CRM-M-27195-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27195-2024
Reserved on: 15.07.2024
Pronounced on: 23.07.2024

Ankur Kumar ...Petitioner

Versus

State of Haryana …Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Kuldeep Choudhary, Advocate
For the petitioner.

Mr. Rajat Gautam, Addl. AG, Haryana.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0047	21.03.2024	Cyber Crime NIT, Faridabad	420 IPC

1. The petitioner, who is a boy of age 19 years, incarcerated in the FIR captioned above has come up before this Court under Section 439 CrPC seeking bail.

2. Petitioner's counsel prays for bail by imposing any stringent conditions including surrender of weapons. The petitioner further contends that the further pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

3. Facts of the case are being taken from reply dated 09.07.2024, which reads as under:-

> *"…brief facts emanating from the present case are that ShriAvdesh Sharma R/o House No 58. Sec-46, NHPC Colony, Faridabad, made a complaint to the local police with the allegations that he came across a few facebook advertisement promoting stock advising business and when he clicked on two such links, he was led to join Whatsapp group "Insider Information Group302" and "HIG Capital Investment Group Hub 82". There were many members in these groups. This group insider information Group302 was administered by Arjun Kapoor, Ravi Sharma and Natasha These people claimed to be representing a US brand Foreign Private equity investment co "Desert Eagle Equitrade investment company" with the website (www.deepuitrade.com). All these people encouraged members to invest in stock market trading using these companies foreign institutional accounts by allowing members to open*

> *sub institutional accounts in their companies for depositing the funds for stock trading. These people provided group members with bank account information of various Indian companies each having current accounts in reputed banks. The details of funds deposited in these companies bank accounts is provided along with the company name, bank account number, IFSC code, amount, date and RRN. All fund were transferred from my ICICI Bank account no 630001509761. This stock trading went on for few days smoothly, however in Jan 2024, when I asked for withdrawal of my money, these people tried to extract more money from me, but I refused to do contribute more money. After this website "www.deepuitrade.com" stopped working and never worked after that. I tried to reach out to these group administrators over their probile nos, but none of these mobile numbers was working. Another Whatsapp group which I was member of "HIG Capital investment Group Hub 82" with a webportalhttps://h5shareindiap.com and having an Android app "Share Indiaplus" on Google PlayStore. This group is run by Pankaj Gupta and Priya Patel as admins. However, this web portal https://h5shareindiap.com is still working, but they are not allowing me to withdraw my money and asking me to deposit more money. With hundreds of such whatsapp groups, these scammers are laundering crores of rupees from investors and such money is suspected to be used in all kind of Anti- National activities."*

4. I have head counsel for the parties and gone through the record.

5. Petitioner's counsel submits that as per the FIR, the complainant has himself participated with the company and later on had differences with its owners, therefore the facts of the case are civil in nature and the complainant is required to file the case of recovery against the main accused and not criminal case. He further submits that role attributed to the petitioner is only for receiving Rs.13,800/-. It is also submitted that the petitioner during custody in jail had become unconscious and suffered injuries on head, eye and other parts of body. But, the proper attention was not given to him despite his complaint to the authorities. Applicant had never felt such symptoms ever before. Therefore, enquiry in this regard can be made from the Jail authorities. During family calls & legal meetings, the applicant had highlighted continuous pain in his head, which requires immediate neurological treatment/consultation. Petitioner's counsel also submits that petitioner's mother has also undergone from back surgery and needs timely care and maintenance.

6. On the contrary, State counsel submits that petitioner had received Rs.4,80,000/- in his bank account linked with his mobile phone and on this ground, State opposes the bail and has also referred to the role of the reply, which reads as under:-

> *"2. That it is pertinent to mention that Rs4,80,000/- out of the total defrauded money Rs12,85,000/- was transferred in the account no.*

84419923702. It is also pertinent to mention here that mobile no. 8441992370 was registered in this account. The petitioner has got recovered mobile phone in which SIM no. 8441992370 was inserted when money was further transferred from this account to others accounts in FIR No 5/2024 u/s 420 IPC PS, Cyber Crime, NIT. Faridabad. The aforesaid mobile phone was also used in the present case also which has been got recovered by the petitioner therefore, the petitioner was joined investigation in the present case after obtaining permission from the Ld. Area Magistrate Faridabad. It is also pertinent to mention here that after collecting sufficient evidence against the petitioner, he was arrested in the present case. He was also interrogated by the investigating officer upon which, he has suffered his disclosure statement without any pressure and admitted to the commission of crime. A copy of disclosure statement is annexed as Annexure R-1.

(3) It is also pertinent mention here that during the course of investigation, technical work was completed. The bank account no 84419923702 was also found used in FIR No 5/2024 u/s 420 IPC PS, Cyber Crime, NIT, Faridabad. The petitioner was arrested in FIR No. 5/2024 PS, Cyber Crime, NIT, Faridabad. The petitioner was also joined investigation in the present case and after collecting sufficient evidence against him, he was arrested in the present case also. During the course of investigation, it has been revealed that the money amounting to Rs 480000/- was found transferred in bank account no 84419923702 and he has got recovered mobile phone in which SIM No. 8491992370 (SIM registered in the account) was entered when the money was transferred to further accounts. The petitioner has also admitted that he was getting 3% from the transferred amount. He has also admitted that money amounting to Rs 13500/- was received by him from the aforesaid defrauded money which had been spent by him on his personal expenses. It is also worthwhile to mention here that during the course of investigation, section 66D of IT Act was also added in the present case. After completion of investigation against the petitioner, a challan was prepare against him 22.05.2024, which has been submitted in Ld Area Magistrate for further legal proceeding against the petitioner. There are total 19 prosecution witnesses, who are yet to be examined in the present case. As per the criminal record of PS, Cyber Crime, NIT, Faridabad, the petitioner is found to be involved in one more case FIR No 5/2024 u/s 420 IPC S, Cyber Crime, NIT, Faridabad. A copy of the custody certificate of the petitioner is annexed as Annexure R-2. The local police has conducted a fair, proper, impartial dele giant transparent and expeditious investigation in the present case."

7. As per paragraph 4 of the bail petition, the petitioner is in custody in this case since 28.03.2024. 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.

8. 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. In Sushila 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.

9. 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. This order shall come into force from the time it is uploaded on the official webpage of this Court.

10. 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.

11. 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 to appear 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)	

12. 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.

13. 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.

14. 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.

15. 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."

16. 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.

17. 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.

18. 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.

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

20. 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.

21. *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

23.07.2024
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Whether speaking/reasoned: Yes
Whether reportable: No.