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

\+ **BAIL APPLN. 104/2020**

MUKESH SHARMA

..... Petitioner

Through: Ms. Saahila Lamba and Mr. Tarun Khanna, Advocates.

versus

THE STATE (GNCT OF DELHI) & ANR.

..... Respondents

Through: Ms. Rajni Gupta, APP for the State with SI Sanjeev Kumar-P.S. Neb Sarai.

Mr. Saleem Ahmad, Mr. S.K. Dawas, Ms. Charu Dalal, Mr. Ajay Pratap Singh, Mr. Amit Basoya & Mr. Mayank Dawas, Advocates for the complainant.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

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

% **11.02.2020**

1. This is an application filed under Section 438 Cr.P.C for grant of anticipatory bail to the petitioner/accused in case FIR No. 347/2017 dated 01.07.2017 under Sections 406/420/34 IPC registered at Police Station Neb Sarai.

2. According to the complainant, he came into contact with Avnish Sharma, Mukesh Sharma (present petitioner) and one Parul Chaudhary who portrayed themselves as businessman. All these persons showed their keenness in starting a new lounge and bar and persuaded the complainant to become their partner. Upon several meetings and discussions between the complainant, Avnish Sharma and Parul Chaudhary, complainant agreed to invest in their project and transferred Rs. 16 Lakh on 25/05/2016, Rs. 47 Lakh on 26.05.2016 and Rs. 20 Lakh on 05.07.2016 in different bank accounts as per the instructions of Avnish Sharma and Parul Chaudhary. It is alleged that thereafter on 19.08.2016, an agreement was executed between the complainant and alleged Avnish Sharma. The development work of lounge and cafe started and the complainant paid Rs 46 lakh on 20.09.2016, Rs. 10 lakh on 21.09.2016 and Rs. 5 Lakh on 29.12.2016 in different accounts as per the instructions of Avnish Sharma and Parul Chaudhary.

3. It is alleged that the complainant paid a sum of Rs. 1.44 Crore through bank transaction and Rs. 70 lakh through cash vide series of transactions. It is alleged that Avnish Sharma, present applicant/accused and Ms. Parul Chaudhary took the above amount in different bank accounts citing income tax issues. Thereafter, from January 2017 Avnish Sharma ceased to take the calls of the complainant and stopped responding to his messages and mails. When the complainant inspected the proposed site, he found that the work

has been stopped and no labour was working there. When he tried to contact Avnish Sharma and Parul Chaudhary their whereabouts were not known. It is alleged that the complainant then came to know that the above named 3 persons are habitual offenders and had duped a number of people and they have cheated the complainant for a sum of Rs. 2 Crore 14 Lakh.

4. During the course of the investigation, a notice U/s 41-A Cr.P.C. was issued to accused Avnish Sharma but it came to the notice of the investigating agency that accused Avnish Sharma had gone to Dubai and a request was moved whereupon Look Out Circular of accused Avmish Sharma was issued by Bureau of Immigration.

5. On 08.07.2019, a notice U/s 41-A Cr.P.C. was issued to the present petitioner to join the investigation but he did not join the investigation and moved an application for anticipatory bail and on 16.07.2019 he was directed to join the investigation. In pursuance to the orders of the Sessions court the petitioner joined the investigation alongwith his advocate wherein he stated that he is the proprietor of M/s Emco Trading Co. which is being run by him for the last 18-20 years and as regards the complainant he stated that he never met him and that his son is living separately from him since 2014-2015.

6. It is urged by the Ld. counsel for the petitioner that the petitioner has been falsely implicated in this case being the father of co-accused Avnish Sharma with whom the complainant has allegedly entered into the business dealings for opening a lounge and cafe. She further urged

that the petitioner has not been named in the FIR as he was not involved in the business dealings between the complainant and his son. She further urged that when the petitioner was called for the investigation by the police, he wrote an email to his son as to know why he was being called by the police for investigation when he had done nothing.

7. It is urged by the Ld. APP that the petitioner is hand in glove with his son co-accused Avnish Sharma. She further urged that he has not been cooperating in the investigation. She further urged that the petitioner has disclosed that he had done an NEFT of Rs. 16 Lakh on the direction of his son co-accused Avnish Sharma. She further urged that the amount of Rs 16 Lakh which was received by the petitioner in his account was a part of cheated amount and was deposited in his account under a well hatched conspiracy. She further urged that the petitioner is one of the Director of M/s Are Media International Pvt. Ltd. which was incorporated on 04.11.2015 and besides this accused Avnish Sharma and Manoj Kumar were also appointed as directors on 04.11.2015 and 18.05.2016 respectively. She further argued that as per the account statement of the complainant the money was transferred from his company for the period 25.05.2016 to 29.12.2016 and in this period accused Avnish Sharma and Manoj Kumar were also the directors of this company which shows their connivance with the petitioner. She further urged that after 10.11.2019 the petitioner has not been joining the investigation. She further urged that the petitioners

and his co-accused from the very beginning had intention to cheat the complainant which is evident from the fact that after the registration of the FIR the petitioner alongwith his co-accused Avnish Sharma and few other people had gone to the house of the complainant and handed over two cheques of Rs.75 Lakh each which got dishonoured. She further urged that the allegations are grave and serious in nature and the custodial interrogation of the petitioner is required for seeking the money trial.

8. In the instant case the money involved is more than Rs. 2 Crore. The contention of the Ld. counsel for the petitioner that the petitioner is not named in the FIR is not of much relevance as the FIR is not an encyclopedia and the role of the petitioner has only surfaced during the investigation. The investigation has revealed that a sum of Rs. 16 Lakh was transferred by the petitioner to the account of his son i.e. co-accused Avnish Sharma which the petitioner had received from the complainant Devender Singh Sethi for which he has no explanation.

9. The contention of the counsel for the petitioner that he has no role in the in the entire transaction which has been done by his son does not inspire confidence because the amount of Rs. 16 Lakh was transferred from the account of the complainant and if he was not in league with his son then there was no reason for him to receive Rs. 16 lakh in his account without raising any objection about the deposit of this huge amount of money in his account. It is also not the case of the petitioner that he is an illiterate man. The record reveals that he has

some company in his name, therefore, it is not simple for the petitioner to feign ignorance about the dealings of his son with the complainant and receipt of Rs. 16 Lakh into his account.

10. As far as the email dated 24.11.2017 is concerned by virtue of which the counsel for the petitioner wanted to show that the petitioner had no knowledge of any sort in regard to this transaction to prove his innocence, in my opinion on reading the contents of this document, this is a self serving document and it will be of no help to the petitioner.

11. One more aspect of this case, which shows the intention of the petitioner i.e. bouncing of the two cheques each of Rs. 75 Lakh which were handed over by the petitioner and his son to the complainant at his house which got bounced. As per the prosecution the petitioner is not joining the investigation. The allegations against the petitioner are grave and serious in nature. Huge amount of more than Rs. 2 Crore is involved. No amount has been recovered till date. The bail application is, therefore, dismissed.

12. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of the case.

RAJNISH BHATNAGAR, J

FEBRUARY 11, 2020
Sumant