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

Date of hearing and Order: March 14, 2017

\+ BAIL APPLN. 450/2017

KAMAL AHMED KHAN ..... Petitioner

Through: Ms. Shantha Devi Raman, Mr.Arbaaz Hussain, Advocate

versus

STATE OF NCT OF DELHI ..... Respondent

Through: Mr. M.S. Oberoi, Additional Public Prosecutor for the State with Inspector Sushil Kumar, Sub-Inspector Janak Singh, Police Station New Friends Colony, Delhi

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

O R D E R

P.S.TEJI, J. (Oral)

Crl. M.A. No.4236/2017 (Exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

Bail Appln. No.450/2017

1. By this petition filed under Section 439 read with Section 482 of Cr. P.C., the petitioner is seeking bail in a case registered vide FIR No.322/2016 under Section 420/34 of IPC, at Police Station New Friends Colony, Delhi.

2. The facts as enumerated in the charge-sheet are that on 06.09.2016 a complaint was lodged by Shri Dhirender Kumar Yadav

and others, stating therein that they met at the shop of one Sayyed Kumail Abbas with Sarfaraz Khan owner of Delhi's Firm, Placement & Hospitality Services at New Friends colony. According to the complainant, this firm works for providing placement abroad. They showed their willingness to work in abroad and talked with the petitioner for work visa for Malaysia and Dubai, for which he demanded Rs.1 lakh per member for Malaysia and Rs.52,000/- per member for Dubai. 16 persons gave Rs.1 lakh each and eight persons gave 52,000/- each, thereby totaling a sum of Rs.20,16,000/- which was given to Kamal Khan and his firm to get work visa for Malaysia and Dubai. The complainant further alleged that the cash amount was deposited in different accounts, out of which Rs.11,66,000/- were deposited in the account of the petitioner being A/c No.32107491489 and 30274896872. After receiving the payment the petitioner alongwith his co-accused sent them on tourist visa. When they complained to the petitioner he showed his willingness to return the money, which has not been returned to them as yet. Accordingly on the basis of investigation and inquiry conducted on the complaint an offence under Section 420/34 was made out. During investigation accused Ahmed Khan and Sarfaraz admitted to their crime.

3. The petitioner applied for bail before the learned Additional Sessions Judge who vide order dated 21.02.2017 rejected the bail application considering the facts and nature of allegations leveled against the petitioner and gravity of offence allegedly committed by the accused. Now the petitioner has applied the instant application for

seeking bail in the present case.

4. Learned counsel for the petitioner contended that the petitioner is in custody since 06.09.2016; charge sheet in the case has been filed on 02.11.2016 and the petitioner had never promised to the complainants or any of the candidates to provide any employment in Malaysia or in Dubai or to provide employment visas for them. It is further contended that the petitioner never interacted with the candidates directly but was addressing Syed Kumail Abbas. In this support learned counsel for the petitioner relied on the various emails exchanged between him and Syed Abbas. It is further contended that there is no specific allegation in the FIR stating that any single penny has been paid by the complainants to the petitioner directly. Further there is no mention of the fact as to who had deposited the alleged amount and in whose account, which is so clarified by the Investigating Officer in the charge sheet. Lastly it is contended that the petitioner's medical condition is deteriorating in jail as he is suffering with continuous chest pain and breathless and he was also admitted in jail hospital for 4-5 days.

5. It is the further submission of the petitioner that the complainant Nos. 1 to 3 are running the travel agency in the name of Al-Asra Manpower consultancy, Siwan, Bihar and in fact they collected the money from the candidates and they were well aware that tourist visa is being given to them and is valid for only three months, but they did not tell this to any of the candidates in order to take benefit out of the

money given by them. It is further contended that the petitioner is an innocent bonafide person who was engaged in facilitating the foreign trips of different customers by helping them in getting tourist visas and the air tickets and has been falsely implicated in the present case and even during police custody, no incriminating evidence has been recovered by the Investigating Officer. Therefore, the petitioner ought to be released on bail.

6. On the contrary, Mr. M.S. Oberoi, learned Additional Public Prosecutor for the State contended that the petitioner has played an active role of booking tickets for the complainants and committed cheating by taking Rs.1 lakh each from 16 persons and Rs.52,000/- from eight persons each, totaling a sum of Rs.20,16,000/-, therefore, considering the seriousness of the offence, the bail application of the petitioner be rejected.

7. I have gone through the contentions raised by the petitioner in the present petition and heard the submissions of learned Additional Public Prosecutor for the State and also gone through the contents of FIR and the charge sheet.

8. During the course of hearing, this court specifically asked the counsel for the petitioner for any specific "Agreement" entered into between him and the other agents to segregate and specify the role of the petitioner from the role of other co-accused persons or any other document to support the contention of learned counsel for the petitioner that the petitioner was merely booking the tickets of the

complainants. The counsel for the petitioner failed to bring forth any document with regard to the above except a lease agreement dated 16.03.2016 being the lessee in respect of property No.2/16, First Floor, Area 650 sq.ft. approx. Sarai Jullena, New Friends Colony, New Delhi - 110025. This court observes that the said lease agreement is only with regard to the address of the firm Globe Placement and Hospitality Services which nowhere establishes the agreement/ or term with respect to booking of tickets for the complainants.

9. This court also perused the order passed by learned Additional Sessions Judge whereby the bail application filed by the petitioner has been rejected. This court also perused the order dated 21.02.2017 wherein the learned Additional Sessions Judge specifically asked the counsel for the accused as to whether the accused was ready to return the amount to the victims, to which counsel submitted that the accused was unable to return the money. In such a situation, this court observes that the petitioner is involved in the present case, wherein 24 persons from different parts of the country have been cheated and most of the victims are from poor families.

10. In the view of the aforesaid facts and circumstances of the present case and the fact that the evidence is yet to be recorded, in the considered opinion of the court, the facts emerging from the record culminate into the dismissal of the present bail application. Accordingly, the present bail application filed by the petitioner is dismissed.

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 stands disposed of.

(P.S.TEJI)
JUDGE

MARCH 14, 2017
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