(2022) 05 SHI CK 0064

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 1005 Of 2022

Sushil Jariyal APPELLANT

Vs

State Of Himachal Pradesh RESPONDENT

Date of Decision : 24-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 21
Code Of Criminal Procedure, 1973 — Section 438, 439
Indian Penal Code, 1860 — Section 120B, 420
Evidence Act, 1872 — Section 27

Citation : (2022) 05 SHI CK 0064

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Vinod Thakur, Divya Sood

Final Decision : Disposed Of

Judgement

Vivek Singh Thakur, J

1. Petitioner Sushil Jariyal has filed the present petition, under Section 439 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.'), for grant of bail, in case FIR No.73 of 2022, dated 27.2.2022, registered under Sections 420, 120B of the Indian Penal Code (hereinafter referred to as 'IPC') and 5, 6 of the Prize and Money Circulation Schemes (Banking) Act, 1978, in Police Station Balh, District Mandi, Himachal Pradesh.

2. Status Report stands filed and placed on the file. Record has also been produced.

3. Prosecution case is that on 27.2.2022, complainant Manoj Kumar submitted a complaint in Police Station Balh, stating therein that in August 2020 his friend Pawan Sankhyan had introduced him with a person Sushil Jaryal, and Sushil Jaryal propagated that with a Plan in Crypto Currency an US Company ONYX Trading was there which had its browser registered as OFS Trading.com.

Thereafter, he demonstrated in his Mobile Phone by logging in his ID-ONYXHP04. He told that there was a 105-days Plan through which on investments there will be 1½ times return within 4½ months and for that he told about four types of investment Plans, i.e. 100 US Dollar (Rs. 8,000), 500 US Dollar (Rs. 41,000), 1000 US Dollar (Rs. 82,000/-and 5000 US Dollar (Rs. 4,10,000). Apart from it, Sushil Jaryal also told that this amount was being invested in Share Market, wherein there was hundred percent risk but the Company was extending guarantee to return the principal amount. Sushil Jaryal also told that investment in Plan was to be made in cash and return thereof would be in Crypto Currency Exchange as BTC Dollar (Bitcoin). After telling that, Sushil Jaryal had shown receipt of BTC in Block Chain. Complainant was impressed by Sushil Jaryal to create 500 US Dollar ID-Manoj121, below Pawan Sankhyan, for confirmation whereof complainant received a Mail from Info@ofstrading.com. After confirmation, complainant started working in the Company and arranged meetings in Balh and Sundernagar area for convincing people for investment and in those meetings, head of the Company Birender Preet Singh alongwith his associates Sushil Jaryal and Pawan Sankhyan started to attend these meetings and in every meeting he had duped the people by assuring that their money shall be safe and in case of closure of Company he shall inform them six months in advance so as to enable them to withdraw their money and not to invest further. Complainant started working on the aforesaid investment Plan and created 650 IDs whereby people invested about Rs. 5 crore. Most of the people gave cash for creating IDs and some amount was deposited in accounts. Cash was taken by Birender Preet Singh himself mostly and sometimes complainant had visited to hand over the cash to him. As per complainant, about Rs. 2 crore was received by people in the shape of BTC or cash and complainant had also received Rs. 15 Lakhs, which was invested by him in the same Company and thereafter Birender Preet Singh started direct communication with the complainant, who, in March 2021, told that there was some problem in the Company, resulting into closure of BTC, which will be started during next month. Upon this, complainant continued to arrange meetings and investment from people in the Company, but people started to make telephonic calls continuously with complaint that amount was not returning but as complainant was assured by Birender Preet Singh, he continued to respond by saying that they will get money during next month and by saying so he continued to assure persons on every date. Thereafter, in August 2021, Birender Preet Singh conducted a meeting in Nangal and told that there was no return of the amount and advised to generate a ticket through the ID of the persons for withdrawal of principal amount, whereupon within two months principal amount will be received in Crypto Exchange Wallet. After one month of generating the ticket, 30% people received 5% principal amount in Crypto Exchange Wallet as BTC, but thereafter people started to complain telephonically to the complainant that they were not getting principal amount. On asking Birender Preet Singh, he conducted a meeting in the month of November at Ropar and told that in the Plan of previous Company, there was some shortcoming and told that he was coming with different Plan of one Company namely RFX Trading wherein 50% shall be invested by the people and 50% by the Company and investment shall be doubled within 9 months. Thereafter, persons who had invested in new Company received 5% of previous investment and two additional installments from new Company. It has been stated in the complaint that persons, who had invested in RFX Trading, had received a confirmation Mail from info@rfstraders.com and thereafter their ID was started. After 18.1.2022, nobody received any installment upon which complainant started calling Birender Preet Singh, on telephone, who for sometime attended his calls but thereafter stopped to receive his calls and switched off his phone. Lastly, prayer was made to take action against Birender Preet Singh. Upon this, FIR under Section 420 IPC has been registered.

4. Learned counsel for the petitioner has submitted that petitioner is not accused but victim in present case and he is on the same footing as the complainant is, as he was introduced with the Plan of the Company by main accused Birender Preet Singh and he was investing their amount like complainant Manoj Kumar, who, admittedly, has received amount of Rs. 15 Lakh in return from the Company and petitioner has also received return of some amount and not of the entire amount invested by him, and, therefore, he is not accused in present case but for his name in the complaint, submitted by complainant, he has been arranged as an accused in the present case. Further that, after rejection of anticipatory bail, he had surrendered and now he is not having any role in commission of offence but he has also invested money in the Plan introduced by Birender Preet Singh, like other investors innocently. Therefore, prayer for enlarging the petitioner on bail has been made by referring the principle "bail is rule and jail is exception". According to him, keeping in view right to personal liberty guaranteed under Article 21 of the Constitution of India, petitioner is entitled to be enlarged on bail.

5. Referring Status Report, learned counsel for the petitioner has submitted that the petitioner was only Up-liners, like the complainant, having no control on the money, and entire business was being controlled by Birender Preet Sngh and petitioner was not having any role in creation of Software.

6. In the Status Report, it has been stated that Sanjeev Kumar, Sushil Jaryal and Pawan Kumar are main accused with Birender Preet Singh and Sanjeev Kumar and Sushil Jaryal were top Up-liner of MLM Plan, who, in connivance with Birender Preet Singh, had allured persons to invest in www.ofstrading.com and had given guarantee of return of principal amount. When there were losses to the people from investment in OFS Tading, they had allured people to invest in RFX Trading by telling the people that it was an US Company, whereas Sanjeev Kumar alongwith Birender Preet Singh had developed MLM Software at Panchkula in the Office of Wave Info Tech and as a result thereof people were made to invest Rs. 1.24 Crore.

7. As per Status Report, in furtherance of statement of petitioner Sushil Jaryal, recorded under Section 27 of Indian Evidence Act, Rs. 2,00,000/- have been

recovered.

8. Learned counsel for the petitioner has submitted that the petitioner was made to believe by main accused Birender Preet Singh that it was genuine business and, therefore, the petitioner had invested his own money in the Plan propagated by Birender Preet Singh and after receiving return of the money had convinced the people for investment by arranging meetings of public with Birender Preet Singh but he was not having knowledge of ill design of Birender Preet Singh, who, in fact, had received the money, however, the petitioner had invested major portion of his earning in the same Plan.

9. Petitioner had approached this Court, seeking anticipatory bail by filing Cr.M.P. (M) No.481 of 2022, under Section 438 Cr.P.C. which was dismissed as withdrawn, on 30.5.2022, before a Coordinate Bench of this Court.

10. Learned Additional Advocate General has submitted that when in Cr.M.P.(M) No.481 of 2022, the Court was not inclined to grant anticipatory bail, the said petition was got dismissed as withdrawn and, therefore, in the same circumstances petitioner is not titled for bail in present petition also.

11. Another Bail Application No.57/2022, under Section 439 Cr.P.C., filed by the petitioner, was dismissed by Additional Sessions Judge (1), Mandi, District Mandi, Himachal Pradesh, on 26.4.2022, on the ground that at that time investigating was still going on and evidence was required to be collected. Now, as per Status Report, challan has been presented in the Court on 28.4.2022, after completing the investigation. Therefore, there is change in circumstance.

12. It has further been submitted by the learned counsel for the petitioner that the only role of the petitioner in the commission of offence is that he permitted his account for transfer of money by main accused Birender Preet Singh, whereas allegation against co-accused Birender Preet Singh, Sanjeev Kumar, Pawan Kumar and Sushil Jariyal are that they were motivating the people of the area and enticing them to invest money in the fake company of Birender Preet Singh and they have also received benefit(s) of such transactions and, therefore, it has been contended that for different and limited role of the petitioner, he can be segregated from rest of the accused persons against whom allegations in the FIR as well as investigation are different in nature and, therefore, petitioner can be treated differently.

13. Learned Additional Advocate General has submitted that keeping in view the fact that petitioner and co-accused are involved in duping large number of people for Crores of rupees and that the investigation is at initial stage, petitioner is not entitled for bail and the bail petition deserves to be dismissed.

14. Learned counsel for the petitioner, under instructions, has submitted that in case the petitioner is ordered to be enlarged on bail, the petitioner is ready and undertakes to furnish local surety and also undertakes to abide by all the conditions that may be imposed by the Court in order to ensure presence of the

petitioner during investigation and trial.

15. Taking into consideration, the entire facts and circumstances, but, without commenting on merits thereon and taking into account factors and parameters, as propounded by the Supreme Court and this Court, required to be considered at the time of adjudication of bail application, I am of the opinion that petitioner may be enlarged on bail in present case, at this stage.

16. Accordingly, the petition is allowed and petitioner is ordered to be released on bail in case FIR No.73 of 2022, dated 27.2.2022, registered in Police Station Balh, District Mandi, Himachal Pradesh, on his furnishing personal bond in the sum of Rs. 2,00,000/- with two sureties, each in the like amount, out of which one surety, as undertaken by the petitioner, shall be local surety, to the satisfaction of the trial Court, upon such further conditions as may be deemed fit and proper by the trial Court, including the conditions enumerated hereinafter, so as to ensure presence of petitioner/accused at the time of trial:

(i) That the petitioner shall make himself available to the police or any other Investigating Agency or Court in the present case as and when required;

(ii) that the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to Court or to any police officer or tamper with the evidence.

(iii) that the petitioner shall not, in any manner, try to overawe or influence or intimidate the prosecution witnesses;

(iv) that the petitioner shall not obstruct the smooth progress of the investigation/trial;

(v) that the petitioner shall not commit the offence similar to the offence to which he is accused or suspected;

(vi) that the petitioner shall not misuse his liberty in any manner;

(vii) that the petitioner shall not jump over the bail;

(viii) that in case petitioner indulge in repetition of similar offence(s) then, his bail shall be liable to be cancelled on taking appropriate steps by prosecution;

(ix) that the petitioner shall not leave the territory of India without prior permission of the Court; and

(x) that the petitioner shall inform the Police/ Court her contact number and shall keep on informing about change in address and contact number, if any, in future.

17. It will be open for the prosecution to apply for imposing and/or to the trial Court to impose any other condition on the petitioner as deemed necessary in the facts and circumstances of the case and in the interest of justice and thereupon, it will also be open to the trial Court to impose any other or further

condition on the petitioner as it may deem necessary in the interest of justice.

18. In case the petitioner violates any condition imposed upon him, his bail shall be liable to be cancelled. In such eventuality, prosecution may approach the competent Court of law for cancellation of bail, in accordance with law.

19. Trial Court is directed to comply with the directions issued by the High Court, vide communication No.HHC.VIG./Misc. Instructions/93-IV.7139 dated 18.03.2013.

20. Observations made in this petition hereinbefore, shall not affect the merits of the case in any manner and are strictly confined for the disposal of the bail application.

21. Petition is disposed of in aforesaid terms.

22. Copy dasti.

Petitioner is permitted to produce a copy of this judgment, downloaded from the web-page of the High Court of Himachal Pradesh, before the authorities concerned/trial Court, and the said authorities/Court shall not insist for production of a certified copy.

