(VIA VIDEO-CONFERENCING)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 13.07.2021

% Pronounced on : 27.07.2021

\+ BAIL APPLN. 3094/2020

DIWAKAR MISHRA

.......Petitioner

Through: Mr. Raghav Narayan, Advocate

Versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Mukesh Kumar, APP for the State with SI Himanshu Balyan, PS Spl. Staff North West Advocate for complainant (Appearance not given).

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. The present bail application has been filed under Section 438 Cr.P.C. on behalf of the petitioner seeking anticipatory bail in case FIR No. 496/2018 under Section 381 IPC registered at P.S. Shalimar Bagh.

2. Briefly stated, the present case was registered on the basis of statement of one Devi Dayal Mittal S/o Sh. Ram Sharan Dass Mittal

R/o BL- 106, West Shalimar Bagh, Delhi. According to the complainant, he runs an office of company at the above noted address and another office of his company is situated in Chawri Bazar. He runs his company under the name and style of Ram Sharan Dass & Company which deals in trading of papers. According to the complainant, the employee of company namely Rajiv Lochan Mishra R/o E-81, Bhagwati Garden Extn. Dwarka More, Delhi, permanent resident of Village-Malachka, Munger, Bihar, was looking after the cash transaction and transport work of his company for the last 15 years.

3. According to the complainant, on 11.09.2018 at about 01:30 PM, he went to passport office from his office. Thereafter his brother Sat Prakash Mittal gave a sum of Rs 11 Lakhs to Rajiv Loachan Mishra to be given to a party at Peeragarhi, Delhi. All the currency notes were in the denomination of 2000. Thereafter his brother Sat Prakash went to Model Town for lunch. After some time the brother of the complainant received a phone call from the party that their employee Rajiv Lochan Mishra has not reached them. The brother of the complainant tried to call on both the phone numbers of Rajiv Loachan Mishra, but the same were found switched off. Thereafter Sat Prakash (Brother of complainant) reached at BL-106, Shalimar Bagh, Delhi at about 04:00 PM and checked the balance cash, which was kept in the bad box, but the cash kept in bad box was not found. There were total 38 Lakhs

rupees in Bad Box in which Twenty Nine Lakh rupees were in the denomination of 2000 currency notes and rest Nine Lakh rupees were in the denomination of 500 and 100 currency notes. The employee of the company of complainant namely Rajiv Lochan Mishra had taken Rs 49 Lakhs along with Company's owned Red colour Motorcycle bearing No. DL 8S AW 8316 Hero Splender. He has also stolen some documents and IDs alongwith cash. Accordingly, a case vide case FIR No. 496/18 U/S 381 IPC was registered at PS. Shalimar Bagh, Delhi, and investigation went underway.

4. Raids were conducted by the police in Delhi, Bihar and Jharkhand, however, the main accused could not be arrested. During investigation, one of the co accused namely, Varun Pathak, who happened to be the relative of the main accused, was arrested on 16.09.2018 and an amount of Rs. 4,40,000/- is stated to have been recovered from the co-accused. Nevertheless, the main accused could not be arrested. In the meanwhile, the investigating agency got the main accused declared as proclaimed offender. An award of Rs. 50,000/ was announced on the main accused. On 26.08.2020, the main accused was arrested and he disclosed that he gave Rs. 36,00,000/- to his brother i.e. the present petitioner/applicant and sister-in-law Sulochana both residents of Deoghar, Jharkhand.

5. I have heard Ld. counsel for the petitioner/applicant, Ld. APP for the state, Ld. counsel for the complainant who assisted the Ld. APP for the state, perused the Status Report filed by the state and also perused the records of this case.

6. It is submitted by the Ld. counsel for the petitioner that no CDR records have been obtained by the investigating agency showing that co-accused Rajiv Lochan Mishra and Varun Pathak came in contact with each other. It is further submitted by the Ld. counsel for the petitioner that the investigating agency has wrongly alleged that the petitioner has purchased property worth Rs. 12 to 13 lakh and undervalued the same for Rs. 6,00,000/- to 7,00,000/- Lakh and a sum of Rs. 2,50,000/- has been paid by way of cheque. It is further submitted by him that there is no investigation or evidence against the petitioner in this regard. It is further submitted that the above said property was given in donation to the ancestors of the wife of the petitioner by the ancestors of one Manoj Kumar and said Manoj Kumar has executed a declaration deed in this regard. It is further submitted that the wife of the petitioner took a loan of Rs. One Lakh from her father in order to make the payment of Rs. 2.5 Lakh. It is further submitted that the petitioner has already joined the investigation with all the pass books belonging to him and his family members. It is further submitted that the petitioner is the brother of accused Rajiv Lochan Mishra and for that reason he is being harassed.

7. On the other hand, it is submitted by the Ld. APP for the state with the assistance of the Ld. counsel for the complainant that the main accused had met the petitioner just after the incident in September 2018 which has been admitted by the petitioner during his interrogation. It is further submitted by the Ld. APP that as per the investigation the main accused has again met the petitioner after about 2 months. It is further submitted that there is unaccounted transactions in the account of the petitioner's wife to the tune of Rs. One Lakh in cash which was deposited on 21.07.2020 and the source of the said amount has yet not been disclosed. It is further submitted that the petitioner has purchased property to the tune of Rs. 12-13 lakh by undervaluing the same. It is further submitted that the broker of the deal of the said property is to be examined and the bank statements of the account numbers provided by the petitioner are to be obtained and analyzed for which custodial interrogation of the petitioner is required. It is further submitted by the Ld. APP that the petitioner, though joined the investigation but he has not co-operated in the same.

8. As per the status report, the petitioner has not come clean on his conversation with his brother Rajiv Lochan Mishra who has taken money of the complainant to the tune of Rs. 49,00,000/-. There is discrepancy in income and expenditure of the petitioner and his family members over the last two years. The angle of purchase of property from one Manoj Yadav in the name of the petitioner's wife is also to be

examined and whether any declaration deed can be executed in respect of ancestral property conferring title on the wife of the petitioner/applicant is also to be investigated.

9. According to the investigation, a cash of Rs. One Lakh was deposited in the account of the wife of the petitioner to which also there is no explanation and justification given by the petitioner, close scrutiny of the petitioner's account and the transaction entered into by the petitioner required to be investigated and since he has not co-operated in the investigation as stated by the IO, so in these circumstances and looking into the seriousness of the offence and on the basis of the facts of the case, custodial interrogation of the petitioner is required to unearth the trail of money which is around Rs. 36 Lakh. In these circumstances, the application lacks merits and the same is, therefore, dismissed.

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

RAJNISH BHATNAGAR, J

JULY 27, 2021

Sumant