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

\+ BAIL APPLN. 769/2017

RAKESH MALHOTRA ..... Petitioner

Through: Mr. Manoj Taneja, Advocate with Mr. Dhruva Bhagat, Advocate

versus

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

Through: Mr. Tarang Srivastava, APP for the State with SI Kamal Kumar Yadav, PS OIA, New Delhi.
Mr. Rajiv Ranjan Dwivedi, Advocate for the complainant.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

<u>O R D E R</u>

% **28.04.2017**

<u>Crl.M.A. 6967/2017 (exemption)</u>

Exemption allowed subject to all just exceptions.

Application stands disposed of.

<u>BAIL APPLN. 769/2017</u>

By the application at hand, the petitioner seeks anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 (Cr.P.C.) in First Information Report (FIR) No.728/2015 of Police Station Okhla Industrial Area wherein offences under Section 420/120-B of the Indian Penal Code, 1860 (IPC) continue to be under investigation after first report under Section 173 Cr.P.C. (charge sheet) has been submitted on 08.04.2016 against one Shashi Shankar Sharma.

The investigation against the applicant has remained pending, *inter alia,* against the backdrop of he having first moved this court by Bail Application No.296/2016 wherein interim protection against arrest was granted by order dated 20.02.2016, the said application having eventually been withdrawn and dismissed accordingly by order dated 21.02.2017. Thereafter, another similar application was moved before the court of Sessions, the same having been dismissed by order dated 13.04.2017 where after this fresh application for similar relief has been moved again under Section 438 Cr.P.C.

Status report has been submitted which is taken on record. The learned counsel for the applicant and learned Additional Public Prosecutor for the State have been heard at length. The case diary produced by the investigating officer, who also appeared at the hearing, has been perused.

The FIR of the case in hand was registered on 18.09.2015 on the basis of a complaint lodged on behalf of MAGMA Fincorp Limited (hereinafter referred to as "the first informant"). During the course of investigation conducted so far it has come to light that the allegations of cheating relate to taking of a loan for purchase of a car make Audi bearing registration no.HR-26-BB-0006, the application having been moved for and on behalf of the applicant under his signatures, through the above mentioned Shashi Shankar Sharma (co-accused), it resulting in loan amount of Rs.33,99,618/- having been granted, the money having been received by the said Shashi Shankar Sharma from whose account an amount of Rs.15 lacs was transferred to the account of the applicant, evidence also indicating that another amount of Rs.5 lac was given by said Shashi Shankar Sharma to the applicant in cash.

The evidence collected during investigation has also revealed that earlier a similar application had been made, through the said person Shashi

Shankar Sharma, again for car loan for purchase of the same very car, the application having been moved in the name and under the signature of Jony Malhotra, wife of the applicant herein. HDFC Bank on the basis of the said application had advanced a loan of Rs.34,13,166/- on 21.04.2014.

It is further revealed by the evidence gathered that the car bearing the said registration number of model 2012 was actually owned by one Om Prakash son of Amar Singh, who had sold it in October, 2013 to one Monty of Vikas Puri against consideration of Rs.46,00,000/-, the said original registered owner having retained the registration number at the time of said transaction, he having been purchased a new car on 01.12.2013 which was registered against the said registration number on 27.12.2013.

The car bearing the above said number was not purchased either against the loan taken from HDFC Bank or against the second loan taken from the first informant of the present case. The evidence thus seems to suggest that the loan was taken second time, withholding the facts of the earlier finance arranged from HDFC Bank, this time also without their being any step taken or intent shown for actually acquiring a car with the help of such finance.

While the application of the petitioner for anticipatory bail was dismissed by the court of sessions, by a subsequent order of the court of Magistrate, non-bailable warrants (NBW) has been issued against him since he did not join the investigation.

It is pointed out by the learned Additional Public Prosecutor that the applicant has been involved in a number of criminal cases in the past, two of which stand out, they including FIR No.196/2012 of Police Station Kalkaji involving offences punishable under Section 408/420/468/471/120-B IPC and the other FIR No.68/2012 of Police Station EOW, involving offences punishable under Sections 408/420/120-B/477-A IPC.

The learned counsel for the applicant submitted that case FIR No.196/2012 has since been closed, the dispute having been settled with the complainant of the said case. This, however, cannot detract from the fact that the applicant has a history of being involved in commission of offences of cheating, the other case bearing FIR No.68/2012 being still alive.

Against the above backdrop of facts, it cannot be said that the allegations against the applicant are unfounded. The prayer for grant of anticipatory bail is thus declined.

Dismissed.

R.K.GAUBA, J.

APRIL 28, 2017
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