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

+ **BAIL APPLN. 3250/2021**

ROHIT KUMAR

..... Petitioner

Through: Mr. Pradeep Kumar Arya, Mr. Raj
Karan Sharma, Mr. Aditya Kumar
Yadav, Ms. Anusha Panwar, Mr.
Prateek Singh and Mr. Gaurav
Chaudhary, Advs.

versus

STATE

..... Respondent

Through: Mr. Amit Sahni, APP for the State
with SI

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Date of Decision: 7th December, 2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

BAIL APPLN. 3250/2021

1. Present application has been moved under Section 438 Cr.P.C. for grant of anticipatory bail in FIR No. 419/2021 lodged on 29th July, 2021 at PS Hari Nagar under Sections 419/420/120B/34 IPC read with Section 66C/66(D) I.T. Act, 2000.
2. Learned counsel for the petitioner submits that all the accused persons have already been admitted to bail. Learned counsel for the petitioner further submits that in fact the petitioner is an actor and producer in the bollywood and has produced certain successful movies. It has been

submitted that that the accused has been falsely implicated in the present case as his brother Sanjeev Kumar was arrested in this case.

3. Learned counsel for the petitioner submits that accused Sanjeev Kumar has already been granted bail by the learned MM/ Tis Hazari Courts, vide order dated 12th August, 2021. Learned counsel for the petitioner further submits that the main allegation against present petitioner is that his brother Sanjeev Kumar who is also director in the company of the petitioner i.e. “Rangrezaa Flims” had deposited some amount. Learned counsel submits that mere deposit of amount by accused Sanjeev Kumar cannot be taken as incriminating material against the present application. Learned counsel submits that the petitioner has not even been named in the FIR. It has also been submitted that the petitioner has regularly joined the investigation as and when called by the IO.
4. Learned APP for the State on the instructions of the IO states that it is a serious case involving cyber fraud. Learned counsel submits that the petitioner is one of the main conspirators of the present cheating Scam Call Centre. As per the disclosure statement of co-accused, the present petitioner is one of the two main gang kingpins. It has further been stated that source of procuring data of US resident victims is yet to be unearthed.
5. Learned APP further states that additionally some amount has been deposited by the co-accused Sanjeev Kumar in the company Rangrezza Films & Rangrezza Hospitality in which the present petitioner is one of the director.

6. Learned APP further states that computers seized from the call centre have been sent to the FSL and report is yet to come. IO states that there is no need of custodial investigation.
7. In the present case, admittedly, the co-accused have already been admitted to bail. The petitioner had joined the investigation as and when directed by the IO. IO has also stated the custodial investigation of the accused is not required. The report from the FSL is yet to come.
8. It is relevant to note that the petitioner has not misused the interim protection granted to him by this court.
9. It is also a settled proposition that keeping the person in custody during the investigation cannot be used as a punitive measure. It is a settled proposition that the basic rule of criminal jurisprudence is bail and not jail. This court and the Supreme Court has said this time and again that the courts must enforce this principle in practice. It has to be borne in mind that denial of bail amounts to deprivation of personal liberty.
10. In the case of *Siddharam Satilingappa Mhetre vs. State of Maharashtra* (2001) 1 SCC 694, while considering matter relating to grant of anticipatory bail and after exhaustively analyzing the rights under Article 21 it was *inter alia* held that a great ignominy, humiliation and disgrace is attached to the arrest. It has further been held that arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community.
11. In *Nathu Singh v. State of U.P.* (2021) 6 SCC 64, the Apex Court *inter alia* held that grant or rejection of an application under Section 438 CrPC has a direct bearing on the fundamental right to life and liberty of an individual. Thus, while considering the bail this court has to look

into the facts and circumstances of the case so as to ensure that there is no infringement of fundamental rights. In *Nathu Singh's* case (supra), the Apex Court has held that Section 438 Cr.P.C. needs to be read liberally, and considering its beneficial nature, the courts must not read in limitations or restrictions that the legislature have not explicitly provided for.

12. The parameter for grant of anticipatory bail are the nature and gravity of offence, the role attributed to the applicant and the facts of the case. The court has also to consider that whether accused will be available during the investigation. It is also pertinent to mention here that this Supreme Court has laid down time and again that unnecessary restrictions or conditions should not be imposed in routine manner. The conditions, which limit the grant of anticipatory bail may be imposed only if they are required in the facts of any case(s). Reliance may place upon *Sushila Aggarwal v. State (NCT of Delhi)* (2020) 5 SCC 1.
13. In the present cases, the nature of evidence is substantially documentary in nature and is already in the custody of the investigating agencies.
14. In the totality of facts and circumstances, in the event of the arrest of the accused, the accused shall be admitted to anticipatory bail on furnishing a personal bond of Rs.30,000/- with one surety of the like amount to the satisfaction of the SHO/IO subject to following conditions applicable on each Applicant individually:
 - a) the Applicant shall under no circumstances leave India without prior intimation of the Court concerned;

- b) the Applicant shall cooperate in the investigation and appear before the Investigating Officer of the case as and when required;
 - c) the Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
 - d) the Applicant shall provide his/her mobile number(s) to the Investigating Officer and keep it operational at all times;
 - e) In case of change of residential address and/or mobile number, the Applicant shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.
15. With these observations the application stands disposed.

DECEMBER 7, 2022

Pallavi

DINESH KUMAR SHARMA, J

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