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

\+ BAIL APPLN. 2227/2020

BIRJESH PANDEY ..... Petitioner

Through Mr. Dhan Mohan, Adv.

versus

STATE ..... Respondent

Through Mr. Izhar Ahmad, APP for State
SI Gaurav Chaudhary, PS Hazarat Nizamuddin

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

% **10.09.2020**

The hearing has been conducted through video conferencing.

1. The present petition has been filed by the petitioner under Section 438 Cr.P.C. read with Section 482 Cr.P.C. for grant of Anticipatory bail in case FIR No.146/2019, registered under Sections 408/34 IPC at Police Station Hazarat Nizamuddin.

2. As per FIR, the complainant (Anita) and her husband are owners of M/s Harshit Traders and in the business of wholesale, they used to buy goods in bulk from a company and further sell/supply in the market as per demands.

3. Upon assurance of Pandit Brijesh Mishra (known to couple for quite long and was aware that business could not be looked after well because of complainant's health), couple employed his nephews i.e. petitioner (Brijesh) and Pankaj. Initially they worked with honesty by virtue of which they earned their trust and started handling their business owing to complainant's health issues. Upon accused person's insistence ,complainant hired godown for business purposes for which rent was being paid by her. Subsequently,

complainant and her husband got to know that payments received from customers/clients being deposited by accused persons(petitioner and his brother) in lieu of goods were less and they had further opened their own shop dealing in similar business along with their uncle. Accused persons were using their godown for their business purposes and were also dealing with their customers. When she asked to return her money, the threats were extended by the accused persons.

4. Case of the petitioner is that he was working as an apprentice with a stipend of Rs.7000 with complainant in order to learn trading business. However, he resigned in 2014 and started his own business (M/s Shri Ram Foam House) of similar nature and hired godown on rent for his business purposes. To this effect, petitioner had annexed Rent Agreement with owner (Annexure-C) and GST Certificate (Annexure-D).

5. Learned counsel for petitioner further submits that complainant's firm was itself dealing with petitioner's firm on regular basis by sending goods and receiving payments through bank. To this effect, copy of bills of goods are annexed as Annexure-E, Bank statement of petitioner's firm is also annexed as Annexure-F

6. As per additional status report filed by State, during investigation petitioner Brijesh Pandey told that he and his wife have five bank accounts in their name, out of which four bank accounts are in the name of petitioner and one in the name of wife. Apart from the said accounts, one more bank account of petitioner was found which he did not disclose i.e account no. 0409040100001639 J &K Branch Bhogal, Delhi opened on 26.9.2011 on the address of complainant. It was found that more than rupees one crore of transaction was done from the period of 2011-2019 in the abovementioned

account. The KYC of the said account was updated on 9.10.2017 and ID proof i.e. Aadhar Card filed in bank in which address is B-502 ,Gali No. 6 Soniya Vihar ,2nd Pusta, Sabha Pur , Delhi is mentioned.

7. During investigation, petitioner disclosed that his wife holds an account bearing no. 44630100002648 in Bank of Baroda. He does not use his wife's account for business purposes but on analysis of said account, money transaction of Rs. 18,32,679/- from various companies has been found. Moreover, Rent Agreement attached with the petition was verified and it was found that at present, Aman Aggarwal is running his business in the name of M/s Singhal Foam House in the premises since 8.8.2020.

8. In addition to above, admitted case of the petitioner is that he was working as an apprentice with a stipend of Rs.7,000/- till 2014 and thereafter, he started his own business (with meagre stipend) which was similar in nature with the complainant’s firm. From the above facts, it seems that complainant had full faith upon the petitioner and as per his advice she acted accordingly. But he breached trust of the complainant and misappropriated money by diverting in a very clever manner.

9. Accordingly, I am of the view that at this stage, without commenting on the merits of the prosecution case, custodial interrogation of the petitioner is required to unearth the truth.

10. The petition is, accordingly, dismissed.

11. The order be uploaded on the website forthwith.

SURESH KUMAR KAIT, J

SEPTEMBER 10, 2020/ms