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

Date of Order: March 20, 2019

\+ BAIL. APPLN. 541/2019

ATUL GUPTA ..... Petitioner

Through: Mr. R.S.Cheema, Senior Advocate with Mr. Rajiv Mohan, Ms. Tarannum Cheema, Mr. M.A. Karthik, Ms. Hiralal Gupta & Ms. Smriti Suresh, Advocates

Versus

STATE ..... Respondent

Through: Mr. M.P.Singh, Additional Public Prosecutor for respondent No.1-State with SI B. Singh. Mr. Vikas Pahwa, Senior Advocate with Mr. Vineet Arora & Mr. Sumer, Advocates for Complainant.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

O R D E R

Petitioner seeks pre-arrest bail in FIR No. 72/2017, under Sections 409/420/468/471/120-B/34 IPC, registered at Economic Offences Wing (EOW), New Delhi while claiming that the case of petitioner is on better footing than the case of co-accused *Vivek Gulati*, who has been already granted regular bail by trial court vide order of 30th November, 2018.

Learned senior counsel for petitioner submits petitioner was working as Vice President (Sales & Marketing) from the year 2007 till 2016 and that it is evidence from the reply filed by respondent to the pre-arrest bail application before the court below that Initiator for approval of invoices/ bills is the Head of Department and then, it is processed through the Japanese Functional Head and then it goes to petitioner, who is the Initiation Functional Head and then, the said invoice/ bill is put up before the Finance Head i.e. the Managing Director and thereafter, the bills are paid to the concerned party i.e. MK/s Brand Serve.

It is submitted by learned senior counsel for petitioner that apart from the disclosure statement of co-accused *Vivek Gulati*, there is no material with the prosecution to show that co-accused *Vivek Gulati* had delivered the huge junk of cash to petitioner and that the so-called cash purportedly delivered to petitioner finds mentioned in the bank accounts of petitioner's family members/ relatives. Learned senior counsel for petitioner vehemently assails the charge-sheet while submitting that in the bank account of petitioner's daughter-*Arushi Gupta,* sum of ₹2,00,000/- was deposited on 27th January, 2015 and that there is no entry of 27th January, 2015 of petitioner's daughter having withdrawn ₹2,00,000/- from the said bank account. Learned senior counsel for petitioner submits that petitioner is ready to join investigation as and when directed and so, on parity basis, petitioner deserves the concession of pre-arrest bail.

On the contrary, learned Additional Public Prosecutor for respondent-State submits that custodial interrogation of petitioner is required to trace out the money trail. It is submitted that petitioner was instrumental in the pilfering of ₹8.00 crores from the complainant-company. It is pointed out that the cash withdrawal of ₹54.19 crores by petitioner has been shifted by him with the help of his family members and relatives and so, his custodial interrogation is required.

Learned senior counsel for complainant strongly opposes this application by submitting that the case of petitioner cannot be considered at par with the case of *Vivek Gulati,* who has been granted regular bail. Learned senior counsel for complainant points out that the embezzlement to the tune of ₹54.19 crores is done by petitioner and co-accused *Vivek Gulati* during interrogation has given the details of amount withdrawn by him from the bank while clarifying that the said amount was distributed to various parties at the instance of petitioner. It is also pointed out by learned senior counsel for complainant that there are e-mails and whats-app communication between petitioner and co-accused *Vivek Gulati* in this regard. So, it is submitted by learned Additional Public Prosecutor for respondent-State and senior counsel for complainant that this application deserves rejection.

Upon hearing and on perusal of FIR of this case and copy of final report, I find that petitioner cannot claim parity with co-accused *Vivek Gulati*, as the co-accused *Vivek Gulati* was the beneficiary of pilferage of funds of M/s Suzuki Motor Cycle India Private Limited. The *modus operandi* adopted by petitioner for commission of offence in question certainly establishes petitioner's complicity in the commission of offence in question, as there is material on record to indicate that petitioner had been asking for various favours including money and embezzlement attributable to petitioner is said to be more than ₹10 crores and so, for effective investigation, petitioner's custodial interrogation is required.

In the facts and circumstances of this case, I do not find it to be fit case for grant of pre-arrest bail to petitioner. This application is accordingly dismissed, while not commenting on the merits of the case.

(SUNIL GAUR)
JUDGE

MARCH 20, 2019
r