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

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Date of Decision : July 24, 2024

ASHISH SAXENA

-PETITIONER

V/S

STATE OF UT, CHANDIGARH

-RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Shrey Goel, Advocate
for the petitioner.

Mr. Manish Bansal, P.P., U.T. Chandigarh with
Ms./Mrs. Diksha Sharma, Advocate and
Mr. Shaurya Nagpal, Advocate.

KULDEEP TIWARI, J. (ORAL)

1. Through the instant petition, the petitioner craves for indulgence of this Court for him being enlarged on regular bail, in case FIR No.17 dated 17.02.2024, under Sections 419, 420, 120-B of the IPC (Sections 467, 468, 471 of the IPC added subsequently), registered at P.S. Cyber Crime, U.T. Chandigarh.

ALLEGATIONS IN THE FIR

2. The present FIR derives its origin from a complaint made by one Sachin Aggarwal (hereinafter referred to as the 'complainant'). Succinctly stated, the allegations levelled in the present FIR are that, the complainant came across an advertisement on Facebook regarding financial services and accordingly he joined the group provided in the said advertisement. In that group, the complainant came in contact with two boys, who used to make him recommendation about sale and purchase of stocks. The complainant was in-

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duced to open a Demat Account through a weblink and he was joined a fake Demat Account, which used to show him his increasing profits. At the inducement of accused, the complainant transferred funds to the tune of ₹ 27,00,000/- in different accounts provided to him by accused. However, after receiving funds from the complainant, he was told that his account has been frozen and the amount deposited therein would be seized. This fraud propelled the complainant to make a complaint, which consequently constituted the bedrock for registration of the present FIR.

DETAILS OF INVESTIGATION

3. During investigation, it surfaced that a sum of ₹ 18,88,000/- and Rs 7,80,000/- were transferred in two accounts, which were maintained at Jaipur.
4. The investigation resulted in total 04 persons becoming nominated as accused in the present FIR, out of which, 03 have already been arrested but one accused Aditya is absconding and an L.O.C. has been issued against him.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

5. The learned counsel for the petitioner, in his asking for the hereinabove extracted relief, has made the following submissions:-

(i) The petitioner has not been named in the FIR, rather he has been arrayed as an accused on the basis of disclosure statement of co-accused Manjeet Guri;

(ii) Nonetheless, the only role assigned to the petitioner is that, he being a bank official, had opened the bank account(s) concerned.

(iii) The petitioner was neither aware about the functioning of



the main accused, nor he played any role whatsoever in inducing the complainant to part with his money;

(iv) Petitioner has been languishing behind the bars since 31.03.2024;

(v) The Final Report against 03 accused (including petitioner) has been presented on 29.05.2024, however, charges have not yet been framed. Therefore, when trial is not likely to conclude any-time soon, keeping the petitioner behinds the bars would serve no gainful purpose;

SUBMISSIONS OF THE LEARNED PUBLIC PROSECUTOR

6. *Per contra*, the learned Public Prosecutor has, by drawing attention of this Court towards the hereinafter extracted role of the petitioner, as mentioned in the reply dated 12.07.2024, opposed the grant of regular bail to the petitioner. He has further submitted that the main accused is still absconding and release of the petitioner on bail would affect the investigation.

“ROLE OF PETITIONER

10.During the course of investigation, it was found that the alleged bank account in which the defrauded amount was transferred was opened by the present petitioner. It is submitted that the petitioner in connivance with other accused has opened the said bank account without verification of the documents.....It is pertinent to mention that the present Petitioner is actively involved in Cyber fraud syndicate and acts under the active guidance and instructions of the main accused Aditya Jain.....

11. That the alleged bank account belongs to co-accused Manjeet Buri and after arrest, he disclosed that the present Petitioner Ashish Saxena helped him in opening and managing the alleged bank account to cheat innocent people. The present Petitioner was arrested on disclosure of Manjeet Buri, and he admitted that he is bank officer in AU small Finance Bank and he provides the bank accounts to Aditya Jain, Hi-



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mansu for cheating purpose. Aditya Jain is the mastermind behind the Cyber fraud syndicate and he gives rupees 25,000/- to 30,000/- to the present Petitioner for opening of every account which are being used to gulp hard earned money of the people.

12. That the call record of present Petitioner reveals that he was in constant touch with the main accused Aditya Jain and other co-accused Himanshu Jain.....”

7. Moreover, on instructions imparted to him by S.I. Yashpal Singh, the learned Public Prosecutor has verified that, although the Final Report against 03 accused (including petitioner) has been presented, but, charges are yet to be framed.

REASONS FOR ALLOWING THE INSTANT PETITION

8. This Court has heard the rival submissions made by the learned counsels for the parties and perused the record. Be that as it may, this Court is of the view that the present petition deserves to be allowed. The reason for forming this inference generates from the factum that:- (i) the only role assigned to the petitioner is that, he facilitated the accused to open bank account(s), wherethrough, the latter allegedly siphoned off the money deposited by the complainant; (ii) although there is evidence that the petitioner was in constant touch with the main accused, however, it is not the case of the prosecution that the petitioner has derived any benefit out of the allegedly siphoned off sums of money; (iii) as per the custody certificate placed on record by the learned Public Prosecutor, the petitioner has suffered incarceration of 03 months and 24 days and he is not involved in any other case; (iv) trial is not likely to conclude anytime soon, as one of the accused is still absconding and even charges have not yet been framed against the arrested accused (including petitioner), therefore, subjecting the petitioner to prolonged incarceration would serve no fruitful purpose.



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9. Therefore, without commenting upon the merits and circumstances of the present case, the present petition is **allowed**, however, subject to the conditions enumerated hereinafter.

(i) The petitioner shall forthwith, in case he possesses, deposit his passport with the learned trial Court concerned;

(ii) The petitioner shall not cause any impediment or adopt any dilatory tactics, thereby causing delay in conclusion of the trial;

(iii) The petitioner shall not, except for strong and compelling reasons, absent himself from the trial proceedings. In case he does so, the learned trial Court concerned shall pass appropriate orders warranted under law against him. Moreover, thereafter the issue of grant of bail to the petitioner would be considered only after examination of all the prosecution witnesses;

(iv) In the event of the petitioner making any attempt to influence or threat any of the victim(s)/witness(es) cited by the prosecution, the same shall be construed to be violation of the terms and conditions of bail and then the respondent-State would be at liberty to institute an appropriate motion, thus seeking cancellation of bail granted to the petitioner.

10. The petitioner is ordered to be released on bail on furnishing of bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

11. However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

July 24, 2024
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No