

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-15272-2023

Date of decision : 27.03.2023

Aashirwad Thakur

Petitioner

V/S

State of Punjab

Respondent

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Suneel Sharma, Advocate for the petitioner.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioner has filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.45 dated 19.09.2022 registered under Sections 420 and 120-B of Indian Penal Code, 1860 and Section 66-C and 66-D of the Information Technology Act, 2000 at Police Station Punjab Cyber Crime, District SAS Nagar, Mohali.

The above-said FIR was registered on the complaint made by Pardeep Kumar Verma authorized signatory for M/s Teleperformance Global Services Private Limited against employees for performing unauthorized actions, manipulating the client portals for creating fraudulent return requests and taking refunds for self/relatives/friends' account, without any calls/request from the customers, misusing the systems and computers provided to them for performing their work obligations.

M/s Teleperformance Global Services Private Limited is

engaged in business of providing outsourcing services to its various clients including reputed E-commerce Companies (Clients) wherein out call center employees (agents) handle and address and customer order placed/return requests/payments related queries and therefore have access to its portal and other information like customer's sensitive data. On 21.04.2022, two fraudulent transactions of Rs.1,59,848/- where 2 "Refund Don't expect returns" were created using the Smart Assist ID of Aman Kaur. Upon further investigation, it was identified that employee from IJS queue Arshdeep Garg did the fraudulent transactions and took the refund of Rs.1,59,848/-. On inquiry, Arshdeep Garg confessed that he created both the returns using the Smart Assist credentials of Aman Kaur. He also confessed that the mobile number 8054366584 under which the client account is registered belongs to him and the product was delivered to Ravinder Singh who was an employee in his father's trade business. The laptop used for playing the fraud belongs to his friend Pranshu Thakur, who is a friend and room mate of Arshdeep Garg. The refund was credited back to the source account and the customer Ravinder Singh transferred Rs.65,000/- to Arshdeep Singh's bank account and Rs.52,000/- to Pranshu Thakur. In the internal investigation of the company, the amount misappropriated was came to light as Rs.1,59,848/-. However, the actual number of transactions in which the suspected employee may be involved is not known and which may only be unearthed with the intervention of State Investigating Agency and it was requested that action should be taken.

A preliminary inquiry was taken into consideration. The representatives of the company as well as accused employees were called to join the enquiry. They joined their inquiry and tendered their statements. On careful scrutiny of the information provided by the representatives of the company and ex-employees of the company, it has been observed that complainant company is engaged in the business of providing outsourcing services to various reputed E-commerce companies which also includes Flipkart. The alleged fraudulent transactions are related with the refund of the amount of the products purchased from Flipkart company only and the employees of the complainant-company deal with the customers of Flipkart Company only. As per record of complainant company, the refund requests under heading "Don't expect returns" in the portal were fraudulently raised by the employees and thereafter refunded amount was transferred to the accounts of employees or someone known to the employees. As per statements of ex-employees, the credentials of their login ID and password which were used to gain access of the portal of the Flipkart company were misused by an employee of the company who was well aware about this loophole in this system and further the amount refunded back has not been credited into the account of these employees or any of their known. After going through the documents provided by the complainant company and the information provided by the accused employee, it has been observed that the employees of the complainant company entered into the web portal of the company to resolve the

grievances of the customers of Flipkart company by going through two layer process. First, by using ACCOP VPN through some pre-registered electronic device, employees of the complainant company first opened the smart assist application and thereafter by entering their login ID and password to this application, they entered into actual portal of the company to assist those customers who had purchased items from Flipkart. Therefore, to know the actual user (s) who entered into portal by using credentials of the employees and to know actual beneficiary of the refunded amount, information about the IP logs, about the beneficiary bank accounts and various other relevant information were sought from the company and it has been concluded that some unknown users by using the pre-registered electronic device has entered into the portal of the company by using the credential of the employees of the complainant company.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. The complaint has been filed against the unknown persons. The present FIR has been registered after the expiry of 6 months. The petitioner has nothing to do with the alleged offence and he has been made a scapegoat. The petitioner was not in contact with the main accused Arshdeep Garg and no transaction was done between them. Nothing is to be recovered from the petitioner and his custodial interrogation is not required in the case. The petitioner is already ready and willing to join the investigation.

Notice of motion.

On the asking of this Court, Mr. Jaspal Singh Guru, Asstt. A.G., Punjab, who is present in the Court, accepts notice on behalf of the respondent-State. He opposes the present petition for grant of anticipatory bail to the petitioner on the ground that there are specific allegations against the petitioner. The money refunded by Flipkart has fraudulently been transferred into the account No.1514579051 of Kotak Mahindra Bank, which is operated by the petitioner and he is the beneficiary of this account. Hefty amount is yet to be recovered from him and as such his custodial interrogation is necessary.

Having heard learned counsel for the parties, prima facie, I am of the view that there is a specific role attributed to the petitioner. The complainant company is engaged in the business of providing different services to its clients and it was found that the fraudulent requests for refund were placed by the agents without receiving any call and without any e-mail transactions with the customers. A huge loss was caused to the company and it was found that the petitioner did fraudulent transactions and took the refund of amount.

The allegations against the petitioner are serious in nature. Moreover, the investigation is still going on and therefore custodial interrogation of the petitioner is necessary for finding out the modus operandi of commission of the offence. It is settled proposition of law that power exercisable under Section 438 of the Cr.P.C. is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Hon'ble Supreme Court in *State Vs. Anil Sharma : (1997) 7 SCC*

187 held as under:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

Keeping in view the aforementioned facts and circumstances and nature of averments, the petitioner does not deserve the concession of anticipatory bail. Hence, the present petition is hereby dismissed.

27.03.2023

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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No