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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-32750-2024
Date of Decision : 18.07.2024

Deepak Mittal

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. S.K. Garg Narwana, Sr. Advocate with
Mr. Vishal Garg Narwana, Advocate and
Mr. Manish Kinha, Advocate
for the petitioner.

Mr. Gaurav Bansal, DAG Haryana and
Mr. Anmol Malik, DAG Haryana

KIRTI SINGH, J.(Oral)

1. Prayer in the present petition filed under Section 438 Cr.P.C., is for grant of anticipatory bail to the petitioner, in case FIR No.11 dated 18.03.2024, under Sections 420, 467, 468, 471 and 506 IPC and Sections 66-C and 66-D of Information Technology (Amendment) Act, (Sections 120-B and 201 IPC added later on) registered at Police Station Cyber Crime Haryana, Panchkula, District Panchkula.

2. As per the FIR it has been alleged as under :-

"*First Information Contents:- To the Superintendent of Police (Cyber), Panchkula, Haryana. Subject : Application regarding fraud of crores of rupees by creating a fake online company Tig Twag International Pvt Ltd. The request is that I have a food supplement shop in Faridabad, whose address is Shop No. 9, Sector 18, Housing Board Colony, Faridabad, which is run by me and my brother*

Puneet. We live in a joint family, in which I, my brother Puneet, my parents and my uncle's family lives on the upper floor as my uncle passed away, my aunt lives with her younger son Pankaj Sharma, who is about 35 years old and has been working in the trade department of ICICI Bank, Sector 16, Faridabad branch for about four years. In the month of March 2023, Pankaj Sharma said that we 5-6 people together make companies and we will make you the director in one of our company and your monthly salary will be Rs. 2 Lakh. When the company starts earning, we will increase your salary to Rs. 5 lakh and you will also get share in the profit of the company afterwards. These people told me that to become the director of the company, first you will have to do your ekyc. From which the account of the director of the company can be opened in any bank, then these people did ekyc on my name on sifysafescrypt, URL of which is ekyccaconnect.safescrypt.com and its user login and pin was made whose signature ID is avpd5438n@username.safescrypt in which my email is sharadushyant101@gmail.com and in which my PAN number is AVPTD5438R is there, registration date of which is 27.04.2023 and time is 14:16:00, and my Aadhar card number 3506-8979-1750 has been linked to the above ekyc. Then these people said that we will make a company in which we will make you the director, name of that company will be TigTwag International Pvt Ltd, whose office will be in Gopala Tower, 8 floor, Red Color Building in Delhi. In order to make me the director, these people brought my Aadhar card, PAN card, Photo from my home in Faridabad and a SIM whose number I don't remember was activated on my name. They linked their phone number with my Aadhar card whose mobile number is 9711587637. Then in the month of April May 2023, I was made the director of TigTwag International Pvt Ltd. Then one day I got a call from Pankaj Bhai he asked me to reach Luxmi Nagar, Metro Station, Delhi and call on this number 8920467545. When I called on that number, the second director of this company whose name is Himanshu and two more people came with him and their numbers are

9820467545, 9643134928, whom I do not know. But I will recognize them when they appear. These people took me to the Yes Bank Branch in Laxmi Nagar. A current account was opened in the name of Tig Twag International Pvt Ltd., on which we both, me and Himanshu signed and all the documents of this Yes Bank account like ATM, cheque book, pass book, internet banking password and 15-15 cheques both sides signatures were obtained without any date. After this, they took me to Krur Vyas Bank Laxmi Nagar Branch Delhi which was at a short distance and there also a current account was opened in the name of Tig Twag International Pvt Ltd., on which both of us I and Himanshu signed. These people took all the documents of this bank account like ATM, cheque book, pass book, internet banking password and 15-15 cheques which were signed on both sides without date. After 15-20 days, in the month of July 2023, accounts were opened in Axis Bank Gurugram, Bank of Bahin and Kuwait Gurugram, Indusind Bank Sector 37 Faridabad and Sys Ban ya Syrien Bank, Delhi. All the accounts were opened in the name of TigTwag International Pvt Ltd. All the documents of the these bank accounts like ATM, cheque book, pass book, bank internet banking password and signatures were taken on 15-15 cheques on both sides without any date and Pankaj, Supreet and Mukesh took all these documents with them. I was told that Tig Twag International Pvt. Ltd. is a company which imports and exports cosmetics related goods. So neither I have ever seen the head office, Godown nor any employee of the company. Then Pankaj bhai opened an account with my documents in ICICI Bank Sector 16, in which Pankaj himself is working and used my ekyocaconnect.safescrypt.com id and opened an account fraudulently without my knowledge and Information. The person whom my brother introduced me, used to opened a bank account with me. I do not know his name. But I have his phone number 8920467545. Apart from this, my brother Pankaj has opened a company in the name of DUSVIK and the account of a company BAKISTA is opened in ICICI Bank Sector 16, Faridabad. This *account has been opened without my signature using the above KYC. In July 2023, I got a call from Manisha, who was working in Yes Bank, who said on the phone that you should get the account of your DUSVIK Company's transferred to our bank. She said that transactions worth about Rs 145 crore were found in your company Tig Twag International Pvt Ltd account in the last six months, which makes it look like you are a big businessman. Manisha's boss showed me the statement on his laptop from 1 June 2023 to 28 December 2023, then I saw the bank balance being Rs. 145 crores. In which transactions of lakhs/crores of rupees have been found to be taking place which have never been done by me. On 28 December 2023, I got a message through a SMS that a transaction of Rs 1 to 2 crores has taken place in your account. Then my brother said that you take one crore rupees and be comfortable. When I went to see the office about four months ago, I was shown an office in Gopala Tower Delhi in which some people sits wearing good clothes, they sits till any bank inquiry comes, and after that they lock the office. These people also opened an office in Arcadia Mall Gurugram. Apart from this, my brother Pankaj works in ICICI Bank. His RHS is Prashant and he asked my brother Pankaj that what you do, how so much money is being transferred in these accounts. My brother never let me go to the head office of this company nor do I know what the company do? And how many employees works in it? This company is looked after by my cousin Pankaj, Supreet, Mukesh and other 4-5 people, whose mobile numbers I have given you. All these people together defrauded a poor person like me by making me the director of a fake firms and used ATM cards, cheque books, pass books, internet banking passwords of all the related bank accounts and committed fraud worth crores, by showing the fake bills of companies like Tig Twag International Pvt Ltd, they cheat the government of crores of rupees and by creating fake ekyc open online account through the internet, they opened online accounts, use fake SIMs and commit fraud online. Yesterday, 02.01.2024, my brother Pankaj threatened me that nothing will* *happen to me but I will get you killed. I humbly request you to take legal action against the above mentioned people. Enclosure: Along with this complaint, I am providing you the statement of Yes Bank from 01.06.2023 to 28.12.2023, screenshot of Yes Bank SMS and photo of the suspect and screenshot related to WhatsApp chat. Thank you Sd/- Dushyant Sharma son of Shri Vishnu Sharma 1881 HUDA Sector 16, Faridabad Mobile: 8368100755.*

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3. Learned senior counsel for the petitioner *inter alia* submits that the petitioner has been falsely implicated in the present case and he has not been named in the FIR. From the FIR, it is revealed that complainant-Dushyant Sharma got lodged an FIR against his own cousin brother Pankaj Sharma and others, who opened company under the name and style of TwigTwag International Pvt. Ltd. and DUSVIK, in the name of complainant-Dushyant. The complainant used to take salary to the tune of Rs. 2 lacs per month and was appointed as Director. Learned senior counsel further submits that the petitioner does not have any direct or indirect involvement in the alleged crime nor have any link with any of the accused named in the FIR. Moreover, the police is illegally trying to link the petitioner with the present case. He further submits that the petitioner is willing to cooperate with the police in their investigation as and when required.

4. Vide order dated 11.07.2024, notice of motion was issued and the State counsel had been directed to file reply detailing therein the role and criminal antecedents of the petitioner.

5. Reply by way of affidavit of Sh. Arvind Dahiya, Deputy Superintendent of Police, State Crime, Faridabad on behalf of respondent-State has been filed in the Court today. The same is taken on record.

6. A perusal of the reply reveals that a complaint was submitted by the

complainant namely Dushyant Sharma to the SP (Cyber) Haryana, stating therein that he had received a promotional call from the Yes Bank Gurugram, to shift his Bank Account to the said Branch and the reasons cited for the same were that during the past few months, the transaction of about Rs.145 crores had been carried out in his Bank Account. The complainant, shocked by the call, inquired the matter at his level and it was revealed that his cousin Pankaj Sharma had started a firm namely Tig Twag International Pvt. Ltd." and by using his e-KYC through electronic mode, had opened various Bank Accounts in the name of the above said company. Therefore, a request was made to investigate the matter.

7. The said company has numerous transactions with various companies and when the data related to all these companies was obtained from the NCRP (National Cyber-Crime Reporting Portal, Ministry of Home Affairs, New Delhi), it was noted that there were total 143 complaints lodged all over the India and seven complaints have been lodged in the State of Haryana only.

8. On receiving the said complaint by the SP Cyber, Haryana, preliminary inquiry was carried out to take the necessary legal action. During the preliminary Inquiry, it has been noted that since the e-KYC of the complainant was used by the way of electronic mode and the quantum of transactions is running into Hundred Crores, registration of the FIR was recommended. In this manner, the present FIR had been registered against Pankaj Sharma, Supreet and Mukesh.

9. Vide order of the DGP Haryana dated 01.04.2024, an SIT (Special Investigation Team) was constituted headed by Sh. Nitiesh Aggarwal, SP State Crime, Faridabad and the investigation in relation to the above said FIR was carried out by and under the aegis of the SIT.

10. During the investigation, statement of the Custom House Agent

namely Kanhaiya Kasera was recorded and thereafter accused Amit Taneja was nominated as an accused and arrested on 21.05.2024. He further nominated co-accused Rakesh Bansal in his disclosure and subsequently he was arrested on 28.05.2024. Further on his disclosure, the co-accused Ankur Goyal was nominated and arrested alongwith his accomplice Antardeep on 29.05.2024. During the interrogation co-accused Ankur Goyal disclosed that his accomplice Kapil Mittal is the person who handled all Bank and Forex Transactions related to the above said Companies. A team headed by the member of the SIT visited the offices of the accused Kapil Mittal on 04.06.2024 where his brother Deepak Mittal (present petitioner) met the SIT members and apprised them that the accused Kapil Mittal was not available in the town and the SIT served a notice to the petitioner to appear before the SIT on 05.06.2024 alongwith entire record pertaining to the transactions of the above accounts.

11. Further, neither the accused Kapil Mittal nor the petitioner-Deepak Mittal, ever appeared before the SIT even after serving 04 notices to him. The SIT had investigated various accounts statements and other relevant documents, which show that the accused-Kapil Mittal was having a joint and common dwelling house, joint office and joint bank accounts with his brother Deepak Mittal (petitioner). Apart from this, Kapil Mittal and the petitioner are the joint Directors of three other Companies. It is further mentioned that when the accused persons, upon noting the raids by the SIT, on 15.05.2024, opened a new Bank Account No. 12620200058908 in Federal Bank, Chandni Chowk Branch, New Delhi on the name of DIMITBRO IVENTURE PVT. LTD. of which the accused Kapil Mittal and the petitioner are the Directors. The entire amount deposited in this account in cash was transferred to the Bank Account of another company namely GODFREY

w.e.f. 15.05.2024 till 12.07.2024 (after filing the present bail application) and the petitioner is the agent/dealer of this Company.

12. It was further contended by learned State counsel that the role of the petitioner is under investigation and the *prima facie* investigation carried out by the SIT indicates that the petitioner is also one of the main accused alongwith his brother Kapil Mittal who are siphoning the Huge Foreign Currency running into hundred crores (Rs.700.00 crore approximately, as investigated till now) which is expected to increase once the petitioner would be thoroughly interrogated to unearth the truth. These transactions include Forex transactions which have ramifications outside India (Dubai and Hongkong) and one of the sources of the amount transacted through these bank accounts has cyber complaints registered against it nationwide.

13. It is also mentioned in the reply that the SIT, later on came to know that the petitioner flew out of the country to Dubai on 11.06.2024. However, as per the information available to the SIT, the petitioner had not returned back to India. It is a point of Investigation that when the petitioner is in Dubai, how affidavit has been attested at Gurugram, Haryana, in his absence. He has furnished affidavit alongwith his bail application before the Sessions Court, Panchkula and has also furnished an affidavit before this Court alongwith the present bail application.

14. Lastly, learned State counsel has vehemently argued that the action of the petitioner for not cooperating with the investigation agency, at the first place, then leaving the country and staying in Dubai and still operating the Bank Accounts of the abovesaid companies reflect the severity about of cyber fraud committed at extensive level running into Hundreds of Crores (Rs.700.00 crore approximately, as investigated till now) causing extemporary loss to the Public

Exchequer and cheating the innocent people of India, which is still under investigation.

15. This Court has considered the rival submissions made by learned counsel for the parties.

16. In ***Siddharam Satlingappa Mhetre v. State of Maharashtra1***, ***(2011) 1 SCC 694,*** Hon'ble Supreme Court considered the principles established by the Constitution Bench in ***Gurbaksh Singh Sibbia v. State of Punjab (1980) 2 SCC 565*** case. After a thorough deliberation, the Court arrived at the following conclusion:

> *"112. The following factors and parameters can be taken into consideration while dealing with anticipatory bail:*
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> *(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
>
> *(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;*
>
> *(iii) The possibility of the applicant to flee from justice;*
>
> *(iv)The possibility of the accused's likelihood to repeat similar or other offences;*
>
> *(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;*
>
> *(vi)Impact of grant of anticipatory bail, particularly in cases of large magnitude affecting a very large number of people.*

17. In ***Sushila Aggarwal v. State (NCT of Delhi) (2018) 7 SCC 731***, the Constitution Bench reaffirmed that when considering applications for

anticipatory bail, Courts should consider factors such as the nature and gravity of the offences, the role attributed to the applicant, and the specific facts of the case.

18. In ***Jai Prakash Singh Vs. State of Bihar and another : (2012) 4 SCC 379***, Hon'ble Supreme Court held that anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty.

19. In ***P. Chidambaram Vs. Directorate of Enforcement (SC) : 2019(4) R.C.R.(Criminal) 875*** Hon'ble Supreme Court observed as under :

> *"67. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C., 1973 is an extraordinary power and the same has to be exercised sparingly. The privilege of the prearrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy."*

20. The relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to

liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome.

21. In view of the above discussion, this Court is of the considered opinion that there are serious allegations against the petitioner and there is an alleged involvement of huge amount of fraud money. The investigation is at a preliminary stage and there are possibilities of the petitioner hampering with the investigation.

22. Therefore, this Court is of the considered opinion that the petitioner is not entitled for the concession of anticipatory bail and, accordingly, the petition is dismissed.

(KIRTI SINGH)
JUDGE

18.07.2024
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Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No