

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 363/2021 & CRL.M.(BAIL) 105/2021**

Date of decision: 9th February, 2021

IN THE MATTER OF:

NIKHIL GAURAV @ SAMEER RAI

..... Petitioner

Through Mr. Naresh Panwar, Advocate

versus

GOVERNMENT OF NCT OF DELHI

..... Respondent

Through Ms. Meenakshi Chauhan, APP for the
State along with SI Sandeep, PS
Janak Puri.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This is an application under Section 439 of the Code of Criminal Procedure (Cr.P.C.) seeking regular bail in FIR No.358/2019 dated 22.09.2019, registered at Police Station Janakpuri, Delhi for offences under Sections 420, 120-B & 34 of Indian Penal Code (IPC). The petitioner was arrested on 27.11.2019.

2. A perusal of the charge-sheet shows that a number of complaints were received against one Crack Ur Career Private Limited stating that promises were made by them that they would help the complainants in getting admission in MBBS Courses. The complainants were told that Crack Ur Career Private Limited has a tie up with various Universities and they can help them in getting admission in colleges and Universities. For getting admissions substantial amounts of money were paid to Crack Ur Career

Private Limited. The investigation revealed that when parents of students started demanding admission letters from the colleges, the accused copied the formats of admission letter of different colleges and started issuing fake admission letters to the students and when the students came to know that the admission letters were fake, the accused closed their office and ran away. It is stated that during the investigation, fee slips and admission letters of different universities issued by the accused persons including the petitioner herein to the complainants were seized. Details of the bank accounts from which money was transferred and the accounts to which it was transferred were verified. Seals/stamps of various colleges were recovered from the accused including the petitioner herein. It is stated in the charge-sheet that raids were conducted and forged ID proofs i.e. Aadhaar Card, PAN card and other documents were recovered at the instance of the accused. Mobile phones were also recovered. It is also stated in the charge sheet that there is sufficient evidence on record against the accused including the petitioner that from the amount received by the accused persons, jewellery has been purchased by many of them. Charge-sheet also discloses that some accused are on the run. The charge-sheet also reveals that information was received from Police Station Expressway, Noida, U.P, that some of the accused namely Neeraj Kumar Singh @ Harender Singh, Nikhil Gaurav @ Sameer Rai (the petitioner herein) and Dheerendra Singh @ Sonal Singh have been arrested In FIR No.287/2019 under Sections 302, 201, 120B and 34 IPC for murder of one of the Directors/partner in Crack Ur Career Pvt. Ltd. Charge-sheet has been filed in FIR No.287/2019 and the petitioner has been made an accused. The Charge-sheet in the present case states that there is sufficient material to proceed against the accused for

offences under Sections 420, 467, 468, 472 IPC read with Sections 201, 120-B & 34 IPC.

3. Mr. Naresh Panwar, learned counsel for the petitioner states that the FIR does not contain the name of the petitioner. He states that the FIR is only against the company. He also states that the petitioner is not responsible for the conduct of the affairs of the company. The petitioner states that since the FIR is only registered against the company he cannot be made vicariously liable for the actions of the company. The petitioner places reliance on the judgment of the Supreme Court in R. Kalyani v. Janak C. Mehta, reported as (2009) 1 SCC 516. Mr. Panwar, learned counsel for the petitioner, also places reliance on the judgement of the Gujarat High Court in **Criminal Misc. Application No. 3662/2011**, titled as Nikita Baldevbhai Dave v. State of Gujarat & 1, which lays down that employees cannot be made vicariously liable for the offence allegedly committed by the company unless specifically named in the FIR.

4. Mr. Naresh Panwar, learned counsel for the petitioner would further state that since the charge-sheet has been filed against the petitioner and he is already in custody for a period of over thirteen months, the petitioner should be released on bail.

5. The State has filed its Status Report. Ms. Meenakshi Chauhan, learning APP appearing for the State states that the petitioner is part of a large-scale conspiracy where substantial amounts of money has been received by the accused persons for securing admission to the complainants in MBBS courses in various colleges. She also states that the investigation against the three accused who are in custody is being carried out. She would state that the five accused are absconding. She would also contend that the

petitioner is an accused for offences under Section 302, 120B, 201 of IPC in FIR No.287/2019, registered at Noida, U.P. for murder of one of the Directors of Crack Ur Career Pvt. Ltd. Charge-sheet has been filed in the said FIR and supportive material has been found against the accused to proceed against them.

6. It is well settled that the FIR is not an Encyclopaedia, the complainants have given the name of the company to which they went to get admission in MBBS courses. Only during the Course of the investigation the persons who were responsible for this large-scale fraud has come to light. In the charge-sheet the petitioner has been shown as an accused. The petitioner is also an accused in offence under Section 302 for murder of one of the Directors of the Crack Ur Career Pvt. Ltd. and the charge-sheet has been filed for the same. The Status Report indicates that the Principals of various colleges have stated that the admission letters issued to the complainants have not been issued by their colleges and the fee receipts have not been issued by their colleges. It has been stated that the college seal affixed on the admission letters is also fake. The material on record discloses that the petitioner has already filed an application for bail, being BM No. 5585/2020, before the Additional Session Judge and the same has been dismissed on 15.11.2020. There is no change in circumstances since then and the bail application cannot be entertained.

7. The ratio of Supreme Court in R. Kalyani (supra) will not be applicable to the facts of the present case. The present case is one of a large-scale fraud wherein fake admission letters and fake receipts have been issued by the accused to gullible students stating that they have secured admission in MBBS courses. The allegation is that the accused is involved

in duping innocent students by taking money from them and promising admission in colleges and giving fake letters of admission and affixing fake seals. Fake letter heads of colleges have been recovered from the accused/petitioner herein.

8. In view of the fact that the investigation is still underway for three accused persons and five accused persons are still absconding and there is a reasonable apprehension that the petitioner will tamper with the evidence, which is now being collected, if enlarged on bail. Keeping in mind the magnitude of the offence and the fact that the petitioner is also an accused in a murder case this Court is not inclined to enlarge the petitioner on bail at this stage.

9. Accordingly, the petition is dismissed along with the pending application.

SUBRAMONIUM PRASAD, J.

FEBRUARY 09, 2021

Rahul

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