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

+ **BAIL APPLN. 595/2016**

VIJAY KUMAR YADAV

..... Petitioner

Through: Mr.Arvind Nayar, Mr.Shailesh
Kumar, Mr.Subhanshu Singh and
Mr.Suman Malhotra, Advocates.

versus

STATE (GOVT OF NCT)

..... Respondent

Through: Mr.Sudershan Joon, APP for the State
with SI Imtiaz Alam, PS Shahbad
Dairy.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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11.05.2016

1. The petitioner is seeking anticipatory bail in case FIR No.96/2016 under Section 420/34 IPC, PS Shahbad Dairy, Delhi which was registered on the basis of complaint made by Mohd. Badiul Akhtar.
2. Mr.Arvind Nayar, Advocate for the petitioner has submitted that on 18.03.2016 the petitioner was directed to join the investigation as and when required by the investigating agency. It was also directed that no coercive steps be taken against the petitioner till the next date of hearing, which was 29.03.2016.
3. Learned counsel for the petitioner has placed on record the dates on which the petitioner has joined the investigation in this case after interim

relief was granted by this Court. The details given by the petitioner are as under:

‘ Joined investigation on :

22.03.2016

24.03.2016

25.03.2016

26.03.2016

27.03.2016

28.03.2016 – After waiting long time at PS, IO not met and stated that came when called you.

05.04.2016 – IO called him through SMS.

07.04.2016 Joined investigation and one time he met

08.04.2016 - with IO near Netaji Subhash

09.04.2016 Place Metro Station

26.04.2016 - IO called him through SMS.

(Accused not able to appear before IO for Investigation due to ill health and telephonically tell about the problem and then IO said that he will call further for investigation.)

4. Mr.Sudershan Joon, learned APP for the State has strongly opposed the prayer of the petitioner for extending the interim protection granted to the petitioner on the ground that the petitioner has failed to join the investigation despite messages being sent to him. The Investigating Officer has also placed on record the status report mentioning therein that he sent SMS to the petitioner on 05.04.2016 directing him to join the investigation but the petitioner did not join the investigation and also did not accompany the police team to Katihar, Bihar for verification of documents. It is further mentioned in the status report that after verification of the documents from

Katihar, Bihar on 12.04.2016, the petitioner was again informed on 26.04.2016 through SMS to join the investigation but he did not turn up to join the investigation.

5. When the above facts were brought to the notice of this Court, learned counsel for the petitioner was questioned as to whether the petitioner was present in the Court, to which he replied in negative stating that he is resident of Indore and will appear in the Court on the next date of hearing. Noticing the conduct of the petitioner that despite the protection being granted to him, he was not cooperating with the investigating agency and has also failed to appear on two dates when he was sent the SMS on his phone to join the investigation, it is not a fit case for extending the interim protection further. Let the application seeking anticipatory bail be heard on merits.

6. I have heard Mr.Arvind Nayar, Advocate for the petitioner and Mr.Sudershan Joon, learned APP for the State.

7. Learned counsel for the petitioner has submitted that so far as the petitioner is concerned, he is not the main accused. In fact, the FIR was initially registered against Pawan Kumar Singh who was the main accused to whom the money was given to seek admission in Katihar Medical College, Bihar. The complainant has already entered into a settlement with the main accused and copy of the settlement has been placed on record (at pages 39 to 41). Under the said settlement, the complainant has received ₹20 lacs and stated that no amount is due towards the first party i.e. Pawan Kumar Singh and that he did not want to prosecute Pawan Kumar Singh in Case FIR No.96/2016 under Section 420/34 IPC. It has been submitted that if the main accused has paid the entire amount to the complainant and the

complainant does not want to prosecute the main accused, then how the petitioner whose role is limited to the extent that pay order/certain documents were allegedly given to him to seek admission in Katihar Medical College, Bihar could be made an accused in this case.

8. In the FIR No. the role attributed to the present petitioner Vijay Kumar Yadav starts after the money has been allegedly paid to the main accused Pawan Kumar Singh on his assurance for admission of nephew of the complainant in Katihar Medical College for MBBS Course. As per the complaint, main accused Pawan Kumar Singh was Director of Meta Career & Education Service Pvt. Ltd. who assured the complainant about admission of his nephew in MBBS Course. However, entrance test result did not show name of nephew of the complainant as a successful candidate. Hence the complainant contacted Pawan Kumar Singh to return the money who assured that he will manage confirmed admission for his nephew and asked to give another demand draft of ₹8,50,000/- prepared in favour of Katihar Medical College and directed them to reach Novelty Hotel, Patna to meet admission Incharge and demand draft was to be given to him and that complainant need not go to Katihar.

9. The complaint defines the role of the petitioner as under:-

'As instructed by him we made a DD of ₹8,50,000/- DD No.726202, in favour of Katihar Medical College, Katihar, Bihar dated 31/07/2015 from SBI and reach novelty hotel where we meet Vijay Kumar Yadav (phone No.09310681113 and 0975561113) who made us talk to Pawan Kumar on phone and as instructed by Pawan Kumar we gave the DD No.726202 to Vijay Kumar Yadav and Vijay Kumar assured us that we will get admission letter. After that Pawan Kumar by courier and mail sent us many letters and asked us that on 17.09.15 with candidate Navin we will reach Katihar Medical

College where he will get admission. As asked by Pawan Singh we reach Katihar Medical College and showed letters sent by Pawan Singh to college officers but after checking the letters the offices said that all the papers are forged and there is no fees deposited with the name of Naveen Kumar and whatever documents we are showing are forged. That Vijay Kumar Yadav, Pawan Kumar Singh of Meta Career Education Pvt.Ltd. has no connection with the college.'

10. From the portion of the complaint extracted above, it can be gathered that the demand draft was allegedly given to the petitioner Vijay Kumar Yadav at Patna for admission of Nveen Kumar - nephew of the complainant in Katihar Medical College.

11. The possibility of a racket being run by the main accused Pawan Kumar Singh who is alleged to be Director of Meta Career Education Service Pvt. Ltd. alongwith other persons cannot be ruled out. The matter needs detailed investigation to ascertain and identify the persons involved in such type of activities. It is also necessary to note here that the documents sent to the complainant for purpose of admission in Katihar Medical College were found to be forged when the complainant alongwith his nephew Naveen reached the said college. They were also informed that no fee has been deposited in the name of Naveen Kumar and whatever documents they were showing were fake.

12. It cannot be an isolated case. The persons involved in preparing forged documents need to be questioned for which custodial interrogation may be required.

13. The petitioner is seeking anticipatory bail in a case where to gain easy money, such type of rackets are being run.

14. In the case of *Siddharam Satlingappa Mhetre vs. State of Maharashtra & Ors. AIR 2011 SC 312*, the Apex Court had laid down the following factors and parameters to be considered while considering the application for grant of anticipatory bail :

- “i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
- iii. The possibility of the applicant to flee from justice;*
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.*
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.*
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.*
- vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of Sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;*
- viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*
- ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
- x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”*

15. The case of the petitioner is not covered by any of the principles referred to above.

16. Legal position is well settled that anticipatory bail can be granted only in exceptional circumstances where the Court is prima facie of the view that applicant has been falsely enroped in the crime and would not misuse his liberty.

17. In view of the nature of the accusation against the petitioner, I am not inclined to grant him anticipatory bail. The Application is dismissed.

18. The observations made above are only for the purpose of deciding the bail application and shall not be considered as an expression on merits.

PRATIBHA RANI, J.

MAY 11, 2016

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