circumstances then prevailing require, and a change in the fact situation. In State of Rajasthan v Balchand, AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably illustrated that the basic rule might perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the Court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh when considering the question of jail. So also, the heinousness of the crime. In Gudikanti Narasimhulu v Public Prosecutor, (1978) 1 SCC 240, (Para 16), Supreme Court held that the delicate light of the law favors release unless countered by the

negative criteria necessitating that course. In Prahlad Singh Bhati v NCT, Delhi, (2001) 4 SCC 280, Supreme Court highlighted one of the factors for bail to be the public or the State's immense interest and similar other considerations. In Dataram Singh v State of Uttar Pradesh**, 2018:INSC:107 [Para 7]**, (2018) 3 SCC 22, (Para 6), Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously, compassionately, and in a humane manner. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

13. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborative and stringent conditions. InSushila Aggarwal v. State (NCT of Delhi),**2020:INSC:106 [Para 92]**, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

14. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail, subject to the following terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

15. In Madhu Tanwar and Anr. v. State of Punjab, **2023:PHHC:077618 [Para 10, 21]**, CRM-M-27097-2023, decided on 29-05-2023, this court observed,

> [10] The exponential growth in technology and artificial intelligence has transformed identification techniques remarkably. Voice, gait, and facial recognition are incredibly sophisticated and pervasive. Impersonation, as we know it traditionally, has virtually become impossible. Thus, the remedy lies that whenever a judge or an officer believes that the accused might be a flight risk or has a history of fleeing from justice, then in such cases, appropriate conditions can be inserted that all the expenditure that shall be incurred to trace them, shall be recovered from such person, and the State shall have a lien over their assets to make good the loss.
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> [21] In this era when the knowledge revolution has just begun, to keep pace with exponential and unimaginable changes the technology has brought to human lives, it is only fitting that the dependence of the accused on surety is minimized by giving alternative options. Furthermore, there should be no insistence

to provide permanent addresses when people either do not have permanent abodes or intend to re-locate.

16. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above, in the following terms**:**

(a). Petitioner to furnish personal bond of Rs. Ten thousand (INR 10,000/); AND

(b) To give one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the concerned court, and in case of non-availability, to any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned officer/court must satisfy that if the accused fails toappear in court, then such surety can produce the accused before the court.

OR

(b). Petitioner to hand over to the concerned court a fixed deposit for Rs. Ten thousand only (INR 10,000/-), with the clause of automatic renewal of the principal and the interest reverting to the linked account, made in favor of the 'Chief Judicial Magistrate' of the concerned district, or blocking the aforesaid amount in favour of the concerned 'Chief Judicial Magistrate'. Said fixed deposit or blocking funds can be from any of the banks where the stake of the State is more than 50% or from any of the well-established and stable private sector banks. In case the bankers are not willing to make a Fixed Deposit in such eventuality it shall be permissible for the petitioner to prepare an account payee demand draft favouring concerned Chief Judicial Magistrate for a similar amount.

(c). Such court shall have a lien over the funds until the case's closure or discharged by substitution, or up to the expiry of the period mentioned under S. 437-A CrPC, 1973, and at that stage, subject to the proceedings under S. 446 CrPC, the entire amount of fixed deposit, less taxes if any, shall be endorsed/returned to the depositor.

(d). The petitioner is to also execute a bond for attendance in the concerned court(s) as and when asked to do so. The presentation of the personal bond shall be deemed acceptance of the declarations made in the bail petition and all other stipulations, terms, and conditions of section 438(2) of the Code of Criminal Procedure, 1973, and of this bail order.

(e). While furnishing personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number, (If available), when the attesting officer/court thinks appropriate or considers the accused as a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

17. The petitioner shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the Police officials, or any other person acquainted with the facts and the circumstances of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to tamper with the evidence.

18. Petitioner to comply with their undertaking made in the bail petition, made before this court through counsel as reflected at the beginning of this order. If the petitioner fails to comply with any of such undertakings, then on this ground alone, the bail might be canceled, and the victim/complainant may file any such application for the cancellation of bail, and the State shall file the said application.

19. <u>The petitioner is directed not to keep more than one prepaid SIM, i.e., one pre-paid mobile phone number, till the conclusion of the trial; however, this restriction is only on prepaid SIMs [mobile numbers] and not on post-paid connections or landline numbers</u>. <u>The petitioner must comply with this condition within fifteen days of release from prison.</u> The concerned DySP shall also direct all the telecom service providers to deactivate all prepaid SIM cards and prepaid mobile numbers issued to the petitioner, except the one that is mentioned as the primary number/ default number linked with the AADHAAR card and further that till the no objection from the concerned SHO, the mobile service providers shall not issue second pre-paid SIM/ mobile number in the petitioner's name. Since, as on date, in India, there are only four prominent mobile service providers, namely BSNL, Airtel, Vodafone-Idea, and Reliance Jio, any other telecom service provider are directed to comply with the directions of the concerned Superintendent of Police/Commissioner of Police, issued in this regard and disable all prepaid mobile phone numbers issued in the name of the petitioner, except the main

number/default number linked with AADHAR, by taking such information from the petitioner's AADHAR details or any other source, for which they shall be legally entitled by this order. This condition shall continue till the completion of the trial or closure of the case, whichever is earlier. In Vernon v. The State of Maharashtra, **2023 INSC 655**, [para 45], while granting bail under Unlawful Activities (Prevention) Act, 2002, Supreme Court had directed imposition of the similar condition, which reads as follows, "(d) Both the appellants shall use only one Mobile Phone each, during the time they remain on bail and shall inform the Investigating Officer of the NIA, their respective mobile numbers."

20. During the trial's pendency, if the petitioner repeats or commits any offence where the sentence prescribed is more than seven years or violates any condition as stipulated in this order, it shall always be permissible to the respondent to apply for cancellation of this bail. It shall further be open for any investigating agency to bring it to the notice of the Court seized of the subsequent application that the accused was earlier cautioned not to indulge in criminal activities. Otherwise, the bail bonds shall remain in force throughout the trial and after that in Section 437-A of the Cr.P.C., if not canceled due to non-appearance or breach of conditions.

21. The conditions mentioned above imposed by this Court are to endeavour that the accused tries to reform, does not repeat the offence and to provide an opportunity to the victim to consider legal remedies for recovery of the amount. In Mohammed Zubair v. State of NCT of Delhi, **2022:INSC:735 [Para 28]**, Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed.

22. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioner understands.

23. If the petitioner finds the bond amount beyond social and financial reach, it may be brought to the notice of this Court for appropriate reduction. Further, if the petitioner finds bail condition(s) as violating fundamental, human, or other rights, or

causing difficulty due to any situation, then for modification of such term(s), the petitioner may file a reasoned application before this Court, and after taking cognizance, even to the Court taking cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.

24. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

25. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

26. The SHO of the concerned police station or the investigating officer shall arrange to send a copy of this order, preferably a soft copy, to the complainant and the victim, without any delay. If the victim(s) notice any violation of this order, they may inform the SHO of the concerned police station, the trial court, or even this court.

27. *There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

Petition allowed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

16.05.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.