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

+ BAIL APPLN. 1526/2017

B. YOUNUS PASHA

.....Petitioner

Through: Mr. Jatan Singh, Mr. Nagendra
Pratap Singh and Mr. Pawan
Madhukar, Advocates

Versus

STATE

....Respondent

Through: Mr. Akshai Malik, APP for the State

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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11.09.2017

1. By this petition filed under Section 438 of Code of Criminal Procedure 1973, the petitioner seeks **grant of anticipatory bail** in F.I.R No. 59/2012 under Section 420/34 of Indian Penal Code, 1860 (hereinafter referred as 'IPC') registered at Police Station Prashant Vihar, New Delhi.
2. The brief facts of the case are that the aforesaid FIR was registered by one Durha Construction Pvt. Ltd. who is in the business of construction, fabrication and erection of plants and machinery in southern states of India. One Devanand Shetty (Accused 2), who is the Managing Director of Dix Engineering Services Pvt. Ltd is also in a similar kind of a business as that of the complainant company having business transactions in Southern states of India. Accused No. 2, introduced the Complainant Company with Yunus Pasha

(Accused No.1) who is the partner/ proprietor of M/S Nishanth Earth Movers & Equipments Co. They projected in front of the complainant company that Accused No. 1 was the owner of the crane No. ALC 955, which had been purchased by the accused No. 1 from Steel Industries Ltd. of Kerela. On the basis of the said representation, the Complainant Company entered into a purchase order dated 24.1.2006 with Accused No. 1; that because the complainant company having close relations with accused No.2 and not aware about the credentials of the accused no. 1, preferred to make the payment through him to the accused No.1, the complainant company made the payments to the petitioner/accused No 1. As per the agreement, the crane was to be delivered to the complainant company by the accused no.1 within 25 days of making the advance payment. However, there was a default in delivering the said crane. Despite giving constant reminders to Accused No.1 for the delivery of crane, neither the delivery was made nor the amount was refunded.

3. The learned Counsel for the petitioner contends that he has been falsely implicated in the present case; that the accused no. 2 was already enlarged on bail since 20.02.2014; that the owner of the said crane was the Steel Authority of Kerela and the amount to be paid towards purchase order of the crane was paid to the accused no. 2 by the petitioner; that the alleged offence took place in Bangalore, therefore the FIR was required to be registered at the place where the offence had taken place; that the payment in respect of purchase order was received on 25.11.2006, however the

complaint case was filed by the respondent on 24.06.2009; that the case involved is of a civil nature and not of criminal nature and the recovery suit has already been initiated by the respondent on 14.12.2009.

4. On the converse, the learned APP for the State contends that benefit of anticipatory bail should not be accorded to the petitioner as the offence is of serious nature.
5. I have heard the learned counsel for the parties and perused the material available on record.
6. At the outset, the record reveals that an amount of Rs. 25 lakh towards advance payment was duly credited in the bank account vide cheque No. 966353 on 28th November 2006, maintained by the petitioner/ Accused No.1.
7. In view of the contention of the learned counsel for the petitioner that the present case constitutes only a breach of contract with regard to the delivery of the crane to the respondent against the payment of Rs. 25lakh and does not constitute an offence under Section 420 of IPC, it is pertinent to deal with the definition of Section 415 (Cheating) of the Indian Penal Code, which states that *“Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said*

to “cheat”. *Explanation.—A dishonest concealment of facts is a deception within the meaning of this sections.* There is clear averment in the complaint petition that it was on the representation made by the petitioner that the payment of Rs. 25 lakh was made by the respondent. The respondent’s allegation against the petitioner are that he had projected that the crane belonged to him whereas it belonged to the Steel Authority of India and Rs.25 lakh was delivered on the basis of dishonest inducement which falls within the definition of Section 415 of IPC.

8. The contention of the counsel for the petitioner that no FIR could have been registered in Delhi as contract with respect to purchase order of the crane was carried out in Bangalore stands explained as the respondent’s company’s complaint was lodged in Delhi.
9. Further, it cannot be ignored that several notices have also been sent to the petitioner through email asking him to join the investigation but he failed to join and hence, NBWs was issued against him.
10. Determining the parameters in granting anticipatory bail in cases of serious offences. The Supreme Court in ***Jai Prakash Singh v. State of Bihar and Anr.*** reported in ***(2012) 4 SCC 379*** after analyzing the entire law has observed as under:-

“19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons thereof. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the

*applicant has falsely been enroped in the crime
and would not misuse his liberty.”*

11. In view of the aforesaid settled principles, the facts and circumstances of the present case and perusing the allegations leveled against the petitioner, and considering the gravity of offence, this court is not inclined to grant anticipatory bail to the petitioner.
12. Observations made in the order shall have no impact no impact on the merits of the case.
13. Accordingly, the petition stands disposed off.

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 11, 2017

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