2024:PHHC:126314

# IN HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**102** **CRM-M-29882-2024**
**DECIDED ON: 14.06.2024**

**PRAVEEN**

**... PETITIONER**

**VERSUS**

**STATE OF HARYANA**

**... RESPONDENT**

**CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.**

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Present: Mr. Rahul Sidher, Advocate
for the petitioner.
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**SANDEEP MOUDGIL, J**

***1. Relief Sought***

The jurisdiction of this Court under Section 438 Cr.P.C. has been invoked seeking pre-arrest bail to the petitioner in case FIR No. 49, dated 26.02.2024, under Section 420 IPC, registered at Police Station City Sadar Rohtak, District Rohtak.

***2. Facts***

The present case was registered on the basis of complaint submitted by Dharam Singh alleging that he received a telephonic call on his mobile bearing No.9813149368 from mobile No.9263984657 at 10:54 a.m. and the voice of caller was like his relative Rajbir, who said that he has to send money in hospital, but he is facing problem in sending the money and told him that he is sending the money to him (complainant) and requested to send the amount on mobile No.9126093243. The accused sent a fake text message and screen shot of transfer of amount to him and requested to further transfer the amount, on which, he transferred Rs.15,000/- through Googlepay and again send Rs.5000/- vide transaction ID 40427894856 and 404287919046. The accused again made call to him and told him that he deposited an amount of Rs.40,000/- and requested him to further transfer the amount. Thereafter, he transferred Rs.40,000/- at 11:27 a.m. through Google pay vide transaction ID 440853148773. At 12.50, the accused again called him and told that he has transferred Rs.35,000/- in his account and requested to further transfer the amount, upon which, he again transferred Rs.35,000/- through Google pay vide transaction ID 404277222651 at 11:02 p.m. In the evening, he checked the amount in his account but no amount was found to be transferred in his account. He made complaint on 1930 number. He has transferred the amount from Punjab National Bank vide account No.04492121022102 in the name of Rahul son of Dharam Singh, in which transaction of Rs.60,000/- was done and Rs.35,000/- was transferred from account No.50100261629434 of HDFC Bank.

***3. Submissions***

***On behalf of the petitioner:***

Learned counsel for the petitioner has submitted that the name of the petitioner has been incorporated in the present case at later stage when it was found that his account was used in some transaction pertaining to cheating with the complainant. In fact, neither any amount has been transferred from his account nor any withdrawal has been done by him from the said account. The assertion is that no offence under Section 420 IPC has been made out against the petitioner as there is no allegation that the petitioner was, in any manner, involved in an act of instigating, inducing or alluring the complainant or any other person to give money. Moreover, the petitioner is not the beneficiary in the present case. Further assertion is that there is also a delay of 15 days in reporting the matter to the police and nothing has been recovered from the petitioner. He is ready and willing to join the investigation.

Notice of motion.

***On behalf of respondent-State:***

At the asking of Court, Mr. Baljinder Singh Virk, Sr. DAG, Haryana, accepts notice on behalf of respondent-State, who asserts that the investigation of the case is still pending. In the present case, an amount of Rs.95,000/- was got fraudulently transferred from the account of the complainant to some other account by alluring him. Moreover, in the present case an amount of Rs.50,000/- has been found to be credited in the account of the present petitioner, meaning thereby, he has actively participated in commissioning of offence. The custodial investigation/interrogation of the petitioner would be required to culminate the investigation into a logical end as well as to recover the mobile phones used by the accused while committing the act of fraud. Thus, pray for dismissal of the present petition.

Heard learned counsel for the respective parties.

***4***. ***Analysis and conclusion:***

In case of criminal investigation, the normal procedure prescribed for curtailing the right to life & liberty, is that the investigating officer can arrest the accused even without warrant. The Court has extraordinary power to protect an innocent person. However, this power has to be exercised by the Courts with due circumspection.

The allegation against the petitioner is serious in nature and due to the severity of alleged crime, he does not deserved the concession of pre-arrest bail. From perusal of FIR, it is evident that though the account was of someone else, but an amount of Rs.50,000/- has been credited in the account of the petitioner for which he has no explanation. Hence, *prima-facie* offence under Section 420 IPC is made out against the petitioner. Such an allegation is certainly required adequate and intense investigation to unearth the truth. Moreover, nowadays such type of offences are on the rise in the society causing unnecessary harassment and humiliation to the innocent persons for not fault on their part. The mere contention that the petitioner is ready and willing to join the investigation does not vest a right for grant him anticipatory bail because an element of cheating is involved in it. The case made out against the petitioner is certainly a relevant ground for denial of anticipatory bail in the case in hand.

It is settled proposition of law that power exercisable under Section 438 Cr.P.C., is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Supreme Court in ***"State vs. Anil Sharma"; (1997) 7 SCC 187***, held as under:-

> *"We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconded with a favourable order under Section 438 of the code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also material which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods needs not be countenanced, for, such an argument can be advanced by all accused in all criminal*

*cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders."*

Considering the fact that the allegation against the petitioner is of serious nature wherein he has committed fraud upon the complainant. Further more a sum of Rs.50,000/- is found to be transferred in the account of the petitioner and specific allegations are levelled against him.

Keeping in view the afore-said facts and circumstances and nature of averments, the petitioner does not deserve the concession of anticipatory bail. Hence, the present petition is hereby, dismissed.

**(SANDEEP MOUDGIL)**
**JUDGE**

**14.06.2024**
*sham*

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