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

\+ BAIL APPLN. 1984/2017

ANIL SHARMA ..... Petitioner

Through: Mr.Rahul Sharma, Advocate.

versus

THE STATE OF NCT ..... Respondent

Through: Ms.Kusum Dhalla, APP for the State with SI Sumit Kataria, PS Nihal Vihar.
MR.Chandan Malik, Advocate for the complainant.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

O R D E R

% **27.09.2017**

Crl.M.A. No.16337/2017

1. Exemption allowed subject to all just exceptions.

2. Application is disposed of.

BAIL APPLN. 1984/2017

1. The petitioner has moved the instant application under Section 439 CrPC seeking bail in case FIR No.720/2016 under Sections 408/420/120-B/34 IPC, PS Nihal Vihar, Delhi.

2. Notice. Learned APP for the State accepts notice and seeks time to file the status report.

3. Mr.Rahul Sharma, learned counsel for the petitioner/applicant submits that since the petitioner/applicant is in J/C since 22nd August, 2017,

arguments on the bail application may be heard today itself.

3. Learned counsel for the petitioner wants to argue the bail application without even giving opportunity to the State to file the status report. Arguments on the bail application are being heard as requested by him.

4. Mr.Rahul Sharma, learned counsel for the petitioner has read the contents of the FIR and submitted that the petitioner has been falsely implicated in this case by the complainant, who is son of the local MLA having influence over the local SHO. He has submitted that the applicant's firm namely Shivam Enterprises was working as Distributors for M/s Lupin Ltd. (a pharmaceutical drug manufacturer company). The complainant's firm was engaged as Carrying & Forwarding Agent by M/s Lupin Ltd. The complainant's firm used to supply the products of M/s Lupin Ltd. on its directions on the basis of orders placed by the Applicant's firm. The applicant has no direct link for placing the order with the complainant's firm and the orders could only be placed through M/s Lupin Ltd. and that too through purchase order. M/s Lupin Ltd. issued the invoices directly to the applicant and the only job of the complainant's firm was to deliver the products to the applicant on the direction of M/s Lupin Ltd. Sometimes the complainant's firm also received cheques on behalf of M/s Lupin Ltd.

5. Learned counsel for the petitioner has further submitted that the criminal case filed by M/s Lupin Ltd. under Section 138 of Negotiable Instrument Act for the cheques issued by the applicant which got dishonoured, is pending trial and the summoning order passed in the complaint case has been challenged by him. This complaint has been filed to pressurize the applicant to make the payment against the aforesaid cheques which are subject matter of adjudication before the Metropolitan

Magistrate at Mumbai. The applicant has already joined the investigation and ready to co-operate. The two employees with whom the applicant has allegedly conspired, have not been arrested and they are still working with the complainant's firm. Learned counsel for the petitioner has relied upon *Md.Ibrahim & Ors. vs. State of Bihar & Anr.* in Crl.A. No.1695/2009 decided on 4th September, 2009 in support of his contentions.

6. I have considered the submissions made by learned counsel for the petitioner and carefully gone through the record.

7. The case law *Md.Ibrahim & Ors. vs. State of Bihar & Anr.* (Supra) relied upon by learned counsel for the petitioner/applicant in support of his contentions on the bail application, has no bearing for the reason that in the decision referred to by learned counsel for the petitioner charges for the offence punishable under 420/467/471/504 IPC were quashed.

8. The facts leading to the registration of FIR No.720/2016 under Section 408/420/120-B/34 IPC have been recorded by the learned ASJ in the order dated 28th August, 2017, whereby application seeking regular bail in the above noted case was dismissed, as under:-

> *'In the present case, FIR was registered U/Sec. 408/420/120-B/34 IPC on the complaint of Compainant Vivek Grover, a partner of partnership firm namely M/s. A.V. Mediways. Sec. 406 IPC has been added subsequently. As per the case of the prosecution, the M/s. A.V. Mediways was appointed as Carrying and Forwarding Agent (C&F agent) of M/s. Lupin Ltd. and as per the agreement, M/s. A.V. Mediways was to maintain the proper books of accounts, receipts, despatches and stocks of goods of M/s. Lupin Ltd. and that on 04.06.2016, the complainant came across the account of M/s. Shivam Enterprises which was a distributor firm of M/s. Lupin Ltd. and found that the said firm had not paid the outstanding amount of ₹ 1,04,88,400/- and on enquiry it was revealed that*

Anil Kumar Sharma (applicant herein), the proprietor of M/s. Shivam Enterprises, though kept on issuing cheques in the name of M/s. Llupin Ltd. but, in connivance with co-accused Kamlesh Negi, Manager Accounts of M/s. A. V. Mediways, used to delay the payment by not submitting the cheques and used to merge the invoices of previous order into new order and to carry forward the sales and outstanding to the next proceeding month so that the credit period of 14 days could be extended as per the prescribed sales terms of the M/s. Lupin Ltd. I. O. has reported that the applicant in connivance with co-accused has committed cheating of more than one crore rupees. He has further reported that various notices were served upon the applicant for joining investigation but he did not co-operate and said that all the documents relating to M/s. Lupin Ltd. were sold to scrap dealer by mistake, but during enquiry the said documents were found hidden by him in his old Maruti car which was lying in the car parking at Rani Bagh. The I.O. has further reported that the applicant had issued cheques worth more than ₹ 1 Crore to the M/s. Lupin Ltd. but there was no amount in his bank account. He has further reported that the applicant has disclosed that an amount of more than one crore was outstanding against him and therefore, he allured the co-accused Kamlesh Negi to merge the invoices of his company.'

9. The modus operandi allegedly adopted by the petitioner/applicant in connivance with two employees of the complainant's firm has already been detailed in the facts noted above.

10. It is true that the petitioner has been in custody since 22nd August, 2017. But considering the huge amount for which the complainant was allegedly cheated and the cheques issued by the petitioner/applicant for a sum of ₹1,04,88400/- in favour of M/s Lupin Ltd. have been dishonoured for which complaint case under Section 138 of Negotiable Instrument Act is pending, learned counsel for the petitioner has been asked to seek instructions as to whether the applicant is ready to deposit the alleged

cheated amount with the Registrar General of this Court. Learned counsel for the applicant has expressed reluctance submitting that the applicant has suffered loss and issue of the amount payable under the said cheques is subject matter of adjudication before the Courts at Mumbai and the summoning order has been challenged before the High Court there.

11. The Court cannot be oblivious to the fact that such offences are preceded by cool, calculated and deliberate design, with an eye on personal gains, and in fact, not all such offences come to the surface at the initial stage. If a person knows that even after cheating for a huge amount, he can come out on bail after spending a few months in jail, and thereafter, he can continue to enjoy the ill-gotten wealth, that would only encourage potential offenders in the belief that even if they have to spend a few months in jail, they can lead a lavish and comfortable life.

12. I do not find it to be a fit case to enlarge the petitioner/applicant on bail.

13. The bail application is dismissed.

PRATIBHA RANI, J.

SEPTEMBER 27, 2017

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