*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 19th April, 2016

\+   **BAIL APPLN. 217/2016**

JITENDER SINGH

..... Petitioner

Through   Mr Ramesh Gupta, Sr. Adv. with Mr Ajay Mehrotra, Advocate

versus

STATE (NCT OF DELHI)   ..... Respondent

Through   Mr Hirein Sharma, Additional Public Prosecutor for the State along with Sub Inspector Akhilesh Bajpai Police Station Section VI – EOW, Vasant Kunj, New Delhi

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CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

: SUNITA GUPTA, J.

1. Vide this application under Section 439 of Cr.PC, the petitioner seeks regular bail in case FIR No. 23/2005 under Sections 406/420/174A/120B IPC registered at Police Station Vasant Kunj, New Delhi.

2. It is submitted by learned Senior Counsel for the petitioner that as per the prosecution version Mewa Singh, Hawa Singh, Jitender Singh (petitioner herein), Anish Ravish, Shamsher Singh and Dalbir Singh all registered a company in the name and style of 'Dayang Nagakawa Motors Ltd." The petitioner was working outside India. When he came back to India on 11.03.2002, he found something wrong in the working of business and as such resigned from the said company on 29.04.2002. A notice was also published in the newspaper and an affidavit was also obtained by the petitioner from the managing director of the company namely Mewa Singh who stated that the petitioner is no more responsible as regards the affairs of the company. Thereafter the FIR in question was registered against Mewa Singh. The petitioner is an NRI and was regularly visiting abroad for business purposes and since May, 2004 till November, 2013, he was not in India.

He was arrested on 19.11.2015 when he was crossing the immigration channel at IGI Airport and then he came to know that he was declared as a proclaimed offender in this case. The enquiry revealed that the petitioner was not named as an accused in the first charge-sheet. In the second charge-sheet, he was named in column number 2 and in the year 2007 in the third charge-sheet he was made an accused. Learned Senior Counsel further submits that a sum of Rs.10,50,000/- was received by the petitioner for settlement of his account with Mewa Singh which was invested by him in the company. Reliance in this regard was placed on the disclosure statement made by the petitioner wherein he stated that Rs.10,50,000/- was received by him vide pay order out of Rs.13,50,000/- invested by him in the company at the time of resignation. It is further submitted that although disclosure statement under Section 25 of the Evidence Act is normally not admissible in evidence being made to a police officer, however, by placing reliance on ***Re: Mottal Thevar***, AIR 1952 Mad. 586, it was submitted that since this disclosure statement is relied upon by the prosecution as such the same can be read in favour of the accused/petitioner. It is further submitted that the petitioner is in custody since November, 2015; the co-accused Mewa Singh who was arrested on 13.05.2005 was released on bail on 16.11.2005. The copy of the said order has been placed on record. As such it is submitted that the petitioner be also released on bail. He is ready to abide by any condition imposed upon him.

3. The bail application is opposed by learned Additional Public Prosecutor for the State on the ground that as per the complaint Mewa Singh approached the complainant sometime in February, 2002 and represented that he had launched a company under the name and style of 'Dayang Nagakawa Motors Ltd." . He also represented that he would appoint distributors for Chinese motorcycles throughout the country and that the complainant can be appointed distributor for Hissar, Haryana. Believing the representation made by him to be correct, the complainant deposited a sum of Rs.11.5 lacs during the period 18.04.2002 to 25.05.2002. He also hired a showroom and got it furnished. However, neither any motorcycles were delivered nor the amount was returned. During the course of investigation,

complaints from other victims were also received which shows a total sum of Rs.79,07,500/- to be paid to various complainants. The investigation further revealed that the petitioner was one of the directors in the alleged company since its inception. He was also a signatory of the account of the company and actively participated in the company's affairs. The money was transferred to the account of the petitioner – Jitender Singh from the account being maintained in the name of Anish Ravish. Despite the efforts, the petitioner could not be arrested as such he was declared a proclaimed offender. He was arrested on 19.11.2015. On interrogation, he revealed that he was one of the directors in the alleged company. However, he resigned from the company just after six months and got an amount of Rs.10 lacs from the company.

4. The petitioner has placed on record the documents for showing that he resigned from the company with effect from 29.04.2002. A public notice was also got issued in this regard. The affidavit of managing director Mewa Singh has also been filed to show that the resignation of the petitioner as well as Anish Ravish has been accepted and all the statutory liabilities will be his.

5. During the course of arguments, the Investigating Officer of the case who was present in person did not dispute that the amount which was transferred in the account of the petitioner was Rs.10,50,000/- which according to the petitioner is a part amount of Rs.13,50,000/- which was initially invested by him in the business. It is also his case that in the year 2004, he had gone to England and returned only in the year 2013. He came to know about the proceedings only in the year 2015 when he was arrested from the airport. The main accused Mewa Singh, who was arrested on 13.05.2005 was released on bail within six months.

6. Keeping in view the totality of the case, it is ordered that the petitioner be released on bail:

(i) On his furnishing personal bond in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of Trial Court.

(ii) He is directed to surrender his passport with the Trial Court.

(iii) He is directed not to leave the country without prior permission of the Trial Court.

(iv) He is also directed to furnish his address and contact number to the Investigating Officer of the case as well as to the Trial Court.

(v) He is further directed not to coerce or threaten the complainant or any prosecution witness.

The bail application stands disposed of accordingly.

A copy of this order be given *dasti* under the signatures of the Court Master to counsel for the petitioner.

(SUNITA GUPTA)
JUDGE

APRIL 19, 2016/*rd*