

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-53057-2023

Date of Decision:-05.02.2024

Varun Sharda.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Mandeep Singh, Advocate for the Petitioner.

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab.

JASJIT SINGH BEDI, J.(ORAL)

The prayer in this petition under Section 438 Cr.PC is for the grant of anticipatory bail in case FIR No.69 dated 23.05.2023 under Sections 419, 420, 465, 468, 471 and 120-B IPC registered at Police Station Kotwali Nabha, District Patiala, Punjab.

2. The present FIR came to be registered at the instance of the official of the Vodafone company which reads as under:-

“ To, The Superintendent of Police, Block-B, Mini Secretariat, District Patiala Punjab-147105, Subject: Request for lodging of Complaint/FIR against Point Sale (POS) Ravi Telecom situated at city Nabha District PATIALA for issuing multiple SIM cards where one face has been used with multiple names, Respected sir, 1. Vodafone Idea Limited is providing cellular mobile/telecom service in the service area of Punjab and having is office at C-105, Industrial Area, Phase VII, have Mohali, Punjab. We have been to communicating our Authorized Distributors/Retailers to follow the instructions of DoT guidelines and documentation customers on time to process for

acquiring new time. The Authorized Distributors/Retailers are further educating to their channel partners to follow these instructions for acquisition of customer. For activation for mobile service to any customer all the TSPS have adopted Point of Sale (PoS) agent concept through sourced out model/partner/franchisee/their own sales outlet.2. Department of telecom (DoT) has developed an AI based Software solution namely Artificial Intelligence AI and facial Recognition powered Solution for Telecom SIM Subscriber Verification (known as ASTR) to analyze all mobile data base on Pan-India basis. Based on the ASTR analysis, the suspected subscribers as well as the details of PoS are being identified and shared with all TSPS for further analysis and suitable legal action who are indulging in issuing of SIM cards on wrong particulars.3. Pursuant to the DoT circular dated 9th August 2012 (copy enclosed), TSPS for further analysis and suitable legal action who are indulging in issuing of SIM cards on wrong particulars. 3. Pursuant to the DoT circular dated 9th August 2012 (copy enclosed), TSPS for further required to file the complaint for registration of Complainant/FIR on detection of forged documents being used for obtaining mobile connections.4. We have carried out the exercise to find out where the same face/photograph has been used for issuing multiple SIM cards on different names. We have noticed that 20 and 10 numbers of mobile connections are alleged to have been issued with same photograph fraudulently by using fake names and by tampering of Proof of Address and/or proof of Identity documents at the time of issuing these SIM cards. The file containing the collage of all such photograph having the same face but different names is attached in the enclosed CD. Infact, it has further been found that 20 and 10 numbers of SIM cards have been issued by the single PoS namely Navdeep Telecom situated at Gurdwara, City Nabha, District- Punjab in the name date which are having the same face/photograph but different names, which shows the clear case of impersonation, forgery and tampering of documents. Please find attached details of mobile numbers issued on the same day i.e., 20/12/2021&01/06/2021 by the PoS having different subscribers name but same photograph and issued on same date, as given below. Copy of the Customer Acquisition Form (CAF) of all such mobile connections is also enclosed as Annexure-1.5. In the case detailed above it appears that the POS agent has fraudulently and dishonestly used documents of the subscriber and impersonated the subscriber to

obtain multiple SIMs using false documents having the same face/photograph but different names. Also, the POS agent has fraudulently or dishonestly uses as genuine the documents of the subscriber which he knew to be a forged document to obtain multiple SIMs. The subscriber may also be involved in this.6. During investigation it may also be find out as to how many more such fake SIM cards have been issued by various Point of Sales (POS) while using the same photograph with different subscriber name. It is stated that mobile connections subscribed on fake/forged name/documents may be frequently used in Cyber Crime, financial frauds and other Anti-National activities. So, legal action against the POSS/subscribers involved in these fraudulent connections is of paramount importance.7. In the view of the above, we would request you to register complaint/FIR and investigate the matter and take action against this fraudulent PoS agent, Subscribers and other persons involved in this criminal activity. Please let us know, in case, you may require any further documents in this regard. Enclosed: 1. DoT circular dated 9th August 2012 wherein TSPS are required to file of Complaint/FIR.2. One CD containing the collage of photos which has been used for issuing multiple SIM cards in different names with same photo. 3. CAF forms of the subscribers given above in the table.”

3. During the course of the investigation it transpired that the petitioner in connivance with Jatin Sharma had activated multiple mobile phone numbers showing his face but different names and addresses.

Jatin Sharma was arrested and has been granted the concession of bail.

4. The Counsel for the petitioner contends that he has been falsely implicated in the present case. No specific role has been attributed to him. In fact the alleged Sim Cards which have been activated on the basis of his photograph have not been misused by anyone in any crime. As the case was based on documentary evidence, the custodial interrogation of the petitioner was not required and, therefore, he was entitled to the concession of anticipatory bail.

5. The Counsel for the State on the other hand contends that the offence stands *prima facie* established on the basis of the evidence collected. A perusal of Annexure R-1 of the reply dated 23.11.2023 would show that multiple phone numbers have been activated on the names and addresses of different persons though the photograph in each case is of the petitioner. Therefore, the offence is clearly established beyond doubt. Further, the petitioner was a habitual offender with 03 other cases registered against him emanating out of FIR No. 67 dated 22.05.2023 U/s 419, 420, 465, 468, 471, 120B IPC registered at PS Kotwali Nabha, District Patiala, FIR No. 68 dated 23.05.2023 U/s 419, 420, 465, 468, 471, 120B IPC registered at PS Kotwali Nabha, District Patiala and FIR No. 69 dated 23.05.2023 U/s 419, 420, 465, 468, 471, 120B IPC registered at PS Kotwali Nabha, District Patiala. Therefore, he was not entitled to the grant of anticipatory bail.

6. I have heard learned Counsel for the parties.

7. The Hon'ble Supreme Court in the case of "***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Livelaw (SC) 870***", has 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.

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 file would reveal that the petitioner in connivance with accused Jatin Sharma by virtue of his live photograph facilitated the activation of a number of fake Sims on different ID cards by way of forgery under different names. Thus there is clear cut cheating and forgery on the part of the petitioner. Once the offence stands *prima facie* established and the investigation has to be taken to its logical conclusion, the

petitioner is not entitled to the concession of anticipatory bail, moreso when he is a habitual offender.

9. In view of the above, I find no merit in the present petition and the same stands dismissed.

10. However, the observations made hereinabove are only for the purposes of deciding this anticipatory bail petition and the Trial Court is free to adjudicate upon the matter on the basis of the evidence lead before it uninfluenced by any such observations made.

(JASJIT SINGH BEDI)
JUDGE

February 05, 2024
Vinay

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