2024:PHHC:067719

225 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CRM-M-23242-2024
Decided on:-14.05.2024

Thakkar Rajesh Rameshchandra ....Petitioner..

vs.

State of Haryana ....Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Rakesh Nehra, Sr. Advocate with
Mr. Shamsher Singh Tomar, Advocate and
Mr. Ajay Bishnoi, Advocate,
for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana.

Mr. Rajesh K. Sheoran, Advocate,
for the complainant.

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HARKESH MANUJA J. (Oral)

1. By way of present petition filed under Section 439 of the Code of Criminal Procedure, 1973, prayer has been made for grant of regular bail pending trial in case FIR No.47, dated 24.11.2023, registered under Sections 420, 204 and 120-B IPC, at Police Station Cyber Crime Central Zone, Faridabad, wherein, petitioner has been implicated with the allegations of having defrauded the complainant by inducing to invest money in the share market through him.

2. Learned Senior counsel for the petitioner submits that petitioner was not named in the FIR. He further submits that even as per

police investigation as pointed out before the trial Court, the petitioner only received a sum of Rs. 62 lakhs in his account, which was being maintained by Nilesh @ Lillu and not the petitioner as he was only getting some commission against the use of his account. Moreover, the petitioner is not involved in any other case.

Learned Senior counsel also points that investigation of the case in hand already stands concluded with the filing of challan and trial is likely to take some time, whereas, the petitioner is in custody for the past around 05 months. He places reliance upon the judgment of Hon'ble Apex Court in case of ***"Sanjay Chandra vs CBI", (2012) 1 SCC 40***, to contend that in case investigation stands completed and charges filed then there is no good reason to detain the accused in jail, especially, when trial is likely to take considerable time and there is no serious contention that the accused, if released on bail, would interfere with the trial or tamper with evidence. Relevant paras 14 and 15 of the ***Sanjay Chandra's*** case are reproduced hereunder for reference:-

> "*14) In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity*

demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, `necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.

15) In the instant case, as we have already noticed that the "pointing finger of accusation" against the appellants is `the seriousness of the charge'. The offences alleged are economic offences which has resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor : The other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the Constitutional Rights but rather "recalibration of the scales of justice." The provisions of Cr.P.C. confer discretionary jurisdiction on Criminal Courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing *valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual. This Court, in Kalyan Chandra Sarkar Vs. Rajesh Ranjan- (2005) 2 SCC 42, observed that "under the criminal laws of this country, a person accused of offences which are non-bailable, is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 of the Constitution, since the same is authorized by law. But even persons accused of non- bailable offences are entitled to bail if the Court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the Court is satisfied by reasons to be recorded that in spite of the existence of prima facie case, there is need to release such accused on bail, where fact situations require it to do so."*

3. On the other hand, prayer made herein has been opposed at the instance of learned State counsel assisted by Mr. Rajesh K. Sheoran, Advocate representing the complainant while submitting that the petitioner was actively instrumental in the offence in hand as during investigation, it was found that within a span of 7/8 months, a sum of Rs.25 crore was transferred in account of the proprietorship firm i.e. Chaumunda Traders, of which, the petitioner happened to be the proprietor and thus, he does not deserve the concession of regular bail, having consciously drawn benefit of those deposits.

4. I have heard learned counsel for the parties and gone through the paper book. I am unable to find substance in the submissions made on behalf of the petitioner.

5. In the present case from the records, it can be diserned that the petitioner in active connivance with the co-accused named in the FIR allured and induced the complainant to transfer huge amount in their accounts on the pretext of investment in share trading with an assurance of high returns, however, instead cheated/defrauded him by usurping the same. The involvement of petitioner in the offence in hand is prima facie established from the fact that a sum of Rs.62 lakhs from the accounts of complainant was transferred in the Proprietorship Firm, namely, Chaumunda Traders, of which, the petitioner happens to be the proprietor. Moreover, as per investigation, in the last 7/8 months, a sum of Rs.25 crore has been received in the accounts maintained by proprietorship firm i.e. Chaumunda Traders, which reflects the direct and conscious participation of the petitioner. Further, in the humble opinion of this Court, the plea set-up by learned Senior counsel that the petitioner was just an employee and his account was misused by the employer is wholly misplaced in the given facts and circumstances as the petitioner was knowingly drawing benefit-commission out of the deposits made in the accounts of his firm, which established his conscious acceptance/acknowledgment the account being misused to deceive others with consent and thus, directly implicates him in the offence in hand. As such, the the petitioner is not entitled for grant of relief of regular bail in the given facts and circumstances.

6. As regards the reliance being placed by learned Senior counsel

upon the judgment passed in case of ***Sanjay Chandra***, considering that such kind of cyber crime frauds are going to shake the roots of the economy of the nation and also erode confidence and trust of individuals toward the investments in the open primary market which indirectly reflects upon the Industrial Growth as well as indirectly adds to market volatility.

7. Moreover, such kind of cyber crime fraud 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 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. Also, 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 cyber crime fraud which definitely and essentially results in breach of privacy of the complainant as well.

8. In view of the discussion made herein above, the present petition is thus, dismissed being devoid of merits.

14.05.2024 **(HARKESH MANUJA)**
sonika **JUDGE**

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