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

210

CRM-M-44475-2024
Decided on: 14.01.2025

Vishnu ...Petitioner

Versus

State of Haryana …Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Arpandeep Narula, Advocate
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

****

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
33	07.12.2023	Cyber Crime, District Hisar	379 & 420 IPC (180 & 120-B IPC added subsequently)

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 CrPC, 1973, seeking anticipatory bail.

2. In paragraph 14 of the bail petition, the accused declares that one more FIR is pending against the petitioner.

3. The facts and allegations are being taken from the reply dated 06.12.2024, filed by the State, which reads as follows:

"3. That briefly the facts of the case are that on 02.10.2023, a complaint was filed by the complainant namely Naresh Kumar resident of District Hisar on the National Cyber Crime Reporting Portal (hereinafter referred as NCCR Portal), wherein it is stated by the complainant that on 28.09.2023, he received a call from mobile No. 96410-xxxxx and the caller informed the complainant that his name is Suresh Kumar and he is calling on behalf of "Rajkot Electricity Office, Gujarat." The caller further asked the complainant that his electricity bill is due and if the complainant did not pay it, then the Electricity connection of the complainant will be disconnected. At the same time, caller Suresh Kumar sent a link to the mobile number of the complainant from his another mobile No. 98259-xxxxx and asked to pay Rs.3/- once by clicking on the given link. When the complainant opened the link and tried to make payment of Rs.3/- then Rs.2,10,012/- was deducted from his account No. 502000767xxxxx of

HDFC Bank in the first instance, then Rs.1,11,940/-, Rs.49,999/-, Rs.49,975/- and at last Rs.49,991/- from his aforesaid account. On the same day another amount of Rs.27,663/- was deducted from the HDFC Bank account No.249925600xxxxx of the complainant. In this way total amount of Rs.4,99,580/- was deducted from his account and he sought legal action against the accused persons for cheating him for the aforesaid amount."

4. Petitioner's counsel submits that during investigation the main accused Sandeep (now on regular bail) was arrested, who in his disclosure statement named the petitioner to also have been involved. He further submits that the State in their reply, had concealed the fact that none of the mobile number used in the commission of the offence belonged to the petitioner and no money came in the bank account of the petitioner. He further submits that the petitioner is not the beneficiary of any money and only substantive piece of evidence brought on record by the police that the petitioner and main accused Sandeep were constantly in contact and there is nothing to show the complicity of petitioner even remotely with the alleged occurrence. Even the reply fails to mention that if the cash amount was wrongfully gained by the petitioner then what was the quantum of the duped amount wrongfully gained by the petitioner. The petitioner's counsel further prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

5. The State's counsel opposes bail and refers to the latest reply dated 06.12.2024, filed by the Superintendent of Police, Hisar.

6. It would be appropriate to refer to the following portions of the reply, which read as follows:

"5. That during the course of the investigation of the case record of the bank account of the complainant was obtained and on perusal of the same it transpired that an amount of Rs.2,10,012/- & Rs.1,11,940/- were transferred through Billdesk into the account of Uttar Pardesh Power Corporation Limited from the Bank Account of complainant. Rs. 49,999/, 49,975/- and 49,991/- were transferred into Indusind Bank Credit Card from which cash transactions were made and online shopping was also done. Account statement of Uttar Pradesh Power Corporation Limited was perused it transpired that electricity bill payment of Rs.2,10,012/- of M.s Annapurna Devi Ice Factory Khair, District Aligarh and Rs.1,11,940/- of Resham C/o Jal Singh R/o Andhari Patti Uttar Ursh Baipas Jattari, District Aligrah, U.P. and Rs.27,663/- of Lakkhi Khan S/o Sardar Khan, resident of Kunwar Pur, District Aligarh were made. Consequently the electricity connection holder i.e. Man Singh son of Charan Singh resident of Aandhri Patti, District Aligrah, U.P. (meter No.6614452000), Shayad Khan son of Lakhi Khan, resident of Kunwarpur, Tehsil Kher, District Aligrah, U.P. (meter No.6073762561) and Amit son of Gajender resident of Mohalla Malikpura, Kher, District Aligrah, M.s Annapurna Devi Ice

Factory Khair, District Aligarh (meter No. 7003572369) were joined in investigation of the case and it is further transpired that they had paid the electricity bill through CSC Centre affiliated to U.P. Government.

6. That during further investigation of the case the operator of CSC Centre i.e. Shyambir was joined in investigation of the case and it transpired that the electricity bills were paid through Sandeep Narayan and Kanhiya. The amount of electricity bill that was transferred in the account of Kanhiya phone-pay No. 98374-xxxxx is Rs.90,000/- and in account No. 078201101xxxxx of UCO Bank of Sandeep the following amount was transferred i.e. Rs.50,000/-, 90,000/-, 80,000/- and in another account of Sandeep i.e. account No. 32871010xxxxx of Canara Bank Rs. 49,000/- was transferred.

7. That during investigation electricity bill payment receipt from Electricity Department office was obtained and the same was taken into police possession by the investigating officer. On perusal of account statement of Sandeep Narayan it transpired that Rs.49,000/- was deposited in his account No. 32871010xxxxx of Canara Bank on 08.10.2023 and accordingly he was joined in investigation of the case and he was arrested in the present case on 18.04.2024. Accused Sandeep Narayan disclosure statement was recorded by the investigating officer in which he disclosed the manner in which he in connivance with petitioner/accused committed the fraud, accordingly, section 120-B & 180 of IPC were added in the present case. Copy of disclosure statement of co-accused Sandeep Narayan is appended herewith as Annexure R-1.

8. That during further investigation in the case accused Sandeep Narayan got recovered Rs.2,000/- and the same was taken into police possession vide separate recovery memo. The name of co-accused Kanhiya and petitioner/accused were disclosed by Sandeep Narayan and accordingly raids were conducted to nab the accused. However, they were not found at given address.

9. That during investigation the record of bank account of accused Kanhiya Lal i.e. Wnion Bank of India, Account No.69630212000xxxxx and UCO bank account No. 078201101xxxxx which were connected with his mobile No.98374-xxxxx were obtained.

10. That during further investigation, call details, CAF ID and certificate under section 65-B of Indian Evidence Act of mobile No. 98370xxxxx, 96679xxxxx, 99581xxxxx, 99972xxxxx, 96410xxxxx, 61907xxxxx, 99972xxxxx, 98374xxxxx were obtained and from analysis of same it was revealed that the accused Sandeep Narayan (mobile No. 98370xxxxx), petitioner/accused Vishnu (Mobile No.99972-xxxxx) and co-accused Kanhiya (mobile Nos. 98374-xxxxx & 99972-xxxxx) were constantly in touch with each other during commission of offence.

11. That as per disclosure statement of the co-accused Sandeep Narayan, the petitioner/accused, is the one who in connivance with co-accused used to get paid the electricity bill from the cyber fraud amount after taking money in cash from the local people and divided the cheated amount among themselves.

12. That on the basis of aforesaid facts it was mentioned in the affidavit dated 19.09.2024 that the custody of the petitioner/accused is required to *nab other accused persons involved in the present case, to ascertain the modus operandi and recover the mobile phone used in the occurrence of offence.*

13. That it is pertinent to mention here that thereafter the present petition was taken up for hearing on 14.10.2024 whereby this Hon'ble High Court pleased to passed following orders:-

> *"List on 11.11.2024*
>
> *Arrest of the petitioner shall remain stayed till the next date of hearing. In the meantime, the petitioner shall join the investigation on 16.10.2024 at 11:00 A.M. in case, he fails to join the investigation then the interim order shall be vacated on the grounds of non joining of the investigation."*

14. That it is relevant to mention here that in compliance of order dated 14.10.2024 the petitioner/accused joined investigation of the case on 16.10.2024. The petitioner/accused got recovered an amount of Rs.2,000/- which came as his share as commission after paying the electricity bill. Petitioner/accused also produced mobile phone which was taken into police possession by the investigating officer. Petitioner/accused Vishnu also gave details of co-accused & gave written assurance to cooperate in future.

15. That it is pertinent to mention here that the present petition was taken up for hearing on 09.09.2024 whereby this Hon'ble High Court directed the State Counsel to file a reply and at that time the petitioner was not directed to join the investigation of case. In furtherance of that order reply dated 19.09.2024 was accordingly filed on 23.09.2024 and in that reply in Para No.13 it was specifically mentioned that the custodial interrogation of the petitioner was required. Thereafter the present case was again taken up on 01.10.2024 and simply adjourned & fixed for 14.10.2024 and on 14.10.2024 the petitioner was directed to join the investigation of the case on 16.10.2024. The petitioner was directed by Hon'ble High Court to join the investigation on 16.10.2024, thereafter present case was taken up on 11.11.2024 and on that day the I.O. concerned gave oral instructions to the State Counsel that the petitioner has joined the investigation and recovery has been affected, so in view of that the petitioner is not required. Hence, neither the affidavit filed by the DSP nor the statement given by the State counsel on instructions of the I.O. concerned is misleading or wrong in any However, there seems to be some mis-communication in this matter. The same is being clarified through the present status report."

7. Given above, it is not a case for custodial interrogation or pre-trial incarceration, however it is clarified that in case the petitioner ever indulges in cyber crime, State shall file an application for cancellation of this bail, before the trial Court and the trial Court shall be at liberty to cancel the case. In addition to that, in case the petitioner indulges in any other crime, where the sentence is more than 3 years, the concerned Court shall keep in mind that by way of indulgence, this Court had granted bail to the petitioner but he did not mend his ways and continued to indulge in crime.

8. The pre-trial incarceration should not be a replica of post-conviction sentencing. The evidence might be prima facie sufficient to launch prosecution or to frame charges, but this Court is not considering the evidence at that stage but is analyzing the same for the bail stage.

9. Given the above, the penal provisions invoked coupled with the primafacie analysis of the nature of allegations and the other factors peculiar to this case, there would be no justifiability for custodial interrogation or the pre-trial incarceration at this stage.

10. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail.

11. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the Arresting Officer, and if the matter is before a Court, then the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Officer/Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

12. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

13. This order is subject to the petitioner’s complying with the following terms. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

14. *The petitioner is directed to join the investigation within seven days of uploading this order on the official webpage of the High Court of Punjab and Haryana and as and when called by the Investigator*. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act, 1872/ Section 23 of BSA, 2023. The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer and shall cooperate with the investigation at all further stages as required. In the event of

failure to do so, the prosecution will be open to seeking cancellation of the bail. During the investigation, the petitioner shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

15. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

16. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

17. **Petition allowed** in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

14.01.2025
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.