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

***Judgment delivered on : May 23, 2016***

\+ BAIL APPLN. 711/2016

PIVI FACEO ..... Petitioner

Through: Mr.Girish K. Sharma, Adv. with Ms.Sushma Sharma, Adv.

versus

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

Through: Mr.Rajat Katyal, Additional Public Prosecutor for the State.

**CORAM:**
**HON'BLE MR. JUSTICE P.S.TEJI**

**JUDGMENT**

**P.S.TEJI, J.**

1. By this petition filed under Section 439 of Cr. P.C., the petitioner seeks bail in a case registered as FIR No. 109/2014 under Section 420/489-A/489C/489D/34 of Indian Penal Code and Section 14 of the Foreigners Act, at Police Station Chanakya Puri, Delhi.

2. The brief facts of the case as per the prosecution are that in January 2014, the complainant/PW2 namely Sh.Manjeet Singh Chadda's friend bought a super bike for Rs. 12,00,000/. He also got interested into super bike and was looking for the some cheaper option. He searched Internet website for old saleable items i.e Olx.com. On the website, bike model 2014 of make Suzuki Hayabusa was listed for Rs. 3.5 lacs. However, its market value was about Rs.

15,00,000/-. He got in touch with one Anil Patil who claimed to resident of Mumbai. He insisted that the amount be paid in advance. Complainant deposited the amount of Rs. 3.5 lacs in an account number given by said Anil Patil. Thereafter, Anil Patil disappeared from the scene. Later on, this Anil Patil gave mobile number of the complainant to one James who came into picture on 01.03.2014. As per him, he promised the delivery of the bike subject to the condition that the complainant deposit Rs. 30,000/- which was later deposited. He also promised to make physical contact with the complainant on the pretext of showing him super cars/bikes. However, at the time of contact, he sent one Mathew to show super bike/cars. He asked him as to whether complainant is interested in conversion of " Black-notes of Dollars" into the real USDs. He also represented himself as an employee of British Commission in Delhi. Complainant was later on introduced to one Kwame. All these three persons assured the complainant that they have some money to invest. Since, complainant had already invested around Rs. 3.8 lacs, so he was allured to earn some money through business. They allured the complainant to depart Rs. 27,00,000/- on the pretext of cleaning the black dollars. On one day, one person namely Khalifa came with instrument/box purportedly by which black dollar were converted into USDs but left and leaving the box with complainant. Complainant found the box containing fake notes. Complainant was called by Kwame and Mathew for latest update. Till then, it was not known to both Kwame and Mathew that Khalifa had left, so they agreed to meet the complainant at

Netherlands Embassy, Chankyapuri. Complainant called them to CCD Coffee shop in front of Taj Hotel on the pretext that tyre of his car got punctured. Khalifa approached the victim. Complainant tried to apprehend him but he ran in a car comprising other three persons and the Complainant chased them. One PCR also got involved in the chase and four accused persons in the car were apprehended. Their identities were established as one Mathew Bobsy, Tibidje Yves @ Khalifa, Timothee Moleka and Coulibaly Ladji @ Auattara Djebo Lazar. The accused person especially Mathew Bobsy had told that he knew a person at Mumbai. Complainant along with police officials went to Mumbai at the residence of one Tolylope Akinkunmi Mekinde @ Mochu @ Simon. However, this person was not found at the said address and later on one other person namely Hussain was also searched for. In the meantime, the complainant informed the police officials that still some persons wants to sell " Solution" ( chemical for alleged conversion of black-notes to USDs). The police officials asked the complainant to get in touch with those persons. On the telephonic conversation, two people from African origin met the complainant at Hyatt Hotel and said that Rs. 47,000/- is the registration fees so that black-dollars can be converted to USDs in a lab. Both these persons were apprehended by the police officials at Hyatt Hotel. They were identified as Pivi Faceo & Onyebuchi Eni. From Pivi Faceo and 05 mobile phones including SIM cards, 58 fake currency notes of denomination of 1000 INR having same serial no. 2BD465765. From Onyebuchi Eni, 65 currency notes of denomination of 1000 INR each having same serial no. 2DM047438 were procured. Both the persons were apprehended. Investigation was completed and present charge-sheet was filed. Accused Pivi Faceo was charged with as a part of conspiracy in which the complainant was duped of Rs. 27 lacs for getting converted black-dollars to USDs. He was separately charged with for having in possession of 58 fake currency notes.

3. Mr. Girish K. Sharma, counsel for the petitioner contended that the petitioner has nothing to do with the commission of the alleged offence and he has been falsely implicated in the case and he is in custody for the last about two years, i.e., since 27.05.2014. It is further contended that the charge sheet in the present case has been filed and the case is at the stage of prosecution evidence.

4. Learned counsel for the petitioner further contended that even the perusal of charge sheet would reveal that the prosecution has failed to link the petitioner with the co-accused persons although as per prosecution story mobile phones were recovered from the petitioner, but there is no record of any mobile phone conversation, amongst the petitioner, complainant and the co-accused persons at any point of time. It is further contended that for the purpose of criminal conspiracy, prior meeting of mind is the first ingredient, however, in the absence of any evidence that the petitioner had earlier talked with the complainant or co-accused persons, it cannot be said that there was any criminal conspiracy.

5. It is further contended that the other four accused persons were

arrested from Delhi and the petitioner was arrested thereafter from Mumbai. Learned counsel for the petitioner has submitted that even the petitioner has not been made by the complainant in the FIR and nor there is any allegation against the petitioner. It is further stated that even after arrest of four co-accused persons from Delhi, the complainant continued to receive calls from one Mr. Patil from Mumbai, which goes to show that there was no connectivity between Mr. Patil, co-accused persons and the petitioner.

6. It is further urged that even for the sake of argument the alleged recovery of counterfeited currency is believed, even then a case under Section 489C is made out against the petitioner and there is no allegation of using the said currency or preparing the same by the petitioner. It is further contended that the petitioner came to Indian on a genuine passport and at the time of his arrest he was having genuine passport and valid visa, therefore there is no charge against the petitioner for offence under Section 14 of the Foreigners Act. It is further contended that even the material witness – PW-2 (complainant herein) has not supported the prosecution case.

7. It is further contended that the prosecution has cited 16 prosecution witnesses and till date only two witnesses have been examined, therefore the prosecution will take sufficient time in concluding the matter and no fruitful purpose will be served by keeping the petitioner behind bars for an indefinite period. In such a situation, it is urged that the petitioner be granted bail in the present

case.

8. Mr. Rajat Katyal, Additional Public Prosecutor appearing on behalf of the State contended that the petitioner has disclosed that he was part of fake currency racket headed by Kwame, James and Patil. He did not meet with Kwame and James but knows Patil by face. They all keep in touch with mobile phones. Petitioner also disclosed that he used to help in alluring the clients and he has admitted that he made fake dollars and Indian rupees. Moreover, co-accused Anil Patil is still absconding and yet to be arrested. Petitioner was used to meet with Anil Patil and release of petitioner will affect the arrest of accused Anil Patil. In addition, the petitioner is a citizen of Guiana, and does not have his permanent address in India. In case he is released on bail, he may indulge with similar racket to commit the similar heinous crime which may affect the economy of the country. There is also recover effected from the petitioner. In such a scenario, the petitioner ought not be granted bail in this case.

9. Considering the aforesaid facts and circumstances of the present case and the fact that the trial is at the evidence stage and in the considered opinion of this Court, it would not be just and fair to appreciate the evidence recorded before the Trial Court and adjudicate upon them, at the stage of considering the application for bail. Therefore, while perusing the charge sheet, and considering the gravity of offence, this Court is not inclined to grant bail to the petitioner at this stage.

10. Resultantly, in the considered opinion of this court, the facts emerging from the record culminates into dismissal of the present bail application. Accordingly, the present bail application filed by the petitioner is dismissed at this stage.

11. Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

12. With aforesaid direction, the present bail application, filed by the petitioner stand disposed of.

**(P.S.TEJI)**
**JUDGE**

**MAY 23, 2016**
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