



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

CRM-M-24938-2025

Date of decision: 13.05.2025

DIVESH VAISHNAV

...PETITIONER

V/S

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Parshant Sethi, Advocate for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

Mr. Sumit Sharma, Advocate for respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

1. This is the first petition filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita (BNSS) for grant of regular bail to the petitioner in case bearing FIR No.163 dated 21.11.2024 under Sections 340/61/338/336(3)/336(2)/318(4) of BNS, 2023 registered at Police Station Cyber Crime Ballabgarh, District Faridabad, Haryana.

2. Brief facts of this case are that complainant Lokender Singh received WhatsApp message on his WhatsApp No.9540913910 from an unknown mobile No.9936132746 on 22.09.2024 with respect to earn online money without making any joining fee and he was asked to give five-star rating on google map on each task by receiving payment of Rs.25/- for each task and accordingly, he joined telegram link and provided some personal information including bank details. Thereafter, he started to play by completing the task as directed to him and used to get money into his account. After completion of eleven tasks, he was again asked to play next task by



making payment, otherwise skip the game and accordingly, he agreed to play the task by making payment and used to get money after completion of task. In this way, he invested Rs.3,22,472/- and completed all the merchant task but they have not returned his money by making excuse that his credit score is down and if he wants his money back, he has to boost up his credit score by making payment. Later on, he came to know that cyber fraud has been committed with him. Accordingly, FIR (*supra*) was registered.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner is not named in the FIR (*supra*) and has been falsely implicated in the present case. Further, after the petitioner was arrested on 16.03.2025, a compromise was effected between the father of the petitioner and the complainant. Moreover, father of the petitioner has already paid the entire amount i.e. Rs.3,17,472/- to the complainant.

4. Mr. Sumit Sharma, Advocate puts in appearance on behalf of respondent No.2 and files his memo of appearance. He submits that a compromise has been effected and the complainant has no objection if the present petition is allowed and the petitioner be released on bail.

5. Learned State counsel produces the custody certificate of the petitioner, which is taken on record and *per contra*, opposes the prayer of the petitioner on the ground that the co-accused of the petitioner are yet to be arrested and petitioner is the main accused in the present case. As such, the petitioner is not entitled to any relief. However, he could not controvert the fact that the petitioner is not involved in any other case and is having clean antecedents.



6. A two Judge Bench of Hon'ble Supreme Court in '***Satender Kumar Antil v. CBI***' (2022) 10 SCC 51, with respect to prevailing conditions of undertrial prisoner in India has observed:

“6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

7. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bar since 16.03.2025. Final report under Section 173 Cr.P.C. has not been presented yet, as such, the trial of the case has not started. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

8. In view of the above, the present petition is allowed. Thus, without commenting upon the merits of the case, lest it may prejudice the



outcome of the trial, the petitioner-Divesh Vaishnav is ordered to be released on regular bail during the pendency of the trial on furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

9. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

May 13, 2025
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(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |