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

%   ***Reserved on: 5th February, 2020***

Pronounced on: 12th February, 2020

+   **BAIL APPLN. 324/2020**

RISHAB KAPOOR ..... Petitioner

Through: Mr. Anjani Kumar Singh & Mr. Saroj Kumar Singh, Advocates

Versus

THE STATE (GNCT OF DELHI) ..... Respondent

Through: Mr. Raghuvinder Varma, Additional Public Prosecutor for State with SI Md. Imtiyan Alam Mr. Rakesh Beniwal, Advocate for complainant.

+   **BAIL APPLN. 315/2020**

RISHAB KAPOOR ..... Petitioner

Through: Mr. Anjani Kumar Singh & Mr. Saroj Kumar Singh, Advocates

Versus

THE STATE (GNCT OF DELHI) ..... Respondent

Through: Mr. Raghuvinder Varma, Additional Public Prosecutor for State with SI Md. Imtiyan Alam

Mr. Rakesh Beniwal, Advocate for complainant.

\+ **BAIL APPLN. 314/2020**

RISHAB KAPOOR ..... Petitioner

Through: Mr. Anjani Kumar Singh & Mr. Saroj Kumar Singh, Advocates

Versus

THE STATE (GNCT OF DELHI) ..... Respondent

Through: Mr. Raghuvinder Varma, Additional Public Prosecutor for State with SI Md. Imtiyan Alam Mr. Rakesh Beniwal, Advocate for complainant

CORAM:
HON'BLE MR. JUSTICE BRIJESH SETHI

J U D G M E N T

BRIJESH SETHI, J

1. Vide above captioned bail applications, petitioner is seeking anticipatory bail in three FIRs bearing Nos.384/2019, 385/2018 and 386/2019, all under Sections 420/406/34 IPC, registered at police station Alipur, Delhi. The FIR No. 384/20219 has been registered at the instance of Prateek Power Plant Pvt. Ltd. and FIR No. 385/2019 has been got registered on the complaint of GPN Solar Pvt. Ltd. and that FIR No. 386/2019 has been registered by Pundeep Solar Energy Private Ltd.

2. Since the grounds urged in these applications seeking anticipatory bail are similar, therefore, with the consent of learned counsel for the parties, these applications have been heard together and are being disposed of by this common order.

3. Briefly stating, the facts emerging in **FIR No. 384/2019** are that in the year 2017, the petitioner-*Rishabh Kapoor* met the complainant- *Raj Kumar* [FIR No. 384/2019] and introduced himself being in the business of Solar Energy and introduced the complainant-*Raj Kumar* to accused-*Jai Kumar Koshti* and *Sumit Aggarwal*, as the Directors of accused company **Troy Milling & Solar Energy Pvt. Ltd.** He represented misleading and alluring facts and data, showing bright dreams in the business of solar energy and persuaded the complainant to become an authorized dealer/ distributor of accused company in different part of the country. The petitioner persuaded the petitioner to get registered the complainant company for business and profit earning. It is alleged that the petitioner obtained signatures of complainant on the ploy and misrepresentation of entering into an Agreement for the purpose of establishing a start up business and assured the complainant that **Troy Milling & Solar Energy Pvt. Ltd** shall be responsible for all liabilities and losses if incurred in running and performance of the project. Subsequent to entering into the Agreement, the accused-company issued a Certificate authorizing the complainant company as the distributor of accused-company and to gain the confidence of the complainant, a cheque amounting to Rs.74,800/- was got issued by the accused persons towards office rent and expenses, which was dishonoured with the

remarks “Stop Payment”. It is mentioned in the FIR in question that the complainant made several payments from time to time to the accused company through bank transfer to proceed with the business requirements. It is alleged that in addition, a sum of Rs.12,55,000/- was given to the petitioner in cash against receipt. It is further alleged in the FIR that the petitioner in connivance with the accused company assured the complainant that the documentation with regard to solar project in Rajastahan and Maharashtra shall be completed. It is also alleged that after payment of Rs.32,05,000/- in favour of accused persons, the complainant followed up with the accused to complete the documentation and hand over the control of established Solar Power Plant project but his request was delayed on one pretext or the other and accused persons could not be approached through telephone calls and complainant was informed that the accused persons had gone abroad. The complainant alleged that the accused persons cheated him by forgery and misrepresentation and when they apprehended criminal action against them, they sent an email to the complainant intimating that the Agreement in question has been cancelled. It is alleged that till date the accused persons have not refunded the cheated amount for which they sought time and rather, they are extending threats to the complainant and his family.

4. Similar are the grounds on which **FIR No. 385/2019** has been got registered on the complaint of **GPN Solar Pvt. Ltd. through its Director Nitin Kumar**. In this FIR, the allegations levelled against the petitioner are that in the year 2017 itself, one- *Raj Kumar (Complainant*

in FIR No. 384/2019) introduced the complainant-Nitin Kumar to the petitioner and the other accused persons, who introduced themselves in the business of Solar Business and by representing fake and fabricated documents, allured the complainant of the FIR in question to take up dealership and agency of **Troy Milling & Solar Energy Pvt. Ltd.** and for this purpose induced him to register a company and assured that all kinds of help and assistance will be provided in operation of the startup business and that for every loss and liability, they shall be responsible. The complainant has alleged that to meet the business requirements, he had transferred an amount of **Rs.13,50,000/-** either through bank transfer or in cash against receipts in the name of accused persons. It is alleged that upon frequent follow up, when the complainant realized that he has been cheated by the accused persons, the FIR in question was got registered.

5. The allegations levelled against the petitioner in **FIR No. 386/2019** are also that on the pretext of establishing start up Solar Power Plant, petitioner along with co-accused persons allured the complainant to register a company and applying the same modus operandi as with the complainants of FIR Nos. 384/2019 & 385/2019, fraudulently procured a sum of **Rs.24,30,000/-** from the complainant and when the complainant realized foul play, the FIR in question was got registered against the accused persons.

6. At the hearing, learned counsel for petitioner submitted that the petitioner met the complainant-*Raj Kumar* through common friends, who intended to invest money in some lucrative project and since petitioner

was in touch with the Directors of the accused company-**Troy Milling and Solar Energy (I) Pvt. Ltd. &Ors**., the petitioner introduced the complainant to them. It is further submitted that the complainant- *Raj Kumar* requested the petitioner to accompany him and help him in the business and promised the petitioner to pay a certain amount of commission on the investment and profits so made, irrespective of whatsoever commission he would be getting from the business. It is submitted by learned counsel for the petitioner that in fact co-accused *Jai Kumar Koshti and Sumit Aggarwal* had also promised and allured the petitioner of giving some commission out of the profit of the business on the condition of taking active part in all their business dealings, but had put the condition that the commission would be given only through *Raj Kumar*. However, no commission ever came to the petitioner.

7. It is further submitted by learned counsel for the petitioner that petitioner had accepted the offer of *Raj Kumar* and worked with him for almost an year and in the course of business, they had to travel from place to place and complainant- *Raj Kumar* made some necessary expenses for travels and lodging. Therefore, the expenses incurred were not exclusively for the petitioner. It is submitted that when the petitioner started demanding commission, *Raj Kumar* threatened him with dire consequences of implicating him in false cases. Consequently, the petitioner maintained a distance from *Raj Kumar*.

8. It is further submitted that the complainants of **FIR No. 385/2019 and FIR No. 386/2019** had come in the investment plan through *Raj Kumar* and when they asked for their returns of the investments from *Raj*

Kumar, he implicated the petitioner to save his skin. For this reason only *Raj Kumar* had falsely alleged that a sum of **Rs.12,55,000/-** was given by him to the petitioner in cash. It is further submitted that in the **FIR No. 384/2019**, the allegation levelled against the petitioner is that he had received a sum of Rs.12,55,000/- from the complainant-*Raj Kumar* but it is not revealed towards what account the said payment was made, as the petitioner was only a facilitator between the complainant –*Raj Kumar* and the accused persons and since the project was not completed, no occasion for payment of commission arose. It is submitted that the allegation of receiving the amount of Rs.12,55,000/- is blatantly false because all the payments were made to the account of the accused-Company through RTGS or bank transaction and also that in the FIR in question, it is not mentioned that for what purpose and for whom the sum of Rs.12,55,000/- was received by the petitioner or that the petitioner had received the said amount for and on behalf of the accused- Company. It is pointed out that the FIR mentions particularly all dates of payments but so far the receiving of Rs.12,55,000/- is concerned, it mentions only August, 2017 and no specific date has been mentioned.

9. It is further submitted that some blank pages signed by the petitioner for the sake of ease and smoothness in the business, were lying with *Raj Kumar* and he has misused one of them and he may further misuse other pages signed by the petitioner. In support of petitioner's case, petitioner's counsel has relied upon decision of this Court in Bail Application No. 1154/2014, *Ashok Kumar Vs. State*, rendered on 6th

August, 2014 and Bail Application No. 2674/2014, *Tara Chand Vs. State of NCT of Delhi*, rendered on 5th March, 2015.

10. Learned counsel for petitioner further submits that petitioner is ready to join investigation as and when called and has prayed that applications seeking anticipatory bail of petitioner be allowed in the interest of justice.

11. On the other hand, learned Additional Public Prosecutor for State has opposed these bail applications on the ground that the allegations levelled against the petitioner are serious in nature, who has been actively involved in the commission of crime. The role attributed to the petitioner in cheating the complainants of FIR in question by misrepresenting facts and cheating them for a huge sum of money has come in picture and, therefore, custodial interrogation of petitioner would be required for investigation in these FIRs.

12. I have considered the rival submissions advanced by counsel representing both the sides. I have also gone through the decisions in *Ashok Kumar (Supra)* and *Tara Chand (Supra)* relied upon by learned counsel for the petitioner. The same are, however, distinguishable on the basis of the facts and circumstances stated therein. It is a settled law that no straight jacket formula can be laid down for grant of bail as each case depends upon its peculiar facts and circumstances. During the investigation, the two accused persons, who represented themselves as the Directors of Troy Milling & Solar Energy Pvt. Ltd. have been arrested in January, 2020 and despite being served with the notice, petitioner is

not coming forward to join investigation in this case and his custodial interrogation is required for the following purposes:-

(i) To recover the laptop, mobile phone and other gadgets which are in possession of the petitioner;

(ii) To recover the cheated amount;

(iii) To recover the blank signed documents containing signature of complainant.

13. In view of the above facts appearing on record and the fact that the petitioner is not joining the investigation and also in view of the fact that custodial interrogation of the petitioner is required, no grounds for anticipatory bail are made out. The anticipatory bail applications are, therefore, dismissed.

(BRIJESH SETHI)
(JUDGE)

FEBRUARY 12, 2020
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