(211)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-51590-2023
Date of decision :05.02.2024

SANJEEB KUMAR GHADEI

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Krishan Singh, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

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JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 438 of Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.56 dated 16.09.2022 registered under Sections 419, 420, 120-B of the IPC and Section 66-D of I.T. Act, 2008 at Police Station Cyber Crime, District Gurugram, Haryana.

2. The present FIR came to be registered at the instance of Vivek Gupta, Chief Financial Officer of the JBM Group and the same reads as under:-

> *"Sir, I, Vivek Gupta, am the Chief Financial Officer in JBM Group. In the afternoon today at around 2:00 pm, I received text messages on WhatsApp from a number (91-9162433966) requesting me to transfer certain sums to bank accounts indicated in such messages. The sender claimed to be Mr. Nishant Arya, who is my boss, and the Vice Chairman of the JBM Group. The profile picture was of Mr. Nishant Arya and even on verifying*

the number on TrueCaller, it reflected that the number belonged to Mr. Nishant Arya. However, since I was informed by the sender that he is busy in an important meeting, I could not directly call to make any further enquiry. I carried out the instructions of the sender under the bona fide impression that the instructions are coming from my superior Mr. Nishant Arya who needed to effectuate these transactions which were both very important and extremely urgent. The sums were transferred from two entities of the JBM Group, namely JBM Industries and JBM Auto. At the request of the sender, the UTR numbers confirming such transfers were also shared on the same WhatsApp chat. The details of the payments made on the instructions of such sender are as under: SI Sender Details Receiver Details Value RTGS Number Sender Name Bank of the sender Sender Account Number Receiver Account Bank IFSC Code 1 JBM Industries Ltd Axis Bank Limited 920030028634621 Gautam Kumar 50100540809714 HDFC HDFC0000284 9,60,501 UTIBR52022091500221169 2 JBM Industries Ltd Axis Bank Limited 920030028634621 Fakaruddin Ali Ahmad 083801507817 ICICI ICIC0000838 8,99,602 UTIBR52022091500224147 3 JBM Industries Ltd Axis Bank Limited 920030028634621 Subhash Bindhani 55550116898865 Federal Bank FDRL0005555 9,70,905 UTIBR52022091500224135 4 JBM Industries Ltd Axis Bank Limited 920030028634621 Sanjeeb Kumar Ghadei 55550115315416 Federal Bank FDRL0005555 18,09,061 UTIBR52022091500224120 5 JBM Industries Ltd HDFC Bank Limited 00030330020359 Suman Sekhar Mohanty 55550122055732 Federal Bank FDRL0005555

> *35,90,005 HDFCR52022091596059169 6 JBM Industries Ltd HDFC Bank Limited 00030330020359 Sanjeeb Kumar Ghadei 77770121956458 Federal Bank FDRL0007777 9,70,609 HDFCR52022091596066979 7 JBM Industries Ltd HDFC Bank Limited 00030330020359 Jai Prakash Yadav 071001505943 ICICI ICIC0000710 9,90,507 HDFCR52022091596071911 8 JBM Auto Limited HDFC Bank Limited 00030330020064 NUR MOHAMMAD 083801507818 ICICI ICIC0000838 9,80,506 HDFCR52022091595980277 1,11,71,696. I have subsequently discovered in the evening that the sender of such messages and instructions on WhatsApp was not Mr. Nishant Arya and someone has perpetrated a fraud by committing impersonation and forgery. The JBM Group have been cheated of a sum of Rs.1,11,71,696/- (Rupees One Crore Eleven Lakhs Seventy One Thousand Six hundred Ninety Six Only) and fraudulently induced to pay sums to the bank accounts indicated above. I request you to urgently investigate the matter and take necessary actions."*

3. During the course of investigation, an amount of Rs.35,90,005/- was found to have been transferred on 15.09.2022 in the Account No.55550122055732 (Federal Bank) of accused Suman Shekhar Mohanty. An amount of Rs.99,999/- was found to have been transferred in the said account from Account No.77770121956458 (Federal Bank) of the petitioner-Sanjeeb Kumar Ghadei. It further came forth that Suman Shekhar Mohanty had transferred money from the said account in another beneficiary Account No.55550122015272 (Federal Bank).

During investigation it came to light that an amount of Rs.18,09,061/- was transferred in the Bank Account No.55550115315416 (Federal Bank) of the petitioner and an amount of Rs.9,70,609/- was transferred in Account No.77770121956458 (Federal Bank) of the petitioner. It also came forth that the petitioner had transferred money from the said accounts in another beneficiary Account No.55550122015272 (Federal Bank) and other accounts.

Accused Gautam Kumar, Raj Kumar, Nanne Singh, Abhishek Singh and Ajay Kumar @ Vishnu were arrested on 19.09.2022. They got recovered amount of Rs.4000/-, Rs.5000, Rs.4200/-, Rs.6000/- and Rs.4000/- respectively. Accused Pradeep Singh, Ramu Jaiswal, Avneesh Singh and Mukesh Maurya were arrested on 20.09.2022. They got recovered amount of Rs.5300/-, Rs.5000/-, Rs.6000/- and 18,000/- respectively. Accused Nitesh Kumar Arya, Deepak Kumar and Raj Kumar were arrested on 21.09.2022.

4. The learned counsel for the petitioner contends that he has been falsely implicated in the present case. The bank accounts used for the fraud had not been opened by him. No money had ever been withdrawn by him from the said bank accounts. In fact, the petitioner was learning computers under the SBI Customer Service Point. The petitioner and the signatory/proprietor of the SBI Customer Service Point were well-known to each other and it appears that the Directors/authorized signatory/proprietor of the SBI Customer Service Point illegally and fraudulently opened two accounts online without

giving any information to the petitioner and used the said accounts to carry out illegal activities. The petitioner had also moved a complaint before the Cyber and Economic Department as well as the Police Station Baripada regarding the same. As the case was based on documentary evidence and he was ready and willing to join investigation, he was entitled to the concession of anticipatory bail.

5. On the other hand, the learned State counsel while referring to the reply dated 04.11.2023, contends that during investigation it was clearly revealed that the petitioner had opened Account No.77770121956458 (Federal Bank) and Account No.55550115315416 (Federal Bank) and the registered mobile number of the said account i.e. 7735999216 belongs to the sister of the petitioner. The e-mail ID sanjeebghadai1@gmail.com registered in the said account also belongs to the petitioner. Further, an amount of Rs.27,79,670/- out of the total fraud amount has been found to be transferred in the accounts of the petitioner. As the offence stood *prima facie* established and the recovery of Rs.27,79,670/- obtained through fraud was to be effected from the petitioner as also the names of other persons in conspiracy with him, the custodial interrogation of the petitioner was certainly required.

6. I have heard the learned counsel for the parties.

7. 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 was 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.*
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> *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.***

8. A perusal of the investigation conducted so far clearly establishes that the petitioner opened two accounts in which an amount of Rs.27,79,670/- was received which is part of the proceeds of the crime. The mobile number connected with the account happens to be belonged to the sister of the petitioner and the e-mail ID also belongs to the petitioner. Therefore, the offence *prima facie* stands established. Further, the custodial interrogation of the petitioner is required to recover the amount as also to obtain information regarding other accused who had conspired along with him to commit the offence in question.

9. In view of the aforementioned discussion, I find no merit in the present petition. Therefore, the same stands dismissed.

10. However, the observations made hereinabove are only for the purposes of deciding this bail petition and the Trial Court is free to

adjudicate upon the matter on the basis of the evidence led before it uninfluenced by any such observations made herein.

(JASJIT SINGH BEDI)
JUDGE

05.02.2024
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No