* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 11th March, 2015

\+ **BAIL APPLN. 1835/2014**

SAMBHAV KHANNA

..... Petitioner

Through: Mr Vipin Sanduja, Adv.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms. Ritu Gauba, Additional Public Prosecutor for the State alongwith Inspector Joginder Singh Police Station Patel Nagar.
Mr S.K. Grover, Adv. alongwith complainant in person.

%

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. By virtue of this application under Section 438 of Cr.PC the petitioner seeks anticipatory bail in case FIR No.524/2014 under Sections 406/420 IPC registered at Police Station Patel Nagar, Delhi.

2. The FIR in the instant case was registered on the basis of a complaint made by Sh. R.N. Chawla, Mr.Vineet and Mr Rakesh Sachdeva, Directors of M/s RVR Hospitality Pvt. Ltd alleging therein that the petitioner/accused – Sambhav Khanna who was working as HR Marketing with M/s Tech Mahindra approached and persuaded the complainant company through Mr Asim Gera at his office at 29/138, West Patel Nagar, Delhi that he would get arranged four canteens/20 counters for the complainant from M/s Tech

Mahindra in their various projects at Noida, Uttar Pradesh and from where they would earn approximately Rs.1 crore per month and for the same, he had demanded Rs.60 lac as his commission/brokerage charges as he is working as HR Marketing with M/s Tech Mahindra. They in good faith gave the said money in cash on different dates. It is further alleged in the complaint that the petitioner/accused once again approached them to arrange and keep a staff of 40 people stating that they need to show to Tech Mahindra that they had the requisite staff and infrastructure to run the 20 counters. But the petitioner/accused failed to honour the said deal and got allotted the 4 canteens/20 counters in the name of complainant in spite of repeated requests and reminder made by them. In the month of April, 2014, the petitioner/accused got allotted two counters in the name of complainant from M/s Tech Mahindra in NSEZ Phase – II, Noida, U.P. but the petitioner failed to get allotted the remaining counters. On 17.05.2014 a meeting took place between the petitioner and complainant at the office of one Mr Aseem Gera at 29/138, West Patel Nagar and in the said meeting the petitioner consented and admitted about both deals and acceptance of amount of Rs.80 lac and told that he will return back the entire money within 90 days, out of which a part payment of Rs.5 lac will be given on 30.05.2014. The entire meeting and conversation of phone was recorded and provided as evidence in the form of CD but on 30.05.2014 when they approached the accused for payment of Rs.5 lac as promised, the petitioner made hue and cry and threatened the complainants that he is going to commit suicide and for his death they would be liable. The petitioner neither returned the money of the complainant nor got allotted the said counters. As such, accused committed offence u/s 403/406/415/420 and 506 IPC.

3. It is submitted by learned counsel for the petitioner that FIR has been registered at police station Patel Nagar, however, no cause of action arose within the jurisdiction of police station Patel Nagar. As per the averments made in the FIR, the canteens were to be opened at Noida. Moreover, the FIR has been registered under Section 406/420 IPC. Ingredients of both the sections are entirely different and both these provisions cannot go together. Further, offence under Section 406 IPC is punishable upto three years and fine. That being so, the Court can even release the petitioner on fine on final conclusion of trial. That being so, it is not advisable to send the petitioner in custody. As regards Section 420 IPC is concerned, this is not the forum to recover money. Moreover, there is no documentary evidence to substantiate the allegations of the complainant that any amount was paid in cash to the petitioner. After the grant of bail, the petitioner joined investigation on various occasions. All the original cheques have been given to the Investigating Officer of the case. As per status report dated 13.11.2014 custodial interrogation of the petitioner is required for the purpose of taking his voice sample and for recovery of cheated money. It was submitted that when the petitioner had joined investigation on three occasions, why his voice sample was not taken, however, he is still ready and willing to give the same. Lastly, it was submitted that the petitioner has roots in the society. He is married and has the responsibility to maintain his family. There are no chances of his absconding. Under the circumstances, the interim protection granted to him be made absolute.

4. Per contra, learned Public Prosecutor for the State as well as counsel for the complainant vehemently opposed the application and gave a detailed account of narration of facts for submitting that the petitioner has been

taking different pleas at different forums. When he was called for joining inquiry in pursuance of a notice dated 15.07.2014, he gave a written reply alleging that he was being falsely implicated in the present case due to a friendly loan of Rs.5,00,000/- given by him to Mr.Asim Gera and as Mr.Gera is unable to return his loan, he is trying to falsely implicate him with the help of his friends, in this case. He appeared before the then enquiry office SI Nitesh Nehra once only. The accused has nowhere stated in the Court regarding this Rs.5,00,000/- loan. He stated in the Sessions Court in his bail application that Sh.Asim Gera had owed him Rs.80,00,000/-, as he had offered him to make investment of Rs.80,00,000/- in his company and lured him of handsome profits for which he paid Rs.80,00,000/- in cash to Sh.Asim Gera in presence of his wife Smt.Priyanka Khanna, sister Sumegha and brother-in-law Brahm Swaroop. Whereas in his Bail application before this Court accused has alleged that he paid Rs.80,00,000/- to Sh .Asim Gera for purchase of a Guest House for Rs.3.25 crores, for which he paid Rs.30,00,000/- on 02.05.14 and Rs.25,00,000/- each on 06.05.14 and 07.05.14, vide separately executed receipts. Sh.Asim Gera has stated that accused has misused the blank signed papers stolen by him from his office and has made false receipts on them only to be used before this Court whereas earlier he did not mentioned about the same at all before the lower Court. During the investigation Mr.Asim Gera stated that he had/has no guest house at Noida which he intended to sell to Mr.Sambhav Khanna and he did not receive any payment from Sambhav Khanna regarding that. Regarding the payment of Rs.30,00,000/- as Bayana to Mr.Asim Gera it is submitted that Mr.Gera has already lodged complaint regarding missing of documents and threats (dated 03.06.14 and 07.06.14). These documents have been used by Sambhav Khanna.

5. It is yet to be investigated that whether any other high officers of the company Tech Mahindra were also involved with the accused or not and whether accused had shared the cheated amount also with them or not for which custodial interrogation is required.

6. I have heard the rival submissions of the parties.

7. As regards the submission pertaining to territorial jurisdiction of the Court, it is well settled that if after investigation it is revealed that Court has no jurisdiction, it can be transferred to the competent Court of jurisdiction. Whether Sections 420 and 406 IPC can go together or not, again is a matter which will be required to be seen at the stage of framing of charge. Keeping in view the seriousness of the allegations, coupled with the fact that the petitioner is taking different pleas at different foras and in order to unearth the factual position, custodial interrogation will be required besides recovery of amount it is not a fit case for grant of anticipatory bail as such, application is dismissed. The interim protection granted vide order dated 01.10.2014 and continued thereafter stands vacated.

The application stands disposed of accordingly.

(SUNITA GUPTA)
JUDGE

March 11, 2015
mb