IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of Decision:-18.04.2024

CRM-M-59486-2023

Vijay Kumar Sharma.

......Petitioner.

Vs.

State of Haryana.

......Respondent.

AND

CRM-M-59708-2023

Manoj Kumar.

......Petitioner.

Vs.

State of Haryana.

......Respondent.

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

Present:- Mr. Parminder Singh, Advocate for the Petitioner (in both cases).

Mr. Kanwar Sanjiv Kumar, Assistant Advocate General, Haryana.

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JASJIT SINGH BEDI, J.(ORAL)

By this common order I shall dispose of both the aforementioned petitions as the same have arisen out of one and the same FIR.

2. The Prayer in these petitions under Section 439 Cr.PC is for the grant of regular bail in case FIR No.03 dated 25.01.2021 under Sections 406, 420, 120-B, 467, 468 and 471 registered at Police Station Cyber Crime, NIT

Faridabad.

2. The brief facts of the case for the disposal of these bail petitions are that that the present case was registered on the complaint of Mahender Pal Lakhani, who alleged that he was having three accounts in Punjab National Bank, Faridabad. One person contacted him through phone and he introduced himself as an employee (Head) of IRDA and disclosed his name as Munni Lal Aggarwal. The said Munni Lal Aggarwal asked him to transfer money from his (complainant's) bank accounts in his (Muni Lal Aggarwal's) bank account, for which he could get very good return against such investment. In this way, Munni Lal Aggarwal, by playing a fraud with him, got transferred Rs. 37,10,000/- from his bank accounts through RTGS on different dates. The complainant further alleged that initially one call was received by him from one female for cancellation of some policy and she had disclosed her name as Sakshi Bajaj and also introduced herself as one of the employees of IRDA. Accordingly, on the basis of these facts, the FIR in question was registered and law was set in to motion.

3. During the investigation the record was obtained from the concerned banks and on evaluation of the same it was revealed that the fraud of Rs.37.10 lacs had taken place with the complainant. Rs.15 lacs were found to be transferred in the ICICI Bank account no.175305001793 (Account Holder FNF Services) and Rs.22.10 lacs was found to be tranferred in Union Bank of India account no.73021010050362 (Account Holder IVD Services). The ICIC Bank account no. 175305001793 were found to be in the name of FNF Service, whose proprietor was Virender Sharma and the Union Bank of India account no.7302101005036200 was found to be in the name of IVD Services and the address mentioned in the bank account form was Khatri, Neemka Thana Road, Sahapura, Jaipur,

Rajasthan. The name of the account holder was Prakash Chand @ Om Parkash proprietor. Prakash Chand @ Om Parkash was arrested and interrogated. He suffered his disclosure statement that the aforesaid bank account had been got opened by his co-accused Vijay Sharma (petitioner in CRM-M-59486-2023) and Manoj Kumar (petitioner in CRM-M-59708-2023). After opening the bank account the bank Kit had been taken from him by Manoj Kumar. He admitted that he had been told by the petitioners that the money received from cheating and forgery would be transferred in his account and would be shared with him.

Vijay Kumar was arrested on 26.09.2023 and suffered his disclosure statement to the effect that bank account had been got opened for the use of of his co-accused Sumit Guglani. The cheated amount would be shared between themselves along with Manoj Kumar.

Manoj Kumar was also arrested on 26.09.2023 and admitted that he had got opened the account in collusion with his co-accused Vijay Kumar on the basis of fictitious documents.

The account no.73021010050362 of Union Bank of India which was in the name of IVD Services was checked and the address mentioned in the bank was found to be non existent. Therefore, Sections 467, 468, 471 IPC were added.

During the course of the investigation Sumit Kumar Guglani was arrested on 26.09.2023 and suffered his disclosure statement. He admitted that Anchal Sharma and Gopal Sharma had demanded bank accounts from him for transferring money obtained by cheating and forgery. Thereafter, Vijay Kumar etc had been contacted to open bank accounts after which the amounts received would be shared between all the accused.

Anchal Sharma was arrested on 30.09.2023 and while admitting to have committed the offence in question stated that he had kept Arti and Suresh for calling people with intention to cheat them. Mobile No.9911655139 stood in the name of Anchal Sharma.

A sum of Rs.1,39,000/- stood recovered from all the accused. Parkash got recovered Rs.5,000/-, Manoj Rs.7,000/-, Vijay Rs.12,000/-, Sumit Rs.95,000/- and Anchal Sharma Rs.20,000/-. Parkash Chand @ Om Parkash was the account holder. Manoj Kumar withdrew the amount received in the account of Prakash Chand. Manoj Kumar also got recovered ATM Card of the bank account no.73021010050362 of IVD Services (Union Bank of India) in case FIR No.768 of 2018 under Sections 420, 406, 467, 468, 471 IPC P.S. Gharaunda, Karnal which was used in the present case also by Manoj Kumar.

After completion of the investigation the report under Section 173(2) Cr.PC stood submitted against Parkash Chand, Manoj Kumar, Vijay Kumar, Sumit Guglani and Anchal Sharma.

4. The Counsel for the petitioners contend that the petitioners have been falsely implicated in the present case. The petitioners had no concern and connection with the accounts in question and had been nominated as accused based on the disclosure statements of the co-accused. The recovery had been planted upon the petitioners. As the petitioners were in custody since 26.09.2023 but none of the 17 PWs had been examined so far, therefore, the Trial of the present case was not likely to be concluded anytime soon. In this situation the further incarceration of the petitioners is not required, moreso when the case was triable by the court of a Magistrate.

4. The learned State counsel on the other hand has filed reply by way of affidavit dated 4.4.2024 of Mr. Abhimanyu Goyat, HPS, Assistant Commissioner of Police, Cyber Crime, Faridabad in both the petitions,

which is taken on record. While referring to the replies, he contend that the investigation conducted so far clearly establishes the *prima facie* culpability of the petitioners in cheating the complainant in conspiracy with the other co-accused. Therefore, they were not entitled to the concession of bail. He however concedes that the petitioners were in custody since 26.09.2023, none of the 17 Pws had been examined so far and that the case was triable by the court of a Magistrate.

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

6. This Court in the case *titled as **Maninder Sharma Vs. State Tax Officer, State, Mobile Wing, Jalandhar, Punjab*** bearing ***CRM-M-24033-2021(O&M)*** *Decided on* ***31.08.2022*** has held as under:-

> " *Therefore, broadly speaking (subject to any statutory restrictions contained in Special Acts), in economic offences involving the IPC or Special Acts or cases triable by Magistrates once the investigation is complete, final report/complaint filed and the triple test is satisfied then denial of bail must be the exception rather than the rule. However, this would not prevent the Court from granting bail even prior to the completion of investigation if the facts so warrant."*

7. The veracity of the prosecution case against the petitioner and his co-accused shall be adjudicated upon during the course of the Trial. Admittedly, the petitioners are stated to be in custody since 26.09.2023 but none of the 17 prosecution witnesses have been examined so far. Therefore, the Trial of the present case is not likely to be concluded anytime soon. Nothing significant has been pointed out by the State that the petitioners would abscond from the Trial, tamper with the evidence or influence the witnesses if they are granted the concession of regular bail. Therefore, their further incarceration is not required.

8. Thus without commenting on the merits of the case, the present petition is allowed and the petitioners-**Vijay Kumar Sharma** son of Sh. Hanuman Sahai and **Manoj Kumar** son of Sh. Sharwan Lal are ordered to be released on bail subject to their furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

9. The petitioners (or anyone on their behalf) shall prepare an FDR in the sum of Rs.2,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited in accordance with law in case of the absence of the petitioners from the Trial without sufficient cause.

10. The petitions stand disposed of.

(JASJIT SINGH BEDI)
JUDGE

Apri 18, 2024
Vinay

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