

11.11.2020

The present application is taken up for hearing through VC through CISCO WEBEX APP.

Present: Ld. APP for State

None for applicant.

1. This is an application filed under section 167(2) Cr. P. C for seeking default bail on behalf accused Mahavir singh Yadav.

2. Reply to the application is also filed by IO.

3. Arguments were addressed by both the sides yesterday and today the application is listed for order.

3. The main ground on which the present application is filed is that in the present case the accused was arrested on 07.09.2020 and since there is no material available with the investigating agency to link the present accused with alleged offence under sec. 467 IPC, the other alleged offences ,i.e, 420 & 406 IPC, being punishable with less than 10 years, as such since the investigating agency has failed to file the Chargesheet the further detention of the accused beyond 60 days from the date of his arrest which expired on 08.11.2020, is unwarranted and the accused becomes entitled to statutory bail under sec. 167(2) Cr.P.C. The Ld. Counsel has also placed reliance upon :

1. "Sanjay Dutt Vs.State Through CBI. Bombay, Special Leave Petition (Crl.) 1834-35 of 1994 SC ",

2. "Bikramjit Singh Vs. The State of Punjab, Criminal Appeal No. 667 of 2020 SC"

3. "Rakesh Kumar Paul Vs. State of Assam, Speacial Leave to Appeal no. 2009 of 2017 SC"

4. "Subhash Bahadur @Upender Vs. The State (NCT of Delhi) Bail Application no. 3141/2020, Delhi HC".

4. On the other opposing the application, the Ld. APP for state has submitted that the present application is without any merits as though initially the present FIR was

registered under sec. 420,406 & 34 IPC, however, during the course of investigation on the basis of collected material, offences under sec. 467 and 120B IPC have also been added to the FIR. It is further stated that as far as the contention of Ld. Counsel for accused that there is no material in the possession of police so as to link the accused with offence under sec. 467 IPC is concerned, the same is also without any merit as the very fact that the complainant was cheated on the basis of false assurance of issuance of insurance policies and renewal of his previous expired policies and was dishonestly induced to deposit a total amount of Rs. 65 lakhs into different accounts (one such account being found to be registered in the name of present accused) and forged insurance policies were handed over to the complainant for such purpose, itself prima facie makes the accused an active member of the entire conspiracy formed to cheat the complainant in such manner. Further the fact that despite being a recipient of an amount of more than Rs. 20 lakh from unknown source, the present accused not only kept mum but thereafter also withdrew that amount by use of his debit card, further prima facie establishes his involvement behind the entire crime. Accordingly, it is argued by the Ld. App that the mere fact that there is no direct evidence available with the police to link the accused with the preparation of forged insurance policies does not per se absolve him from the alleged under sec 467 more particularly when his active involvement in the entire conspiracy is prima facie well established through the transfer of money into his bank account from the account of complainant which took place only due to the dishonest inducement and by gaining his confidence on the basis of forged policies. Hence, it is prayed that the present application being premature is liable to be dismissed.

5. I have heard both the sides and have also perused the available material.

6. The accused in the present case was arrested on 08.09.2020. Admittedly offences under sec. 467 and 120 B IPC were added to the case during the course of investigation. The main premises on which the present application is based is that there is no material in the possession of the investigating agency so as to link the accused with alleged offence under 467 IPC read with sec. 120 B IPC. The ground taken for raising such contention is that neither any such alleged forged insurance policy bears the signature of accused nor does the same was handed over by him to complainant. It is further submitted that even none of the mail allegedly sent to the complainant asking him to deposit money for issuance or renewal of his previous expired policies was sent from the email account of the accused. The Ld. Counsel for accused has even argued that the accused is himself a victim of cyber crime and was himself cheated by some unknown persons.

7. Now as far as the contention raised by the Ld. Counsel that since there is no direct evidence in the possession of the police to link the accused with the forged insurance policies and as such section. 467 is not attracted against him and therefore the rest of the offences being punishable with less than ten years of imprisonment, makes him entitled for statutory bail by virtue of sec 167(2) Cr. P. C is concerned, the court also does find any substance in such contention. The transfer of money, I.e, more than around Rs.20 lakhs into the bank account of accused from the bank account of complainant is an established fact. It is also another admitted position that the accused has no explanation of the same and he has also failed to give any justification that why did he not bother to inform the bank authorities of such unexpected transfer and how it all disappeared from his bank account and more importantly for what purpose and in what manner.

8. Further the perusal of the statements of complainant recorded during investigation reveals that he came into contact with a number of persons during the entire series of events leading to cheating of his money and all of them played different roles. Some of them induced him to make the transfer and other suggested the mode and manner of transfer. Similarly some of them made different communications and other handed over the forged policies to gain his trust and assure of his return. Thus, the series of events clearly suggest that a number of minds were behind the entire crime and were performing their different role. However, the sole purpose of all was to cheat the complainant and the manner in which all of them were acting shows their per-concert and prior meeting of minds. It may be that only some of them made the dishonest representations and other did not come in direct contact. Similarly only some of them prepared the forged documents and others simply handed over them. There may be some who had the roles of only receiving cheated money once they succeed in their evil design. However, the mere fact that they played different roles does not make them less liable for the penal consequences which ensues from their collective acts. The present case being clearly to be one such case makes the present accused stand on the same footing and does not make him less liable for the penal consequences of the collective acts of all the accused. The present accused also can not say that he did not perform one of the alleged act more particularly when he is also one of the beneficiary of the cheated amount. Moreover, the investigation of the case is still in progress and the efforts are being made to know and ascertain the role played by each of the accused. Accordingly, since the material available on record prima facie sufficiently link the accused with the entire criminal conspiracy leading to cheating the complainant and preparation of forged document may also be one small conspiracy

which is a part of the entire large conspiracy, the court is not convinced that offence under sec.467 read with sec.120 B IPC is not attracted against the accused. Hence, that being the position the court has no hesitation to hold that the present application being premature is liable to be dismissed and is accordingly dismissed.

9. The application accordingly stands disposed off. Copy of order be given dasti.

(Balwinder Singh)
MM (East)/KKD/Delhi/11.11.2020