HRPK-01-00-3255-2024

Presented on : 25.09.2024
Registered on : 25.09.2024
Decided on : 04.10.2024
Duration : 0 year, 0 month, 09 days

IN THE COURT OF
Additional Sessions Judge
at Panchkula.
(Presided Over by Sunil Kumar-II)
UID No.HR-0233

BA/1051/2024

Neeraj, aged about 31 years, son of Sh. Rameshwar, resident of 4954, Street No.2, Nangal Road, Nehru Mohalla, Near Aggarwal School, N.I.T. Faridabad, Haryana.

…..Applicant/Accused.

VERSUS

State of Haryana. …..Respondent.

FIR No.49 dated 03.07.2024.
Under Sections–406/420/467/468/471/120-B/201 of IPC.
Police Station : Cyber Crime, Panchkula.

2nd Bail Application under Section-439 of Cr.P.C./Section-483 of Bharatiya Nagrik Suraksha Sanhita, 2023.

Present: Sh. Mahesh Goel, Advocate for the applicant/accused.
Sh. Sanjeet, Ld. Public Prosecutor.

ORDER:

The instant application for bail under Section-439 of Cr.P.C/Section-483 of BNSS, 2023 has been filed by the applicant/accused named above with the averments that he has been implicated falsely in the instant case by the police at the instance of the complainant. The alleged offences have not been committed by the applicant/accused. He is not named in the FIR and no specific role has been attributed to him. The applicant/accused was arrested on 23.07.2024 and he is behind the bars since then. The trial will take long time and no useful purpose would be served by keeping the applicant/accused behind the bars. No recovery is to be effected from the applicant/accused. The custodial investigation is not required in any manner. The applicant/accused filed the application for regular bail and the same was dismissed by the learned Chief Judicial Magistrate, Panchkula vide the order dated 20.08.2024. Thereafter, the applicant/accused filed the application for regular bail before this Court but the same was withdrawn as the final report/challan under Section-173 of Cr.P.C. was filed before the trial Court during the pendency of said application. It is on the basis of the disclosure statement of co-accused that the applicant/accused has been arrested though such a disclosure statement is not substantive piece of evidence. It would be debatable issue during the trial as to whether the applicant/accused committed the alleged offences. The case is based upon documentary evidence and all the documents are already in the custody of the police. Hence, the judicial custody of the applicant/accused is not required. The investigation in the case has since been completed and report under Section-173 of Cr.P.C. has since been submitted in the Court concerned. There is no allegation that the applicant/accused forged any document. Hence, the ingredients of Sections-467/468 of IPC are not made out. The applicant/accused is not a beneficiary in the present case and he has not received a single penny from the bank account of the complainant or any other person as alleged by the prosecution. There has been no false representation or impersonation on the part of the applicant/accused. Hence, the offences punishable under Sections-419/420 of IPC are not made out. The authorities reported as Swarandeep Singh Versus State of Punjab, CRM-M-57885 of 2023 and Jappandeep Singh Versus State of Punjab, RM-M-7314 of 2023 are referred to in the application for bail. It is averred that the applicant/accused has no concern with Rajesh Cargo and said account is not in the name of the applicant/accused. The applicant/accused does not bear criminal antecedents. The guidelines issued by the Hon'ble Supreme Court of India in Arnesh Kumar Versus State of Bihar have not been followed by the police and notice under Section-41-A of Cr.P.C. has not been issued to the applicant/accused prior to his arrest. All the offences are triable by the Judicial Magistrate Ist Class. The applicant/accused undertakes not to tamper with the evidence of prosecution and also not to put any kind of pressure upon the witnesses of the prosecution if released on bail. He will make himself available for interrogation by the police as and when required. He undertakes to appear on each and every date of hearing. He is ready to furnish the bail bond and surety bond to the satisfaction of the Court. No such or similar application for bail in the present FIR either before this Court or before the Hon'ble High Court of Punjab and Haryana at Chandigarh except as mentioned above has been filed by the applicant/accused. The present application for bail under Section-439 of Cr.P.C./Sectoin-483 of BNSS, 2023 is the first regular bail application filed by the applicant/accused. It is on the above grounds that the applicant/accused has prayed for regular bail under Section-439 of Cr.P.C/Section-483 of BNSS, 2023.

2. On notice of the bail application, reply to the same through the learned Public Prosecutor has been filed. In the reply, it is stated that the instant FIR was registered on the basis of a complaint dated 28.06.2024 given by one Lalit Singla son of Bal Krishan Singla, resident of House No.71, Sector-7, Panchkula. The complainant alleged that on 13.12.2024, he received a WhatsApp group link at his mobile set and the Administrator of said group was Rahul Sharma using mobile No.9575441247. There were three other administrators in the group using mobile numbers 8401981855, 9032897137 and 8401614710. The name of said group was EG Primary Group X2 and the persons in the said group were doing the work of share market. The complainant also joined the group at the instructions of Rahul Sharma, Group Administrator. The complainant talked to a person by the name of James Smith at WhatsApp No.447411645449 on 06.03.2024. Said James Smith disclosed the name of exchange company working in Crypto currency. The complainant was asked to open the account. The documents of the complainant were also demanded. Thereafter, said person asked the complainant to trade with his account opened with the Website Viyakae.com. The complainant formed the ID 9814329109 and password Ganptit 848 for the purpose of trading and he started the trading on 16.04.2024. The complainant deposited the amount of Rs.8,50,000/- from his bank account

No.01081000043827 maintained with HDFC Bank in the account No.7001105700000045, Punjab National Bank. Likewise, the complainant deposited the amount of Rs.38 lakh from his HDFC Bank account to the Punjab National Bank Account No.1686102100000490 on 24.04.2024. In this way, the complainant deposited the total amount of Rs.9,68,18,411/- on different dates from his bank accounts in different bank accounts. When he demanded the amount back, he was asked to deposit 10% tax. Thereafter, the complainant came to know that the website www.viyakae.com was a fake website and that his documents were misused fraudulently. In this way, the complainant was cheated in the name of share trading. It is on the basis of the allegations as summarized above that the instant FIR was registered under Sections-406/420/467/468/471/120-B of IPC with Police Station-Cyber Crime, Sector-12, Panchkula. The investigation was initiated. The documents related to the HDFC bank account of the complainant were obtained and copies of the cheques of the complainant with the Group Administrator Neha and James Smith were taken into possession. First of all, the amount of Rs.38 lakh from the HDFC bank account of the complainant bearing No.01081000043827 was found transferred in the account No.1686102100000490. Said Account No.1686102100000490 was found in the name of R.K. Enterprises and Mustak Mohammad, Shop No.12, AB Backside Thapar College, Patiala, Punjab. The record related to said bank account was obtained from the Branch Manager, Punjab National Bank, Patiala. Notice was given to Jatin Jindal using said bank account of

Mustak Mohammad. It was on 11.07.2024 that the accused persons Mustak Mohammad and Jatin Jindal were duly arrested. Their confessional statements were recorded. Accused Jatin Jindal got recovered the SIM bearing No.7626904474 and said SIM was in the name of the accused Mustak Mohammad. Accused Jatin Jindal used the said SIM in order to talk to Munn based in China and other accused persons. Said accused Jatin Jindal used to send bank accounts opened in the name of Mustak Mohammad and others via said SIM and he used to delete the chat thereafter. Said Jatin Jindal also got recovered the SIM bearing No.9888648816 in the name of Mustak Mohammad. He also got recovered the forged stamps used at the time of opening the account in the name of Mustak Mohammad. The mobiles and stamps recovered at the instance of accused Jatin Jindal were taken into police possession by means of converting the same into sealed parcels. In pursuance of his confessional statement, accused Mustak Mohammad got recovered the I-Phone 12 Mark Apple bearing SIM No.9877505098 purchased by him out of the commission from the amount subject matter of the fraud and he also got recovered the amount of Rs.10,000/-. Accused Jatin Jindal burnt the cheque book and ATM card related to the bank accounts of Mustak Mohammad and Section-201 of IPC was added to the instant FIR. Thereafter, the record related to the amount of Rs.65 lakh deposited by the complainant from his HDFC bank account No.01081000043827 in the Indusind Bank Account Delhi No.258510889175 was obtained. As per the record, the said Account No.

258510889175 was opened in the name of Pandit Rajesh Cargo OPC Pvt. Ltd. by the Branch Deployment Manager Vikas Kumar at the instructions of one Jai Karan at the work place of Neeraj son of Rameshwar, resident of House No.4975, Gali No.2, Nagla Road, Nehru Mohalla near Aggarwal School, NIT, Faridabad, Haryana. At the time of opening the said account number, the KYC was prepared alongwith the photographs by BDM Vikas Kumar. At the time of opening the said account number in the office of Rajesh Cargo, the photographs were taken by Jai Karan. The applicant/accused Neeraj as well as the account holder Rajesh Cargo both were present there. It was on 23.07.2024 that the applicant/accused Neeraj appeared in the police station with his father and he was duly arrested. The confessional statement of accused Neeraj was recorded. In pursuance of the confessional statement of accused Neeraj, search for accused Rajesh Cargo and Jai Karan was conducted but they were not found at their residential places. The applicant/accused got recovered the amount of Rs.1,40,000/- out of the amount of Rs.5 lakh received as commission by him and the mobile SIMs bearing No.8510926675 and 8510887670. The temporary sheet in the name of fake firm Pandit Rajesh Cargo OPC Pvt. Ltd. bearing CIN No.U5224HR2024OPC121342 and Mobile No.7982274177 was already destroyed by the applicant/accused Neeraj. Said mobile sets and the currency amount were taken into police possession vide a separate memo. On 20.09.2024, the report under Section-173 of Cr.P.C. on completion of investigation qua the accused persons Mustak Mohammad, Jatin Jindal, Neeraj and Ashutosh Nageshwar was submitted in the Court concerned. It is stated in the reply that the applicant/accused played a lead role in opening the fake bank account in the name of Rajesh Cargo bearing No.258510889175 and sixteen complaints qua said account have been registered on the Cyber Portal. The investigation in the case is going on. It is on the above grounds that the application for regular bail is sought to be dismissed.

3. I have gone through the contents of the application for bail as well as the reply filed to the same. The arguments led by learned counsel for the applicant/accused as well as learned Public Prosecutor have been heard at length by me.

4. No doubt, it is a huge fraud of Rs.9,68,18,411/- which forms subject matter of the instant FIR but then the Court has to see the role actually attributed to the applicant/accused Neeraj. The applicant/accused Neeraj is not a person in whose bank account any amount was transferred from the account of the complainant. The applicant/accused did not establish any contact with the complainant Lalit Singla. The only role attributed to the applicant/accused is that he offered his office while opening the bank account No.258510889175, Indusind Bank, Delhi in the name of Pandit Rajesh Cargo OPC Pvt. Ltd. by the Branch Deployment Manager Vikas Kumar and he was present with said Rajesh Cargo at the time of preparation of the KYC and the photographs related to said account number. In the course of the investigation, it has been found that Rs.65 lakh were

transferred from the bank account of the complainant to said account No. 258510889175 opened in the name of fake firm Pandit Rajesh Cargo OPC Pvt. Ltd. It is the above mentioned limited role which has been attributed to the applicant/accused. It is not the case of the prosecution that the applicant/accused was the person operating said account No. 258510889175. It is the Branch Deployment Manager Vikas Kumar by whom said account was opened after verification of the requisite facts. The applicant/accused has been in custody since 23.07.2024 i.e. for a period of more than two months. The report under Section-173 of Cr.P.C. on completion of the investigation qua the applicant/accused has since been submitted on 20.09.2024. All the evidence gathered or to be gathered would be documentary evidence. It means nothing remains to be investigated so far as the applicant/accused is concerned. The investigation in the case is still going on and so far, the applicant/accused has not been found as the person beneficiary of the amount obtained by means of fraud from the complainant. Conclusion of the investigation qua the remaining accused persons and thereafter the trial would take sufficiently long time. In the reply to the application for bail, no other criminal case registered in the past against the applicant/accused is disclosed. It means the applicant/accused is not a person bearing criminal antecedents. Given the limited role attributed to the applicant/accused in commission of the offences and the fact that the applicant/accused does not bear criminal antecedents, there is no reasonable likelihood of the applicant/accused escaping from the process of law if released on bail. In the light of above facts, it would not be justiciable to keep the applicant/accused behinds the bars any longer.

5. For the reasons recorded above, the application for bail under Section-439 of Cr.P.C./Section-483 of BNSS, 2023 filed by the applicant/accused Neeraj is allowed and he is admitted to bail subject to furnishing personal bond in the sum of ₹60,000/- with one surety of the like amount to the satisfaction of the learned trial Court/Duty Judicial Magistrate, Panchkula. A copy of this order be forwarded to the learned trial Court/Duty Judicial Magistrate, Panchkula. Thereafter, the case file be consigned to the record room after necessary compliance.

Pronounced in open Court: (Sunil Kumar-II),
Dated : 04.10.2024 Additional Sessions Judge,
(Bhupinder) Panchkula. (UID : HR0233)

Note: Each of the -10- pages of this order has been checked and signed by me.

(Sunil Kumar-II),
Additional Sessions Judge,
Panchkula.

I attest to the accuracy and authenticity of this document.
Digitally signed by BHUPINDER KAUR
DN: cn=BHUPINDER KAUR, ou=PANCHKULA COURT, o=DISTRICT AND SESSIONS COURT PANCHKULA, st=HARYANA, c=IN
Date: 2024.10.04 16:35:07 +0530

Neeraj Versus State of Haryana

HRPK-01-00-3255-2024 BA/1051/2024

Present: Sh. Mahesh Goel, Advocate for the applicant/accused.
Sh. Sanjeet, Ld. Public Prosecutor.

Order pronounced. Vide my separate detailed order of even date, the application for bail under Section-439 of Cr.P.C./Section-483 of BNSS, 2023 filed by the applicant/accused Neeraj is allowed and he is admitted to bail subject to furnishing personal bond in the sum of ₹60,000/- with one surety of the like amount to the satisfaction of the learned trial Court/Duty Judicial Magistrate, Panchkula. A copy of the detailed order be forwarded to the learned trial Court/Duty Judicial Magistrate, Panchkula. Thereafter, the case file be consigned to the record room after necessary compliance.

Pronounced in open court.
Dated : 04.10.2024
(Bhupinder)

(Sunil Kumar-II),
Addl. Sessions Judge,
Panchkula. UID : HR0233

I attest to the accuracy and authenticity of this document.
Digitally signed by BHUPINDER KAUR
DN: cn=BHUPINDER KAUR, ou=PANCHKULA COURT, o=DISTRICT AND SESSIONS COURT PANCHKULA, st=HARYANA, c=IN
Date: 2024.10.04 16:35:00 +0530