IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.212

Case No. : CRM-M-46231-2024

Decided On : November 06, 2024

Kaushal Kumar .... Petitioner

vs.

State of Haryana .... Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Piyush Sharma, Advocate
for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana

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GURBIR SINGH, J. :

1. Prayer in the present petition is for grant of anticipatory bail to the petitioner in case FIR No.48 dated 11.06.2024, under Sections 420, 120-B IPC, 1860, registered at Cyber Police Station, District Karnal (Annexure P-1).

2. The case in question was registered on the complaint of one Dinesh Kumar, who is a Press Reporter by profession. As per allegations, on 01.06.2024, he received a phone call. The said person talked to him projecting himself to be son of his nephew namely Khush. The voice was similar. He told that his friend would deposit Rs.10 lacs in his account. Since it was Saturday, so, the amount would come to the account of the complainant on Monday. Khush was residing in Canada. His friend also sent a receipt to the complainant, which was got verified by the complainant from Canara Bank, Meeraghati Chowk. It was also conveyed to the complainant that the rate of dollar did not open on Saturday, so, the amount could be credited on Monday. Again, a phone call was received from Toll Free number stating that the complainant had received Rs. 10 lacs in his account by a relative living in Canada. The said person also told the complainant that he was sending number of his friend namely Vishal Singh (97144-24668) and asked the complainant to talk to him and send him Rs. 4 lacs since his children had met with an accident and he was in great need of money. Thereafter, aforesaid Vishal Singh called the complainant through whatsapp call and gave him account number of one Pankaj Kumar Singh and asked him to deposit Rs.4 lacs in the said account i.e. No.110179034679, IFSC – CNRB0005502, Canara Bank Branch, Lahartara, U.P. Again, on 03.06.2024 at 08:00 AM, the complainant received a phone call from the aforesaid number, stating that his one child had died and the other one was very serious. So, remaining amount of Rs.6 lacs be also deposited. The complainant became doubtful. Then he made a call to his nephew's son and discussed the matter with him. His nephew's son told him that he had not asked any person about any money and the complainant had been trapped in a scam. The amount of Rs.4 lacs, deposited by the complainant, was through RTGS from the account of his Commission Agent Hari Singh.

3. Learned counsel for the petitioner has argued that vague allegations have been levelled by the complainant against the unknown persons without disclosing complete facts and the police, under the influence of complainant, being a Press Reporter, conducting the investigation in a hasty manner. The complainant failed to explain as to how he had deposited amount of Rs.4 lacs in the account of Pankaj Kumar Singh, on receiving a call from unknown number and as per instructions given by one person, projecting himself as Khush – son of nephew of the complainant. The story propounded by the complainant is not believable. The petitioner has been named on the basis of disclosure statement of Anoop Kumar, from whom Rs.25,000/- has been recovered. During investigation, Anoop Kumar suffered second disclosure statement and named the petitioner. As per the version of prosecution, the petitioner had received an amount of Rs.36 lacs in his bank account bearing No.3625110010050930, maintained in Ujjivan Small Finance Bank, in a short span of about six months i.e. from 05.09.2020 to 06.11.2020 and 09.09.2022 to 20.01.2023. The said account has already been frozen by the bank due to multiple transactions which is not permissible in a saving bank account. However, the said transactions have nothing to do with the present case as the same related to investments and online trading in BITCOIN, but when the petitioner found that the Government had declared the same to be not legal, he stopped the trading. Learned counsel for the petitioner has further submitted that as far as the other allegation against the petitioner that in the year 2020, he had received Rs.95,34,000/- in the bank Account No.919010026933027 pertaining to Axis Bank, is concerned, it is clarified that neither the said account belonged to the petitioner nor the same had any connection with the petitioner in any manner. The occurrence took place in the year 2024, whereas all the transactions stated by the police pertained to the years 2020, 2022 and 2023.

Sections 41 or 41-A Cr.P.C. have not been complied with. Reliance in this regard has been placed on a judgment of Hon'ble Supreme Court in the case titled **Satender Kumar Antil vs. Central Bureau of Investigation and another** reported as **2022 (10) SCC 51**. It is further submitted that the petitioner is not named in the FIR and has been nominated only on the basis of disclosure statement made by co-accused in custody. The Challan against the co-accused has been presented. The petitioner is ready to join investigation. So, the petitioner be granted concession of anticipatory bail. Learned counsel has also relied on judgment passed by Hon'ble Supreme Court in **Md. Asfak Alam vs. State of Jharkhand and another** reported as **2023(3) RCR (Criminal) 754**.

4. On the other hand, learned State counsel has filed Status Report by way of affidavit of Nayab Singh, HPS, Deputy Superintendent of Police, Hqrs. Karnal, along with Account Statement(s) of Ujjivan Small Finance Bank (Annexure R-3), Axis Bank (Annexure R-4), Jana Bank (Annexure R-5), Canara Bank (Annexure R-6) and DBS Bank (Annexure R-7) pertaining to different bank accounts. Learned State counsel has opposed the present petition, stating that after the arrest of co-accused Anoop Kumar, the petitioner had switched off his mobile numbers. The petitioner had received amount of Rs.34,80,389/- by way of fraudulent transactions in his bank account No.3625110010050930 of Ujjivan Small Finance Bank in the short span of about six months i.e. from 05.09.2020 to 06.11.2020 and 09.09.2022 to 20.01.2023. The said account has been frozen after receiving three different complaints at Panchkula, Kurukshetra (Haryana) and one of the complainant was from Gujarat. Two different amounts of Rs.95,34,000/- and Rs.5,119,000/- had also been received in the Account No.919010026933027 of Axis Bank, which pertained to one Sujit Kumar. However, it was found that the said account was linked to mobile numbers of the petitioner. In these circumstances, it has been prayed that the custodial interrogation of the petitioner is necessary. Therefore, he be not granted anticipatory bail as it may hamper the investigation.

5. I have heard the submissions made by learned counsel for the parties and have also perused the case file.

6. In the Status Report filed by learned State counsel, role of the petitioner as well as incriminating evidence found during investigation has been discussed in detail, which reads as under :-

> ***"a)*** *The petitioner/accused in conspiracy with other co-accused deceived the complainant and made him transfer a huge amount of money into the bank account of co-accused. The petitioner-accused is the main accused in this case. During investigation the co-accused Anup Kumar has confessed about the complicity of petitioner-accused and Pankaj Kumar in the offence of present case.*
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> ***b)*** *The perusal of the CDR of Mobile number 8292822252 of accused Anup Kumar reveals that he used his SIM in the mobile phone having IMEI number 865924058493560 up to 12-08-2023. Thereafter the SIM numbers of the linked accounts in which the defrauded amount was being received were also used in this mobile phone. The petitioner/accused has used his SIM number 88639-66627 in the abovesaid mobile*

phone having IMEI number 865924058493560 from 20-08-2023 to 04-09-2023, which clearly shows that the petitioner in collision with the co-accused Anup Kumar was indulged in this fraud.

c) *As per CDRs of mobile phones co-accused Anup Kumar having SIM number 8292822252 and petitioner/accused having Mobile number 7320020727 & 8863966627, had 528 conversation between them from 22-03-2023 to 24-06-2024.*

d) *The petitioner-accused Kaushal Kumar had switched off his mobile phone numbers 7320020727 and 8863966627 since the date of arrest of co-accused Anup Kumar.*

e) *As per record of Interoperable Criminal Justice System (ICJS), there are 10 complaints registered all over India regarding the account number 110179034679 pertaining to Pankaj, in which the complainant was fraudulently made to deposit a huge amount.*

f) *The petitioner-accused had received an amount of Rs. 34,80,389/- by way of fraudulent transactions in his bank account number 3625110010050930 in Ujjivan Small Finance Bank linked to his mobile number 73200-20727 in a short span of about six months between 05.09.2020 to 06.11.2020 and 09.09.2022 to 20.01.2023 and the said bank account has been freezed after receiving three different complaints. Further, three complaints pertaining to the abovesaid bank account of the petitioner-accused have been received at Panchkula, Kurukshetra and one of the complainant was from Gujarat. The account statement of this account &*

*detail of complaints is attached as **Annexure R-3** for the kind perusal of this Hon'ble Court.*

g) *The bank account number 919010026933027 in Axis Bank pertains to Sujit Kumar and it has been found linked to mobile number 8863966627 of the petitioner/accused in which an amount of Rs. 95,34,000/- between 01.07.2019 to 03.06.2020 as well as an amount of Rs. 5,19,000/- between 06.07.2020 to 27.07.2020 was received. The account statement of this account is attached as **Annexure R-4** for the kind perusal of this Hon'ble Court.*

h) *The petitioner-accused had received an amount of Rs.27,37,000/- by way of fraudulent transactions in his bank account number 4507010042862946 in Jana Bank in a short span of about 45 days between 09.02.2023 to 18.03.2023 and there are two complaints pertaining to the abovesaid bank account of the petitioner-accused. The account statement of this account & detail of complaints is attached as **Annexure R-5** for the kind perusal of this Hon'ble Court.*

i) *The petitioner-accused had received an amount of Rs.45,49,432/- by way of fraudulent transactions in his bank account number 110093980017 in Canara Bank linked to his mobile number 8863966627 in a month i.e. from 23-01-2023 to 24-02-2023. Four complaints pertaining to this bank account has been received. The account statement of this account & detail of complaints is attached as **Annexure R-6** for the kind perusal of this Hon'ble Court.*

j) *The petitioner-accused is also having* *another bank account number 8874010000025753 in DBS Bank linked to his mobile number 8863966627 in which he received an amount of Rs.16,17,168/- between 19.04.2024 to 06.05.2024. Five complaints pertaining to this bank account has been received. The account statement of this account & detail of complaints is attached as* ***Annexure R-****7 for the kind perusal of this Hon'ble Court."*

7. From the evidence collected till today, it is clear that the petitioner is directly involved in the online scam. There is sufficient evidence collected by the Investigating Agency against the petitioner. The petitioner received Rs.34,80,389/- in the account at Ujjivan Small Finance Bank, two amounts of Rs.95,34,000/- and 5,19,000/- in account with Axis Bank, which was found linked to petitioner's mobile number 8863966627. He also received Rs.27,37,000/- fraudulently in his Jana Bank account and two complaints were received regarding this account of the petitioner. Similarly, amount of Rs.45,49,432/- was received in Canara Bank account and four complaints of this account were received. Apart from this, five complaints were also received regarding his account in DBS Bank, wherein he received amount of Rs.16,17,168/-.

8. Cyber crimes are while-collar crimes. The effect of white-collar crimes has been beautifully described by Hon'ble Justice M.P.Thakker in case titled **State of Gujarat vs. Mohanlal Jitamalji Porwal – (1987) 2 SCC 364** in the following words :-

"The entire community is aggrieved, if the

economic offenders, who ruin the economy of the State, are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design, with an eye on personal profit, regardless of the consequences of the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community on the system to administer justice in an even-handed manner without fear of criticism from the quarters, which view white collar crimes with a permissive eye, unmindful of the damage done to the national economy and national interest."

9. In these days, organized crime groups are are using the Internet for major fraud and theft activities. There are trends indicating organized crime involvement in white-collar crime. As criminals move away from traditional methods, internet-based crime is becoming more prevalent. India has become one of the prime targets of the cyber criminals.

10. The petitioner is indulged in money-making by making fool of general public and adopting short-cut methods, thereby stealing their hard earned money through various cyber-tricks. So, he cannot be considered to be entitled for any sympathy. In case **Pratibha Manchanda and another vs. State of Haryana and another** reported as **2023(3) RCR (Criminal) 511**, it is held by Hon'ble Apex Court that at the time of deciding application for anticipatory bail, the Court should consider factors such as nature and gravity of offence, role attributed to the accused and specific facts and circumstances of the case. The relevant extract of the said judgment reads as under :-

> ***"17.*** *In* ***Siddharam Satlingappa Mhetre vs. State of Maharashtra (2011) 1 SCC 694****, this Court carefully considered the principles established by the Constitution Bench in* ***Gurbaksh Singh Sibbia vs. State of Punjab (1980) 2 SCC 565*** *case. After a thorough deliberation, this court arrived at the following conclusion:*
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> > ***"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;*
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> > ***(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.*

> *xxx xxx xxx"*
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> ***18.*** *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.*
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> ***19.*** *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."*

11. The case **Md. Asfak Alam** ***(supra)***, cited by learned counsel for the petitioner, is under Section 498-A IPC. The FIR was lodged in violation of directions of Five Judges' Bench in **Lalita Kumari vs. Govt. of UP and others** reported as **[2013] 14 SCR 713** and Challan was also presented. So, the said authority does not help the petitioner in any manner.

12. In the case in hand, investigation of the case is going on. The Challan has been presented only against the one co-accused. The disclosure statement made by the co-accused cannot be ignored at the stage of grant of anticipatory bail. The case in hand has sufficient material which establishes the direct involvement of the petitioner and receipt of huge amounts through online fraud. So, custodial interrogation of the petitioner is necessary to bring true facts to the light during investigation.

13. Accordingly, I do not find any ground to grant anticipatory bail to the petitioner. The petitioner has given his address in the 'Memo of Parties' and has also given his mobile number. So, for compliance of Sections 41 and 41-A Cr.P.C., as per directions given in judgment titled **Satender Kumar Antil** ***(supra)***, the Investigating Agency shall give notice to the petitioner on his mobile number, as mentioned in the present petition and then proceed in accordance with law.

14. In the light of the above discussion, the present petition is hereby dismissed being without any merit. However, nothing observed herein above shall be construed to be an expression of opinion on the merits of the case. The observations recorded above are only for the purpose of deciding the present bail petition.

15. Pending applications, if any, shall stand disposed of along with this judgment.

November 06, 2024 **(GURBIR SINGH)**
monika **JUDGE**

Whether speaking/reasoned ?	*Yes/No.*
Whether reportable ?	*Yes/No.*