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

Reserved on: 28.09.2022

% ***Pronounced on: 27.10.2022***

\+ **BAIL APPLN. 2618/2022**

DHARAM PAL ..... Petitioner

Through: Mr. Vivek Sharma, Advocate.

versus

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

Through: Mr. Satish Kumar, APP for State with Insp. Somveer Singh, PS Ashok Vihar.

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

SWARANA KANTA SHARMA, J.

1. The present bail application has been filed by the petitioner seeking anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 in case FIR bearing no. 136/2022 dated 22.01.2022, registered under Sections 408/420/467/468/471/120B/34 Indian Penal Code, 1860 at Police Station Ashok Vihar, Delhi.

2. The Brief facts leading to the present case are as follows:-

   a. The present case was registered on the complaint of Sh. Om Jalani, the owner of the firm Metallic Ferro Alloys LLP, alleging that the accountant in the firm, accused no. 1/ Pawan Chauhan, in collusion and connivance with other staff member of his company conspired and opened a forged account namely '*BRL Logistics*'

b. During the course of investigation, it unfolded that accused no. 1 Dilip Kumar Jha and the present applicant opened a forged account bearing no. 2224201011419 in Canara Bank, Badhpat, UP under name of BRL Logistics after taking signatures of all the co-accused persons and thereafter, had fraudulently kept on transferring the funds of the firm into the fraudulently formed forged account. A total sum of Rs. 2,20,48,256/- from August 2019 to September 2021, was deposited in current bank account of BRL Logistics by accused no. 1/ Pawan Kumar Chauhan. During the course of investigation, it was found that there were per se no business transactions with BRL Logistics.

c. On 03.03.2022, accused no. 1 was arrested, whereafter he disclosed that 25% of the cheated amount was being shared with the co-accused Dilip Kumar Jha and the present applicant. Each received a sum of Rs 36,00,000/- as their respective share, and the remaining amount was further distributed with other accused persons.

d. The anticipatory bail applications of accused/ Dilip Jha and present applicant was first rejected on 26.03.2022 by the learned ASJ/Spl. Judge (NDPS), North-West, Rohini Courts, Delhi, making the following observations:-

> "*Considering the facts and circumstances and also keeping in view that investigation is at initial stage,*

co-accused persons are yet to be arrested. Furthermore, the cheated amount is yet to be recovered. hence I am not inclined to grant bail to the accused persons, accordingly the present applications of bail are dismissed."

e. The present applicant and the other accused/Dilip Kumar Jha, remained untraceable and Non-bailable warrants were obtained from the learned Trial Court. The learned Trial Court issued NBWs against them.

f. Further, on 05.07.2022, the learned ASJ (POCSO Act) North-West, Rohini Courts, Delhi again dismissed anticipatory bail of the accused persons, with the following observations:-

> "*As per the report of IO, the applicants have not joined the investigation till date and they are absconding. The NBWs have already been issued against the present applicants by the concerned court. The cheated amount is yet to be recovered from the applicants and their specimen signatures have to be obtained in view of these circumstances. I find force in the submissions of the prosecution that admitting the accused persons on anticipatory bail would prejudice the investigation. Even otherwise, anticipatory bail is an extraordinary remedy that needs to be granted only in those cases where the circumstances warrants the granting of the remedy for avoiding injustice. In the present matter, keeping in view the gravity of the offence and taking note of nature of serious allegations against the applicants and its impact on society, no case is made out to grant anticipatory bail to the accused*

persons, hence, the present applications are dismissed."

g. On 26.08.2022, the accused / Dilip Jha was arrested from his native place. However, the present applicant is still evading arrest and has not yet joined the investigation.

3. The learned counsel for the applicant states that there are no allegations leveled against the accused in the FIR registered, and he is being falsely implicated in the present case.

4. The learned APP for the state opposes the bail by submitting that NBWs have already been issued against him, and he has not been cooperating with the process of investigation. It is further submitted that at this stage granting bail to the accused would cause grave prejudice to the process of investigation, as the cheated amount has not yet been recovered and the signatures of the present applicant have not been obtained to compare with the signatures on the cheques. Therefore, at this stage the bail should not be granted to the applicant.

5. I have heard the submissions of both the learned counsels and perused the record.

6. The power under Section 438 Cr.P.C. needs to be used only in exceptional circumstances and remains discretional power of the Court. In the present case, the Court notes that the accused is evading arrest, and NBWs have been issued against him.

7. It is settled position of law that when an individual is absconding and evading execution of warrants, he may not be entitled

to grant anticipatory bail. In ***Prem Shankar Prasad V. State of Bihar and Anr., reported in 2021 Cri.L.R. (SC) 1538***, the Hon'ble Supreme Court observed as follows:

> *"...Normally, when the accused is „absconding" and declared as a „proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail…"*

8. Further in ***Sanatan Pandey vs. State of Uttar Pradesh*****SLP (Crl) 7358 OF 2021**, the Hon'ble Supreme Court made the following observations: -

> *"The Court shall not come to the rescue or help the accused who is not cooperating the investigating agency and absconding and against whom not only non- bailable warrant has been issued but also the proclamation under Section 82 Cr.P.C. has been issued."*

9. In the present case, although Sections 82 and 83 proceedings have not been initiated yet, the present applicant has been evading arrest and has not been available for investigation. He has not been cooperating with police and investigation of the case. Further, NBWs have already been issued against the applicant.

10. Moreover, the Original Account Opening Form of alleged account bearing no. 2224201011419, the signatures and hand-writing as well as the documents along with Account Opening Form have to

be compared with specimen signature of the accused which are crucial for investigation and to unearth the conspiracy hatched by the accused for fraudulently transferring the amount from the firm of the complainant to the fraudulently opened bank account. Since it is alleged that Rs. 36,00,000/- had been given to the present applicant/accused as part of his share, during investigation the trail of the money and how it was used by the applicant/accused for his own personal use or otherwise will also have to be found out. Custodial interrogation of the applicant/accused is thus required and as already mentioned above since he has not joined investigation and has been evading arrest therefore, the learned Trial Court had to issue NBW against him which have remained unexecuted.

11. Considering the overall facts and circumstances of the case, thus no ground is made out for grant of anticipatory bail to the present applicant/accused.

12. In view of the above, the application stands dismissed.

SWARANA KANTA SHARMA, J

OCTOBER 27, 2022/zp