



2024:PHHC:082024



CRM-M-22266-2024

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

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Date of Decision: 03.07.2024

SUMIT NANDWANI

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vikas Arora, Advocate for the petitioner.

Mr. Rajat Gautam, Addl. A.G., Haryana (through V.C.).

Mr. Sandeep Lather, Advocate for the complainant.

Mr. Satya Pal Jain, Additional Solicitor General of India with
Ms. Meghna Malik, Central Government Counsel for UOI.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
36	16.12.2023	Cyber Crime, Hisar, Haryana	420, 201, 120-B IPC

1. On 29 May 2024, this Court had passed a detailed order and also arraigned the Union of India, Ministry of Telecommunication, Government of India through Secretary and added it as party respondent No.2 in the petition, and the matter was posted immediately after vacations, i.e., for 01-Jul-2024. The order dated 29-May-2024, as far as it relates to the Union of India, shall be read as part and parcel of this order.

2. However, in the meantime, the government has notified the Telecommunications Act, 2023, which came into force on 26 Jun 2024.

3. Given this, no response is required from the Union of India.

4. Cybercrime has been affecting people across the Nation, irrespective of religion, region, education, or class. Newspapers, Magazines, YouTube channels, and social media are brimming with the ordeals of an uncountable number of innocent victims of cybercrime, and these reports cannot be brushed aside as agendas. Reference made to paragraphs 6 and 7 of the previous order dated 29 May 2024 which reads as follows:-



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“6. In India, citizens contend with the pervasive threat of cybercrime, leading to a heightened sense of vigilance and caution. This apprehension has led majority of people to refrain from answering calls from unfamiliar numbers, even when such communication may be necessary. The prevailing fear extends to the use of internet and mobile banking services, as individuals seek to safeguard themselves against potential cyber fraud. Consequently, this apprehension poses challenges as individuals strive to keep pace with the rapid advancements in technology and global connectivity. Complicating matters further is the reality that proficiency in technical knowledge or academic attainment does not necessarily confer Immunity against cyber threats, as cybercriminals often possess superior skills and tactics. Moreover, cyber-crime being a faceless borderless activity with multiple jurisdictional challenges, and the dearth of adequately trained and skilled investigators exacerbates the situation, emboldening these adept predators to exploit any opportunity for financial gain through extortion, manipulation, or thuggee.

7. Additionally, cybercriminal activities have led to a global tarnishing of India's reputation, particularly through fraudulent operations conducted from Indian soil, targeting people overseas. These encompass a range of scams such as counterfeit tech support services, fraudulent Amazon and gift card schemes, insurance fraud, courier frauds, and the unlawful conversion of cyber proceeds into cryptocurrencies like Bitcoin. Notably, a considerable proportion of these illicit endeavours are orchestrated via mobile devices. Following the exploitation of a certain number of victims, perpetrators routinely discard or deactivate their SIM cards, acquiring new ones to perpetuate their nefarious deeds. Disturbingly, reports suggest that these actors obtain prepaid SIM cards under not only their own identities but also those of unwitting individuals, often through deceitful means or even by remunerating for SIM card usage. Consequently, innocent



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individuals whose identities have been impersonated for obtaining these prepaid SIM cards frequently find themselves implicated as primary suspects. These innocent individuals, largely oblivious to their involvement, are confronted with accusations of complicity in financial crimes, notwithstanding their lack of activity associated with the phone numbers registered under their names. This dual predicament presents a considerable challenge whereby victims suffer financial losses while innocent parties endure unwarranted scrutiny and suspicion due to the unauthorized registration of SIM cards in their names.”

5. Leaving uncovered milk in a cattery and threatening cats with a cage will only boil the people's rage.
6. Let the Secretary of Telecommunication, Government of India, deliberate on the issue of cyber-crime that takes place by using pre-paid SIM cards and also by fraudulent marketing companies by using mobiles and landlines, fraudulent authorization of OTP through voice using VPN, etc., and submit a report containing steps and suggestions to eliminate or at least limit the SIM and phone-based cyber-crimes, to the Secretary Home, Government of India, with a copy to the Cabinet Secretary, Government of India, positively by 31 July 2024.
7. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, 1973, seeking regular bail.
8. In paragraph 15 of the bail petition, the accused declares that he has no criminal antecedents.
9. The petitioner's counsel prays for bail and does not object to imposing any stringent conditions. The petitioner contends that the petitioner is entitled to bail just on the grounds of massive pre-trial custody, viz-a-viz the punishment provided in the statute, and further pre-trial incarceration would cause an irreversible injustice to the petitioner and his family.
10. The State opposes bail.



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11. The allegations made in the complaint and the investigation conducted so far are mentioned in the reply dated 14 May 2024, filed by Dr. Rajesh Mohan, IPS, Assistant Superintendent of Police, Hisar, Haryana, the relevant portion of which reads as follows:

"2. That the brief facts of the case are that one application was received on 30.08.2023 on the NCCRP Portal. Accordingly, statement of Rakesh was recorded who revealed that on 27.08.2023, he got a message on WhatsApp from No. 7085578438 on his WhatsApp No. 99915xxxxx stating to earn money while sitting at home. Accordingly, he had a chat with subscriber on that number. He asked him to create a telegram account. Following his instructions, he created his telegram account in the name of @rakesh_sheokand. Thereafter, the said person sent a link kiwi-airfare-site.com on his telegram account. He clicked that link and the site got opened and he entered his mobile No. 99915xxxxx and got himself registered. The site asked him to complete the task and joined him in the Kiwi group 710. Almost 28 persons were members of this group. The name of the owner of the telegram was @ Mah_verma15. On 28.07.2023, they asked him to transfer Rs.10,000/- and accordingly he transferred Rs.10,000/- from his account No. 661601700XXX of ICICI Bank in the account No. 724705500132 of ICICI Bank. Thereafter, the accused transferred Rs.10,900/- and bonus of Rs.6800/- in his account. In the initial transaction, they repaid the amount to the complainant and therefore, he reposed faith in them. Subsequently, they asked him to deposit almost Rs.8,09,469/- by different transactions, but did not return the same to him. He kept on calling the mobile numbers, but did not get any answer. Thereafter, he realized that he had been defrauded. With these allegations, he prayed to take legal action against the culprits. On this the case FIR No. 36 dated 16.12.2023 under sections 420 IPC was registered at Police Station Cyber Crime, Hisar.

3. That, investigation of the case was carried out by ASI Narender Kumar No. 160/Jind. During the course of investigation account numbers 661601700756, 724705500132, 236905500531, 51001513584 of ICICI bank statement and registered mobile numbers in abovementioned accounts details were possessed by the investigating officer vide separate recovery memo. In furtherance of the course of investigation account numbers 65259519937, 41978506746, 31124706662, 33644160446 of SBI statement and registered mobile numbers in the account details were possessed by the investigating officer vide separate recovery memo. Kotak Mahindra Bank account number 8447184043 detail was also taken into possession via mail by the investigating officer. In furtherance of the



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investigation of the case telegram user details i.e. @Mah_verma15 was also taken from the telegram mail ID abuse-in@telegram.org to shocyberhsr.pol@hry.gov. and from the above record it has been found that mobile number was used in these ID's and telegram was +917024771707 and address used in the above mention ID belongs to Taiwan. In furtherance of the course of investigation CAFF ID's of mobile numbers 7024771707 and 8085981505 were also possessed by the investigating officer and from the same it has been found that the above mentioned numbers was issued by the present petitioner namely Sumit Nandwani as POS agent from his mobile number 8269997777. It has been also found that mobile numbers 8085981505, 7024771707; whose were used in the offence and same were used in the mobile of IMEI No. 359916108074180 and 351261012698750 on dated 18.07.2023 and 22.07.2023. Further it has been found that the abovementioned mobile numbers connected with mobile number 7089333888 and same was issued in the name of present petitioner namely Sumit Nandwani. On the basis of documentary evidence present petitioner namely Sumit Nandwani was arrested on 23.01.2024 and he suffered his disclosure statement in which he revealed that mobile numbers 8085981505 and 7024771707 were registered in the name of Anil Manjhi and Shivam Kewat after registration and activation, he provided blank SIMs and retained the activated numbers and thereafter the said numbers were used to operate the telegram/WhatsApp. In furtherance of his disclosure statement he got recovered two keypad mobiles and from them in one mobile phone mobile numbers 8059881505 and 7024771707 was used. He also got recovered realme C 25 s. In the same it has been found that WhatsApp number 9522110743 was used and from this number he sent mobile numbers 8059881505 and 7024771707 to 8882863343. Screen shot of the same was taken by the investigating officer and taken into possession vide separate recovery memo. Copy of the same is annexed herewith as Annexure R-1. He also got recovered Rs.20,000/- cash who received as commission on pretext of OTP. True translated copy of disclosure statement of present petitioner is annexed herewith as Annexure R-2.

4. That, during the course of investigation Anil Manjhi (8059881505) and Shivam Kewat (7024771707) were joined in the investigation and they stated that present petitioner gave them blank SIMs. On which section 201 IPC was invoked in this case. Mobile realme c 25 s was sent to CFSL for his examination and report of the same is awaited.

5. That, during the course of investigation it has been found that defrauded amount was credited in ICICI account number



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236905500531 and in the same mobile number 9174488421 was registered in this account number. The aforementioned number was used in IMEI No. 352336083474530 between 29.08.2023 to 30.08.2023. In furtherance of the investigation of the case it has been found that one another mobile number 9650474623 was also used in the above said IMEI number mobile. The above said number was issued on Kuswa's ID.

6. That on dated 11.03.2024, Kuswa was joined in the investigation and during the course of investigation he was interrogated by the investigating officer and he stated that from him the above said mobile was took by Noor Mohammad on 27.08.2023 and on the above statement co-accused Noor Mohammad, Mukesh Mishra and Dil Bahadur @ Pawan were arrested in this case. They suffered their confessional disclosure statement during their interrogation. Co-accused Noor Mohammad got recovered one mobile phone MI and two cheque books of RBL bank and FINCARE bank and Rs. 10,000/- cash. Co-accused Mukesh Mishra got recovered one mobile phone and Rs.15,000/- cash. Co-accused Dil Bahadur got recovered Rs.15,000/- cash. Section 120B IPC was invoked in this case.

7. That, during the course of investigation details of mobile number 8882863343 was taken by the investigating officer and from these details it has been found that the aforementioned mobile number was used by the Parshant Kumar. On dated 21.03.2024, co-accused Parshant was joined in the investigation and he suffered his confessional disclosure statement in which he stated he received telegram and WhatsApp OTP from the present petitioner namely Sumit Nandwani and on pretext of this he gave money to the present petitioner. Further he stated that Jai Kumar was also involved with him and co-accused Jai Kumar was also arrested in this case. In furtherance of his disclosure statement co-accused Parshant got recovered one mobile in which he used 8882863343 mobile number and cash Rs. 15,000/-. Co-accused Jai Kumar got recorded his confessional disclosure statement and in furtherance of the same he got recovered Rs. 12,000/- cash.

8. That, thereafter completing the investigation against present petitioner namely Sumit Nandwani and co-accused Dil Bhadur @ Pawan, Mukesh Mishra, Noor Mohammad investigation report was prepared on dated 18.03.2024 under section 420, 120B and 201 IPC and same was submitted in the learned trial court on dated 19.03.2024. It is submitted that vide order dated 04.05.2024 charge has been framed by the learned trial court and the case is fixed on 17.05.2024 for prosecution evidence. In this case 21 prosecution witnesses were cited by the investigating officer and no one witness has been examined yet.



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It is further submitted that investigation is pending in this case yet because Farhan Ansari and others arrest is pending. Copy of custody certificate of the present petitioner is annexed herewith as Annexure R-3.

9. *That, present petitioner namely Sumit Nandwani was the person who activated mobile numbers 8085981505 and 7024771707 being POS agent in the name of Anil Manjhi and Shivam Khewat and thereafter, he provided blank SIMs to the abovesaid subscribers and sold the activated numbers to the other accused who used the same to create the telegram account and commit fraud with the complainant like persons. During investigation, the investigating officer discovered that co-accused Noor Mohammad, Dil Bahadur and Mukesh Mishra were involved in the conspiracy and thus invoked section 120B IPC. It is further submitted that online fraud havoc in the society. Everyday innocent persons were falling in such type of trap.”*

12. As per the reply, the petitioner was arrested on 23 Jan 2024. The investigation report was prepared on 18 Mar 2024 under sections 420, 120B, and 201 IPC and was filed before the trial Court on 19 Mar 2024. The charges were framed against the petitioner on 04 May 2024, and the case is at the stage of prosecution evidence. The maximum sentence prescribed under Section 420 IPC is seven years; under S. 201, read with 420 IPC, would be one-fourth of seven years; under S. 120-B, read with S. 420, is six months. Given the penal provisions invoked viz-a-viz pre-trial custody of more than five months, and the other factors peculiar to this case, there would be no justifiability for further pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order.

13. Without commenting on the merits of the case, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail, subject to the terms and conditions on bail bonds and as mentioned in this order.

14. This order shall come into force from the time it is uploaded on the official webpage of this Court.

15. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above, in the following terms:

(a). Petitioner to furnish a personal bond of Rs. Ten thousand (INR 10,000/).

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(b). To give one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the Trial Court, and in case of non-availability, to any Court which has been assigned its work, or the nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Officer/Court must satisfy itself that if the accused fails to appear in Court, then such surety can produce the accused before the Court.

(c). The petitioner is to also execute a bond for attendance in the concerned court(s) as and when asked to do so. The presentation of the personal bond shall be deemed acceptance of the declarations made in the bail petition and all other stipulations, terms, and conditions of BNSS, 2023, and of this bail order.

(d). While furnishing personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number, (If available), when the attesting officer/court thinks it appropriate or considers the accused as a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

16. If the petitioner is not in a position to furnish surety, it may be brought to the notice of the concerned Court which is accepting the bonds, and if the said Court is satisfied with the petitioner's inability, then it shall be permissible for the said Court to exempt surety bonds.

17. The petitioner shall attend the trial on every date and shall not influence, browbeat, pressurize, or make any inducement, threat, or promise, directly or indirectly, to the witnesses, the Police officials, or any other person acquainted with the facts and the circumstances of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to tamper with the evidence.

18. During the trial's pendency, if the petitioner repeats or commits any offense where the sentence prescribed is more than seven years or violates any condition as stipulated in this order, it shall always be permissible for the respondent to apply for cancellation of this bail. It shall further be open for any investigating agency to bring it to the notice of



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the Court seized of the subsequent application that the accused was cautioned not to indulge in criminal activities earlier. Otherwise, the bail bonds shall remain in force throughout the trial and subsequently under Section 481 of The Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS, 2023], if not canceled due to non-appearance or breach of conditions.

19. The conditions mentioned above imposed by this Court are to ensure that the accused tries to reform and does not repeat the offense.

20. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order in any language the petitioner understands.

21. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

22. In return for protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

23. *There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

Petition allowed in aforesaid terms. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

03.07.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: **YES.**