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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 2677/2018 & CrI. M.A. No.47237/2018

VIJAY JAIN

..... Petitioner

Through: Ms. Geeta Luthra, Senior Advocate with
Mr. U. Jain and Mr. Sudhir Kumar Sukhija,
Advocates.

Versus

STATE

..... Respondent

Through: Mr. Rajat Katyal, Additional Public
Prosecutor for State with SI Richa Sharma,
P.S. Punjabi Bagh.
Mr. Dayan Krishnan, Senior Advocate with
Mr. Jay Kumar Bhardwaj, Ms. Priya
Darshini Arora and S. Seshadri, Advocates
for Complainant.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% 15.11.2018

CrI. M.A. No.47237/2018 (for exemption)

Allowed, subject to all just exceptions.

The application stands disposed-off.

BAIL APPLN. 2677/2018

The petitioner seeks anticipatory bail. He had interim protection before the Trial Court since 28.06.2018. However, the same was withdrawn by an order dated 12.11.2018 on the ground that there was substantial material to show complicity of criminality by the petitioner. He is alleged to have taken a loan of Rs. 2 crores from the complainant and issued cheques

and promissory notes in repayment thereof. Upon presentation, the said financial instruments and promissory notes were dishonoured. It was contended by the petitioner before the Trial Court that since the complainant has initiated proceedings under section 138 of the Negotiable Instruments Act, 1881, therefore, proceedings under section 420 and other provisions of IPC are not contemplated in law. Reference has been made to the judgment of the Supreme Court in ***G. Sagar Suri & Anr. vs. State of U.P. & Ors., (2000) 2 SCC 636***. However, the complainant has relied upon the judgment of the Supreme Court in ***Sangeetaben Mahendrabhai Patel vs. State of Gujarat & Ors.*** (2012) 7 SCC 621 to contend that filing of the complaint under Section 138 NI Act is not a bar to invoke the proceedings under sections 406/420 IPC. While relying upon the aforesaid judgment of the ***Sangeetaben Mahendrabhai Patel***BI (supra), the learned Trial Court held that that the contention raised by the applicant/accused is not applicable in the eyes of law.

Ms. Luthra, the learned Senior Advocate for the petitioner submits that insofar as the petitioner has joined investigations, the interim protection ought to be continued. She relies upon the judgment of the Supreme Court in ***Mr. Arnesh Kumar vs. State of Bihar, (2014) 8 SCC 273***, in support of her contention that wherever punishment for an offence is upto 7 years and the person has joined investigations, then ordinarily, the person should not be arrested. However, the learned counsel for the State submits that the said judgment is not applicable to the facts of the present case as that stage has not yet arisen and that the principle of the aforesaid judgment will be considered by the Investigating Officer if and when the petitioner is required to be arrested.

Ms. Luthra further relies upon the judgment of this Court in ***Neera Singh vs. State (Govt. of NCT of Delhi) & Ors.***, 138 (2007) DLT 152 in support of her contention that source of the alleged money purportedly given as loan ought to be enquired into by the Court, especially in matters relating to the personal liberty under section 438 Cr.P.C.

The learned counsel for the State and the learned Senior Advocate for the complainant submit that there is a Loan Agreement dated 01.01.2017, wherein the petitioner has acknowledged receipt of Rs. 2 crores and had agreed to repay the same in terms of para 2 and in pursuance thereof eight cheques of Rs.25 lacs had been given to the complainant. Furthermore, the learned Senior Advocate for the complainant refers to para 3 of the suit filed by the petitioner, wherein he does acknowledge talk about the loan being extended by the complainant voluntarily without the petitioner even asking for it. However, the petitioner acknowledges the signing of the Agreement. The learned Senior Advocate for the complainant submits that the Agreement is the same which has been referred to hereinabove.

The allegations being serious in nature especially in view of the aforesaid Loan Agreement, the Court is not inclined to grant anticipatory bail to the petitioner. The petition is without merits and is accordingly dismissed.

NAJMI WAZIRI, J.

NOVEMBER 15, 2018

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