2024:PHHC:132910

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

103 **CRM-M-33854-2024**
DECIDED ON: 18.07.2024

HARSH KUMAR
... PETITIONER

VERSUS

STATE OF HARYANA
... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

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Present: Mr. Lalit Kumar Yadav, Advocate
for the petitioner.

Mr. B.S. Birk, Sr. DAG, Haryana.

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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. 643, dated 20.11.2023, under Sections 420 and 120-B of the Indian Penal Code, 1860, registered at Police Station Pinjore, District Panchkula (Haryana).

2. Facts

The facts as narrated in the FIR are as under:-

The present case was registered on the basis of complaint submitted by Nilesh Kumar Chaudhary on the allegations that the accused no. 1 namely Harsh Kumar is the son of his sister in law namely Smt. Binita Devi and has done the course of software engineer from HCL-TEK Lucknow (UP) and the accused no. 2 namely Basant Kumar is the father of the accused no. 1 i.e.

Harsh Kumar.3. That the accused no. 1 namely Harsh Kumar is the son of his sister in law namely Smt. Binita Devi and has done the course of software engineer from HCL-TEK Lucknow (UP) and the accused no. 2 namely Basant Kumar is the father of the accused no. 1 i.e. Harsh Kumar 4 That the son of the complainant namely Satyam Kumar Choudhary, aged about 16 years, had received the injury in his jaw in the month of August, 2022. and was confined to bed. During this period he was studying in 11 in the non medical stream. Due to injury in his jaw and confinement to the bed, he was taking the online classes on Physics from Kota Rajasthan and for this purpose the complainant had given his mobile phone REDMI Smart phone with connection no. 9896102575 to his son to attend the online classes. So, the complainant was using other mobile, connection no. 8307375451 and during this entire period his son was using the above said mobile number for his study. Above said accused no. 1 namely Harsh Kumar had come to see the son of the complainant for the first time along with his mother namely Binita. 5. That the complainant for the purchase of plot and construction of the house had taken home loan from Canara Bank Pinjore branch and after sanction of the loan from Canara Bank branch Pinjore, the sale deed was executed in the name of the complainant in the month of September, 2022. Thereafter on the occasion of Bhoomi Poojan on 31.09.2022 at Pinjore, the accused no. 1 had come again i.e. second time and insisted to live with the son of the complainant for eight to ten days and being relative the complainant agreed for the same. 6. That during this period of stay in October, 2022, the accused no. 1 secretly and fraudulently with malafide intentions took the photos of the Aadhar Card, PAN Card and the salary slips of the complainant which were lying in the house of the complainant by his own mobile phone without the knowledge of the complainant as well as his son.7. That thereafter by taking the advantage of the injury of the son of the complainant, he took the loan of Rs. 2,40,000.00 on 03.10.2022 from NAVI App by fraudulently and dishonestly using the above said documents of the complainant of which he had taken the photographs in his mobile phone in the name of the complainant without the knowledge and consent of the complainant and from the above said loan amount of Rs. 2,40,000.00, Rs. 2,31,000.00 was transferred in the account of the complainant. 8. That thereafter the above said loan amount was transferred in the above said salary account of the complainant maintained at HDFC Bank Parwanoo branch. Thereafter above said accused no. 1 induced and manipulated the facts to the son of the complainant and had taken the passwords of Net-banking and Pay TM account of the complainant with bad intentions. Thereafter he had transferred an amount of Rs. 50,000.00 in his own account on the same day and an amount of Rs. 1.03.392.00 on 04.10.2022 in his own account, Rs. 9,996.00 in the account of his friend namely Govind Rao.9. That thereafter on 08.10.2022 he had taken another loan of Rs. 1,40,000.00 from IDFC Bank, SCF: 47, Sector: 26. Chandigarh through its app in the name of the complainant by using the above said documents of the complainant. It is apt to mention here that while taking the above said all the loans, he had given his own mobile number 8930985179 to the bank in respect of two loan accounts. Thereafter an amount of Rs. 1,30,000.00 was transferred from the above said loan amount in the salary account of the complainant at Parwanoo bank. It is apt to mention here that due to the injury in the jaw and due to the pressure of study the accused no. 1 had won the confidence of the son of the complainant by helping him in his studies and was also using his above said mobile phone on one pretext or the other. 10. That on the same day i.e. on 08.10.2022 the accused no. 1 had fraudulently transferred an amount of Rs. 20,000.00 in the account of Ashok (his friend) and Rs. 5,000.00 in the account of Bata Kandi (his friend) and Rs. 20,000.00 in the account of Rukmini both on 06.10.2022, Rs. 40,000.00 in the account his sister namely Suman Kumari and Rs. 10,000.00 in his friend account namely Bata Kandi and Rs. 5,000.00 on 09.10.2022 in the account of his sister namely Anshu Kumari and Rs. 20,000.00 in the account of his friend namely Prince and Rs. 20,000.00 in the name of Rukmini, and Rs. 20,000.00 in the account of Govind Rawat his friend and Rs. 9,500.00 on 10.10.2022 and Rs. 25,000.00 on 16.10.2022 in the account of Binita Devi his mother. It is apt to mention here that when the son of the complainant came to know about the above said transactions then he started to threaten and blackmail the son of the complainant on the pretext that he will kill him and his parents and otherwise will implicate in the false cases. On this the son of the complainant who was minor got frightened and kept mum due to the fear of elimination of him and his family members. Thereafter he started to blackmail and pressurized the son of the complainant. Due to these reasons the son of the complainant fell ill and went into depression. Thereafter on 27.10.2022 he took another loan by threatening the son of the complainant, amounting to Rs. 3,20,000.00 from CRED app out of which Rs. 3,08,000.00 were credited into the salary account of the complainant and this amount was also fraudulently transferred through net-banking ie. Rs. 95,000.00 in his own account on same day, Rs. 50,000.00 on 28.10.2022 in the account of Binita Devi (his mother), Rs. 50,000.00 on 30.10.2022 in the account of Binita Devi, Rs. 50,000.00 on 04.11.2022 in his own account, Rs. 75,000.00 on 10.11.2022 in the account of his mother i.e. Binita Devi, Rs. 50,000.00 on 13.11.2022 in the account of Binita Devi, Rs. 500.00 on 22.11.2022 again in the account of Binita Devi 12. Thereafter the accused no. 1 took another loan from Stashfin app amounting to Rs. 40,000.00 on 11.10.2022 out of which Rs. 36,023.00 was credited in the salary account of the complainant. It is apt to mention here that now the accused no. I forcefully and by threatening to the son of the complainant was using the above said mobile phone of the complainant on his own. However, the accused no. I out of the above said loan amount Rs. 15,000.00 was transferred in the account of his own father namely Basant Kumar on the same day and Rs. 10,000.00 on 14.10.2022 in the same account of his father. Thereafter Rs. 4,000.00 on 14.10.2022 in the account of his mother namely Binita Devi and Rs. 14,000.00 on 16.10.2022 in the account of Binita Devi. It is apt to mention here that the complainant and his wife were worried about the bad health conditions of their son. But the son of the complainant namely Satyam Kumar Chowdhary was mum and was not telling anything to his parents. Thereafter the complainant firstly took him to the hospital i.e. Shourie Hospital, Pinjore and thereafter at Civil Hospital, Sector: 6, Panchkula for his treatment and he also remained admitted in the hospital. 13. Thereafter the accused took another two loans amounting to Rs. 20,000.00 and Rs. 10,000.00 out of which Rs. 25,000.00 was credited into the HDFC Bank of the complainant against both these loans through the app Cashe on 31.12.2022 out of which Rs. 8,000.00 and Rs. 13,000.00 transferred to his own PayTM account. 14. Thereafter the complainant received an amount of Rs. 42,000.00 of his LIC maturity amount in his account maintained at Union Bank of India, Parwanoo on 29.12.2022. Thereafter the complainant had transferred the above said amount to his salary account in HDFC bank. However, the accused no. 1 had fraudulently and by threatening the son of the complainant had re-transferred an amount of Rs. 40,000.00 in above said Union Bank of India, Parwanoo and out of the above said amount Rs. 40,000.00 was transferred on 29.12.2022 in the account of his mother namely Binita Devi and Rs. 2,000.00 from HDFC Bank in the account of his mother namely Binita Devi by illegal means. It is apt to mention here that an amount of Rs. 63,000.00 was received in the same salary account of the complainant from his PPF account in the month of November, 2022 and, Rs. 16,000.00 was received as salary of the complainant in the complainant's HDFC account in the month of January, 2023. Thereafter the accused no. 1 on 08.01.2023 had transferred an amount of Rs. 19,915.00 in the account of Hardeep Singh and Rs. 49,000.00 in the account of Ramesh Choudhary, Thereafter Rs. 2,250.00 on 14.01.2023 7 and Rs. 319.00 on 15.01.2023 and 200.00 Rs. on 17.01.2023 were transferred by the accused no. 1 in the account of Binita Devi, his mother. It is apt to mention here that in a pre-planned manner, the accused no, I inclusion with the accused no. 2 and 3 after transferring the amount in his own account had re-transferred the same in the account of the complainant and again transferred the same in his own account through the son of the complainant to conceal his misdeeds by threatening him with dire consequences. It is apt to mention here that the accused no. I in conspiracy with the accused no. 2 and 3 had further deposited certain installments of the loan just to conceal his misdeed with bad intention and to defraud banks and financial institutions as well as the complainant so that the complainant could not come to know about the fraud committed by the accused persons. The complainant had firstly come to know about these fraudulent activities of all the accused persons on 19.01.2023 when he received a phone call from the bank tc deposit the loan installment. When the complainant asked the official of the bank that he had not taken any loan from any bank or financial institution except the housing loan from Canara Bank branch Pinjore and that why they are calling him for this purpose then they disclosed about all these loan transactions and the complainant obtained the copies of the statement of accounts from the bank i.e. HDFC Bank, Parwanoo branch which shows the above said fraud and cheating and misappropriation committed by the accused persons for their own benefits and to cause the loss to the complainant. Thereafter the complainant asked his son about all the things then his son got frightened and went under the great stress and depression and was not in a position to talk with the complainant due to fear. However, when the complain and his wife repeatedly asked about the above said fraud, then he told that the accused no, I had misused his trust and relation and threatened him with dire consequences and further threatened that he will kill him and his parents and implicate them in false cases and due to injury the son of the complainant was not in a good position. That thereafter the complainant visited to the residence of all the accused persons at Bhiwani and asked about the entire fraud which they had committed with conspiracy with each other against the complainant by threatening and blackmailing his minor son. The complainant further told to all the accused persons that due to the stress his son is not well and is under depression and threat and fear and is taking the treatment from various doctors and due to the fear he could not speak to anybody. That thereafter initially the accused no. I in the presence of the accused no. 2 and 3 admitted that all of them had committed the fraud, cheating and misappropriation and used the above said amount, in share market just to get the profits and to earn more money for their personal gains and to cause loss to the complainant. When the complainant raised the voice and told that now the bank officials are making phone calls to him to repay the above said all the loans and asked that he will make H complaint against them and further told that being closed relatives they have betrayed the trust of the complainant and his son and committed the cheating with him, then Initially all the accused persons agreed to return the amount however with the passage of time, they started to linger on the matter on one pretext or the other and openly threatened that they were having the bad intentions to defraud and to commit cheating with the complainant and his family since beginning and made the plan by sitting together. That thereafter in the last week of June, 2023 all the accused persons had threatened to the complainant that all the accused persons along with other persons in a preplanned manner by taking the advantage of the injury of the son of the complainant and having the relations with the complainant and by threatening to the son of the complainant had misused the documents, phone and accounts of the complainant and threatened that they will kill the complainant and his family and if he again visited their house or ever dare to ask for his money to return and the accused no. 2 specifically told that he was having high links and nobody can harm them and asked to the complainant to do what he likes and now they will not return any money whatsoever to the complainant. Hence, the present FIR.

3. Submissions
On behalf of the petitioner:

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case. The complainant, who is the uncle of the petitioner borrowed an amount of Rs.1,35,000/- from the petitioner's father to meet his personal needs. The said amount was borrowed in two installments. It is further submitted that son of the complainant played an online game called Avigator Game, who suffered significant losses and demanded money from the petitioner. It is asserted on behalf of the petitioner that the son of the complainant took loans by misusing his father's Aadhar Card and documents and the complainant was very well aware of all the transactions made by his son. Moreover, loan amounts were also invested in the game. Further assertion is that the complainant is using the legal system to grab money and to protect his son. The custodial interrogation of the petitioner is not necessary as nothing is to be recovered from him.

<u>On behalf of respondent-State.</u>

On the other hand, learned State Counsel prays for dismissal of the present petition stating that the petitioner had committed significant crimes. The investigation of the instant case is at initial stage and if the accused is granted the concession of pre-arrest bail, he can abuse it and obstruct the investigation. Thus, the custodial investigation/interrogation of the petitioner is necessary to culminate the investigation into a logical end and also to make recoveries.

Heard learned counsel for the respective parties.

4. ***<u>Analysis and conclusion:</u>***

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.

Since the instant case was purportedly committed as part of criminal conspiracy, it would not be appropriate to determine the criminal culpability of any of the accused individuals at this time. As per the prosecution, the petitioner accused must be questioned while in custody in order to conduct an investigation, facilitate recuperation, etc. The petitioner is not eligible extraordinary relief in the form of anticipatory bail.

The Hon'ble Supreme Court in the case of ***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Live Law (SC) 870*** held that merely because custodial interrogation is not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the *prima facie* case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

> "*It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.*
>
> *Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.*
>
> *We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like*

POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail."

More so, investigation is still going on in the present case. 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."

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.

All other misc. application(s), if any, also stand(s) disposed of accordingly.

(SANDEEP MOUDGIL)
JUDGE

18.07.2024
sham

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