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

\+ BAIL APPLN. 852/2016

NASEEM AHMED ..... Petitioner

Through: Mr.Shahid Azad & Mr.Anubhav Mehrotra, Advocates

versus

STATE ..... Respondent

Through: Ms.Alpana Pandey, APP for the State with SI Rakesh Kumar PS Saket

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

O R D E R

% **27.04.2016**

CRL.M.A.6784/2016

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

BAIL APPLN. 852/2016

1. By way of this application, the petitioner is seeking anticipatory bail in case FIR No.1076/2015 registered under Section 420 IPC at PS Saket.

2. Notice. Ms.Alpana Pandey, APP for the State accepts notice of this application and seeks time to file status report.

3. Let the same be filed before the next date.

4. At this stage, learned counsel for the petitioner submits that either interim protection may be provided to the petitioner till the next date of hearing or he may be heard on merits.

5. In this case status report is yet to be filed. Finding it to be not a case wherein interim protection should be provided to the petitioner till status report is filed, learned counsel for the petitioner is at liberty to make his submissions on merits.

6. Heard.

7. Mr. Shahid Azad, learned counsel for the petitioner has submitted that a bare perusal of the FIR No. 1076/2015 PS Saket reveals that petitioner is neither the beneficiary of the account opened with the HDFC Bank, M-Block Branch, Saket nor any forgery has been committed by him. The account opening form bears the photographs of the complainant as well as his signature and if that is so then how the petitioner can be blamed by the complainant for the cheating if any.

8. After referring to the contents of the FIR No. 1076/2015 PS Saket learned counsel for the petitioner has submitted that earlier petitioner had been provided protection and he has joined the investigation.

9. Referring to the antecedents of the complainant Pawan Tiwari, learned counsel for the petitioner has referred to the FIR No. 394/2010 PS Sangam Vihar and submitted that it was complainant who had been cheating the innocent persons in the manner referred to in the above FIR.

10. Mr. Shahid Azad, learned counsel for the petitioner has further submitted that when the petitioner has neither committed any offence of cheating nor opened the bank account with forged signature of the complainant and the account opening form has the photograph of the complainant he may be enlarged on anticipatory bail.

11. In the anticipatory bail application the petitioner has mentioned the details of the FIR in which he has been ordered to be released on

anticipatory bail. The details of those FIR are as under:-

(i) FIR No. 1076/2015 under Section 420 IPC registered at PS Saket.

(ii) FIR No.160/2015 under Section 387 IPC registered at PS Barakhamba Road

(iii) FIR No.1119/2015 under Section 387 IPC registered at PS Vasant Kunj North.

12. The orders passed in above cases have also been annexed by the petitioner along with this application.

13. In FIR No.1076/2015 under Section 420 IPC, wherein petitioner is seeking anticipatory bail, has been registered at the instance of Pawan Tiwari. It was reported by him that on 23rd July, 2015 at about 3 p.m. he received a letter from HDFC Bank though he was not having any account in that bank. He contacted the Manager, HDFC Bank, M-Block, Saket. He was informed about opening of one account in the name of M/s Pawan Enterprises in that bank and another account to be opened in the name of Scoop India Motors. The Manager was informed that he had not applied for opening of bank account. The Manager summoned Nikhil Allahabadi, the bank employee, who informed the Manager that the papers for opening the account had been given by Devendra Nath Pathak and Nadeem/Naseem. They also handed over two cheques for a sum of ₹ 12,000/- each drawn on State Bank of Bikaner & Jaipur towards the amount initially required to be deposited for opening the account. Thereafter he reported the matter to the police informing that the above persons have opened the account in his name and he was not aware about the details of other account, if any opened in any other bank and prayed for legal action.

14. The petitioner is seeking anticipatory bail mainly on the ground that

neither he has forged the signature on the account opening form nor the names and photographs of Pawan Tiwari.

15. The FIR No. 394/2010 PS Sangam Vihar u/s 420/406 IPC was lodged against Pawan Tiwari, the complainant of this case. In the FIR, it was mentioned about a scheme being run by the Pawan Tiwari along with his brother-in-law, who is a clerk in the Indian Army. The scheme was named as 'Annapurna' whereunder people were issued cards of four different colour under which they were extended some benefits and the scheme was projected as being run by the Government.

16. So far as the petitioner, Naseem Ahmed is concerned, in para No.7 & 9 of the application he has stated as under:-

> *"7. That the learned ASJ has further erroneously not considered that various fake, forged and fabricated documents in different* ***names has been used by the complainant illegally to cheat the public and those documents when were found by the applicant during the course of his employment and enquired upon by the applicant from the complainant antagonized the complainant who became furious and in connivance the police officials lodged the present FIR*** *entirely on false allegations. The applicant further states that against complainant Pawan Tiwari criminal proceedings under FIR No.394/2010, dated 02.12.2010, u/s 420/406 IPC have been long initiated for offences u/s 420/406 IPC. Copy of the documents like Pan Card, ID proof of the complainant & FIR No.394/2010 are enclosed as Annexure-3.*
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> *9. That the applicant has been falsely implicated in the present case as well as in four other cases with the connivance of the police and the applicant has nothing to do with the commission of the said offences however has been granted protection in said FIR's vide orders dated 11.02.2016, 25.02.2016 & 26.02.2016. Copies of the orders dated 11.02.2016, 25.02.2016 & 26.02.2016 on the bail applications are annexed as Annexure -4."*

17. In para no.7 extracted above the petitioner claims himself to be the employee of Pawan Tiwari but without specifying any detail as to the duration of his employment, nature of the job performed and other necessary details. Thus, role of the petitioner as employee of the complainant in the alleged offence of cheating need to be investigated.

18. The petitioner has placed on record the copy of the bail orders in other cases wherein he has been granted protection or released on anticipatory bail. However, copies of the FIRs of those cases are not placed on record. It can be inferred that he is alleged to be involved in number of cases which have been registered within a short span as referred to in FIR No.1076/2015 u/s 420 IPC PS Saket; FIR No. 160/2015 u/s 387 IPC PS Barakhamba Road and FIR No. 1119/2015 u/s 387 IPC PS Vasant Kunj North.

19. State has placed on record copy of the statement of Nikhil Allahabadi to whom the documents were handed over for opening the bank account allegedly by the petitioner.

20. In the case reported as ***Adri Dharan Das Vs. State of West Bengal*** 2005 III AD (SC) 73, the Apex Court has laid down the guidelines for release on anticipatory bail and in para 19 held as under :-

> *"19. Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his dis-appearance to maintain law and order in the locality. For these or other reasons, arrest may become inevitable part of the process of investigation. The legality of the proposed arrest*

cannot be gone into in an application under Section 438 of the Code. The role of the investigator is well-defined and the jurisdictional scope of interference by the Court in the process of investigation is limited. The court ordinarily will not interfere with the investigation of a crime or with the arrest of accused in a cognizable offence. An interim order restraining arrest, if passed while dealing with an application under Section 438 of the Code will amount to interfere in the investigation, which cannot, at any rate, be done under Section 438 of the Code."

21. Taking into consideration that the involvement of the petitioner is not limited to one case, custodial interrogation may be required to ascertain the magnitude of offence and modus operandi by the petitioner and the complainant for allegedly duping the innocent persons, I do not find it to be a fit case to enlarge the petitioner on anticipatory bail.

22. The application is dismissed.

PRATIBHA RANI, J.

APRIL 27, 2016
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