IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

108 **CRM-M-33795-2024 (O&M)**
Date of Decision : August 12, 2024

VIVEK OJHA **-PETITIONER**

V/S

STATE OF HARYANA **-RESPONDENT**

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Vinod Ghai, Sr. Advocate with
Mr. Arnav Ghai, Advocate and
Mr. Shivam Sharma, Advocate
for the petitioner.

Mr. Rajesh Gaur, Addl. A.G., Haryana.

Mr. Ram Bhati, Advocate
for the complainant.

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KULDEEP TIWARI, J. (ORAL)

CRM-32126-2024

1. As prayed for, the instant application is **allowed.** The emails sought to be placed on record, are taken on record as Annexure R-1, subject to all just exceptions.

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2. Through the instant petition, the petitioner craves for indulgence of this Court for him being enlarged on regular bail, in case FIR No.429 dated 08.12.2021, under Sections 406, 420, 506, 120-B of the IPC (Sections 467, 468, 471, 201 of the IPC added subsequently), and, Section 66-D of the Information Technology (Amendment) Act, 2008, registered at P.S. Saran, District Faridabad.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE PETITIONER

3. The learned senior counsel for the petitioner has, in his beseeching the relief of regular bail for the petitioner, mainly emphasized upon the period of incarceration suffered by the petitioner, which comes out to be approx. 9½ months, besides emphasizing upon his clean antecedents. He further submits that, since none out of the total 29 prosecution witnesses has yet been examined, therefore, there is no likelihood of the trial, which is a Magisterial trial, concluding anytime soon. Consequently, subjecting the petitioner to prolonged incarceration would serve no gainful purpose.

SUBMISSIONS OF THE LEARNED STATE COUNSEL, AND, LEARNED COUNSEL FOR THE COMPLAINANT

4. The learned State counsel has filed a status report, on affidavit of Madan Singh, H.P.S., Assistant Commissioner of Police, Faridabad, which is taken on record. By referring to the role of the petitioner, as disclosed in this status report, he has opposed the grant of regular bail to the petitioner.

5. Moreover, on instructions imparted to him by the official concerned, the learned State counsel has informed that, investigation *qua* the petitioner is already complete, whereupon, Final Report was presented on 02.01.2024 and charges were framed on 17.05.2024. He has also verified that, out of total 29 prosecution witnesses, none has yet been examined.

6. The learned counsel for the petitioner has, by drawing attention of this Court towards Annexure R-1, wherein becomes enclosed email communications, submitted that thereby the accused have confirmed the receipt of amounts, as became received through bank transactions and in cash.

<u>ALLEGATIONS AGAINST THE PETITIONER, AND, DETAILS OF INVESTIGATION (AS DISCLOSED IN THE STATUS REPORT FILED BY THE RESPONDENT-STATE)</u>

7. The genesis of the present FIR is embodied in a complaint made by one Jatin Ratra, wherein, he alleged that the petitioner and his co-accused hatched a criminal conspiracy and in furtherance thereof, they committed forgery, cheated him and misappropriated huge amount from him.

8. Succinctly stated, the allegations against the petitioner are that, he along with his co-accused lured the complainant(s) by misleading him that FXPB company is a part of a foreign based company, namely, Tickmill, which gives fixed monthly returns. The petitioner/accused also got prepared a forged website, thus displaying that, if a person would invest ₹ 20,00,000/-, he would get a return of 13.4% over it and if the investment is lesser, the returns would also be lesser. In this way, the petitioner along with his co-accused spread false information and duped gullible persons for crores of rupees.

9. During the course of investigation, it transpired that complainant-Jatin invested a sum of ₹ 33,08,484/- (through bank accounts, cash and cheques) in the company (supra). It further transpired that a sum of ₹ 10,00,168/- has already been received by the complainant- Jatin from accused persons, but, a sum of ₹ 23,08,316/- is yet to be recovered.

10. Likewise, co-complainant Gopal and his relatives invested a sum of ₹ 91,19,200/-, and, co-complainant Narender Gera and his relatives also invested a sum of ₹ 55,22,400/- in the company (supra). Out of ₹ 55,22,400/-, a sum of rs 28,01,280/- has already been received by the complainant- Narender Gera, but, a sum of ₹ 27,21,720/- is yet to be recovered.

11. In this way, a sum of ₹ 1 crore 78 lacs (approx.) was embezzled by accused, out of which, a sum of ₹ 1 crore (approx.) is yet to be recovered.

ROLE OF THE PETITIONER (AS DISCLOSED IN THE STATUS REPORT FILED BY THE RESPONDENT-STATE)

12. The role, as becomes assigned to the petitioner in the status report filed by the respondent-State, is extracted hereinafter:-

> *"A. That co-accused Sheetal wife of the petitioner accused Vivek Ojha and has received huge Money about Rs.50 lakhs of investment from the complainant and his relatives, in her personal bank account number 387501000624 from the various accounts of the complainants, and thereafter she used to transfer the same in the accounts of the present petitioner accused Vivek Ojha and other accused persons.*
>
> *B. That the present petitioner accused Vivek Ojha was managing/operating fake domain in the name of Fake company FXPB by using his Google accounts viz. vivekojha2167@gmail.com, Google account ID 507407508152 and was also using prabhat FXPB@gmail.com, Google account ID 503757037759 in collusion with other accused persons.*
>
> *C. The co-accused and the present petitioner accused Vivek Ojha had Whatsapp chats confirming the payments received from complainants and the said copy of WhatsApp Chats regarding payment confirmations is attached as Annexure R-2.*
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> *D. That the present petitioner accused Vivek Ojha had lured the complainant at various occasions by giving them tempting offers and had got them invested huge amounts in a fake company formed and managed by him by misappropriating the same in the name of a UK based Company and had committed cheating and forgery with innocent investors.*
>
> *E. That investigation qua co-accused persons namely Satya Dev Ojha, Abhishek Chandel and Jitender Kumar is still pending in the present case awaiting documentary records....."*

REASONS FOR ALLOWING THE INSTANT PETITION

13. This Court has heard the arguments made by the learned counsels

for the parties and also perused the record.

14. Be that as it may, considering the fact that: (i) investigation *qua* the petitioner is already complete, whereupon, Final Report was presented against him on 02.01.2024 and charges were also framed on 17.05.2024; (ii) undisputedly, the petitioner has been in custody since 27.10.2023, and, he is not involved in any other case; (iii) the trial in the instant case is a Magisterial trial; (iv) there is no likelihood of the trial concluding anytime soon, inasmuch as, none out of the total 29 prosecution witnesses has yet been examined; this Court deems it appropriate to grant the concession of regular bail to the petitioner. Therefore, without commenting upon the merits and circumstances of the present case, the present petition is **allowed**. 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.

15. Pending application(s), if any, stand disposed of accordingly.

16. 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.

(KULDEEP TIWARI)
JUDGE

August 12, 2024
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No