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

Decided on : 20th October, 2022

\+ **BAIL APPLN. 3006/2022 & CRL. M.A. 20449/22**

RAVI RASTOGI ..... Petitioner

Through: Mr. Tanveer Ahmad Mir, Mr. Fahad Khan and Mr. Aman Tehlan, Advs.

versus

STATE OF NCT OF DELHI ..... Respondent

Through: Ms. Priyanka Dalal, APP for the State with SI Jitender, DIU, North West Distt.
Mr. Yudhishter Sharma, Ms. Neelam Sharma and Mr. Vaibhav Sharma, for R-2

CORAM:
HON'BLE MS. JUSTICE POONAM A. BAMBA

JUDGMENT

POONAM A. BAMBA, J. (ORAL)

1.0. This is an application under Section 438 Cr.P.C for grant of anticipatory bail in case FIR no. 351/2022, under Section 409/34 IPC, Police Station Model Town.

2.0. Prosecution case is that the present FIR came to be registered on the complaint filed on behalf of Cyber Root Risk Advisory Private Limited ("**complainant company**" in short) regarding illegal leakage and divulgence of their bank records and mishandling of their confidential and sensitive information by Kotak Mahindra Bank Limited, JMD Regent Square branch, Gurugram ('**Kotak Mahindra Bank'** in short) where the complainant company maintained a current account bearing No.2511468461 along with other accounts. In June, 2020, the complainant company lost some projects from their existing clients due to pricing and other such issues which could only be revealed from one's bank account statements and other confidential data. The complainant company's statement of the bank account was filed by a third party-i.e., the accused No.7 Mr. Haralambos Tsiattalou before the United States District Courts for the Middle District of North Carolina, USA, (in short '**US District Court**') falsely representing that the same had been obtained from a 'whistle-blower' employed with the complainant company having legitimate access to the complainant company's bank account.

2.1. The complainant company filed a complaint with RBI ; in that regard, the Kotak Mahindra Bank filed vague report dated 27.05.2022 mentioning only the names of two employees, but did not give complete details. Compelled by the same, the complainant filed a complaint before EOW, Gurugram on 17.08.2022. However, no FIR was registered by them. The complainant then filed an application under Section 156 (3) Cr.P.C bearing no. 568/2021 before the Ld. District Magistrate, which was subsequently withdrawn. The present FIR then came to the registered pursuant to the order of Ld. Magistrate, North Rohini Courts, Delhi on the complainant's application under Section 156 (3) Cr.P.C vide order dated 24.03.2022 in CC no. 318/2022.

2.2. Subsequently, Kotak Mahindra Bank admitted that an employee of the bank had illegally accessed the bank accounts of the complainant and that his services have already been terminated, but no details were provided to the complainant. Kotak Mahindra Bank subsequently informed that the accused no.1/bank employee Pappu Kumar had no access to the system and had approached the accused No.2 Deepak/Branch Sales Manager of the Kotak Mahindra Bank to generate the statement and the accused no.2 had done so ; that some unknown persons had approached the accused no.1 for illegal access to the complainant company's bank account but no further information was provided.

2.3. As per the status report, during investigation, it was revealed that accused no. 2 Deepak Kumar disclosed that in the month of June 2020, his known/accused no. 1 Pappu Kumar, employee of Kotak Mahindra Bank, Paschim Vihar Branch, telephonically requested him to give the statement of account of the complainant's company having account no. 2511468446. Accordingly, he obtained the said bank account statement of the complainant company for the period of 01.04.2016 to 01.07.2016 and forwarded the same to the accused no. 1 Pappu Kumar.

2.4. During the course of further investigation, the accused no. 1 Pappu Kumar ex-employee of the Bank disclosed that in June 2020, his customer accused no. 8, Omkar Nath Tiwari had requested him to provide statement of the aforesaid account of the complainant company. Further, accused no. 8 Omkar Nath Tiwari during sustained interrogation disclosed that he had received a whatsapp call and chat from mobile no. 9318372229 of the present petitioner, who requested for leaking of the bank statement of the complainant company and at his/petitioner's request, he/accused no. 8 had procured the same and in that regard, the accused no. 8 produced his mobile phone make Vivo V-7.

3.0. The petitioner vide his application has submitted that he is a chartered accountant and innocent and has been falsely implicated. He was not named in the FIR and his name appeared only in the disclosure statement of accused no. 8 Omkar Nath Tripathi. In support, Ld. Counsel placed reliance upon the judgment dated 04.04.2019 in the case of Deepak Talwar vs. Assistant Director Enforcement Directorate, in WP (Crl.) 385/2019, pleading that in that case, bail was granted as the accused was implicated on the basis of disclosure statement of co-accused, who made different statements on different points of time. Same is the situation in the present case.

3.1. It is also submitted that the petitioner was granted interim protection by Ld. ASJ, Rohini (North), Delhi, vide order dated 01.06.2022 in his anticipatory bail application bearing no. 1479/2022. Thereafter, the petitioner had joined the investigation on 23.06.2022, 24.06.2022 and 19.09.2022 and extended full cooperation. He even handed over his mobile phone as required by the IO. Thus, nothing remains to be sought from the present petitioner. It is further submitted that the petitioner's anticipatory bail application was finally dismissed by Ld. ASJ, vide order dated 26.09.2022.

3.2. Ld. Counsel for the petitioner submitted that there is no incriminating material on record against the petitioner except for disclosure statement of accused Omkar Nath Tripathi. The petitioner does not even know any of the accused persons except accused Omkar Nath Tripathi that too in a professional capacity. The status report itself shows that the petitioner used to give small assignments to the employees of SK Bharti Enterprises and Associates including to the Omkar Nath Tiwari, of which the petitioner was previously a partner.

3.3. It is also submitted that the present petitioner did not appear in the chain of persons involved in the matter ; the chain was completed when the accused no. 8 Omkar Nath Triatphi supplied the bank account statements of the complainant company to the accused no. 7 ; and all these facts stand judicially determined vide order of this Court dated 31.08.2022 while dismissing the bail applications of accused no. 1 Pappu Kumar, accused no. 2 Deepak, employees of Kotak Mahindra and accused no. 8 Omkar Nath Tripathi, wherein it was observed that the accused no. 1 and 2 wrongfully accessed the complainant's bank accounts and supplied the statements of account to an outsider i.e. Omkar Nath Tripathi/accused no. 8, who further supplied the same to the accused no. 7 Mr. Haralambos Tsiattalou, who filed the said statement in United States District Court ; and the said facts have attained finality.

3.4. Ld. Counsel for the petitioner further argued that the accused no. 8 Omkar Nath Tripathi, who was named in the FIR, had challenged the said order and was granted interim protection against arrest by the Hon'ble Supreme Court of India vide order dated 14.10.2022 in SLP (Crl.) No. 9648/2022, titled as 'Omkar Nath Tripathi vs. State of NCT of Delhi & Anr.' Ld. counsel also submitted that the petitioner stands on a better footing than accused Omkar Nath Tripathi. Therefore, he be either granted interim protection or be granted anticipatory bail for the above reasons. He is still ready to extend cooperation, if protection is provided to him.

4.0. **Per contra**, Ld. Prosecutor strongly opposed this application submitting that merely because the petitioner was not named in the FIR can hardly be a ground for grant of anticipatory bail.

4.1. It is submitted that the deep-rooted conspiracy in the matter unfolded with time on sustained interrogation of the accused persons. During investigation, accused no. 8 Omkar Nath Tripathi, only on sustained interrogation from time to time, disclosed that he had received a telephone call from mobile no. 9318372229 of the present petitioner who requested for leaking of bank statement of the complainant company ; he then produced his mobile phone make Vivo V-7 and submitted that he had received the whatsapp call and chat from the petitioner for leaking the bank account statements of the complainant company.

4.2. Ld. Prosecutor also submits that the CDR of the aforesaid mobile number was obtained, which showed that the petitioner had made four calls to the accused no. 8 Omkar Nath Tripathi on his mobile number 9999290352 on 23.06.2020, 24.06.2022, 25.06.2020 and on 30.06.2020 i.e. during the period, the aforesaid bank account statements of the complainant were leaked and filed in the US District Court.

4.3. Ld. Prosecutor further submitted that from the above, it is evident that the petitioner was not summoned to join investigation only on the basis of disclosure statement of accused no. 8 Omkar Nath Tripathi. Mobile phone from which, the accused no. 8 Omkar Nath Tripathi received a call for procuring the complainant company's bank account statement, has been found to be in the petitioner's name and CDR also clearly connects the petitioner with accused no. 8, as disclosed by him.

4.4 Status report also mentions that on disclosure of the accused no. 8 Omkar Nath Tripathi, the Investigation Officer (**IO**) tried to serve a notice on the present petitioner to join investigation, but every possible effort was made by the petitioner to avoid the notice. No one was found present at his address. Consequently, the notice was pasted on the wall of the petitioner's house, but the petitioner still did not join investigation on 30.05.2022. The petitioner had even switched off his mobile phone. The IO had tried again to serve notice on the petitioner for joining the investigation on 31.05.2022, but no one was present at the residential address of the petitioner.

4.5. Ld. Prosecutor further submitted that subsequently the petitioner had joined the investigation after he was granted interim protection by ld. ASJ, but he did not cooperate and gave evasive reply denying all the allegations against him.

4.6. Ld. Prosecutor also submitted that from the investigation so far, it is apparent that the accused no. 8 Omkar Nath Tripathi had procured the bank account statement of the complainant at the behest of the present petitioner ; and on account of such leakage of the complainant's bank account statement/other information, the complainant lost out on business opportunities. Therefore, the petitioner's custodial interrogation is very much required to unearth the conspiracy and to complete the chain as to why/on whose behest, the petitioner requested the accused no. 8 Omkar Nath Tripathi to obtain the bank account statement of the complainant company, which was leaked/sent to US District Court through A-7 Haralambos Tsiattalou-Solicitors. But the petitioner has not been cooperating. The matter is of sensitive nature and the petitioner does not deserve to be released on anticipatory bail.

4.7. Ld. Prosecutor further submitted that the petitioner's mobile phone has been sent to FSL Rohini for retrieval of the deleted mobile data of the whatsapp calls dated 23.06.2020, 24.06.2022, 25.06.2020 and 30.06.2020 and whatsapp chat history between the petitioner and the accused no. 8 Omkar Nath Tripathi. Said report is still awaited.

4.8. Ld. Prosecutor also submitted that any observation made by this Court in bail order dated 31.08.2022 while dismissing the bail applications of the accused nos. 1, 2 and 8 cannot be termed as judicial determination of facts. I am in agreement with the same.

4.9. Lastly, Ld. Prosecutor submitted that the petitioner cannot seek parity with accused no. 8 Omkar Nath Tripathi, who has been granted interim protection by the Hon'ble Supreme Court, as it is the petitioner at whose instance, the accused no. 8 Omkar Nath Tripathi had procured the relevant information/ documents, which were then filed in US District Court by Accused no. 7.

5.0. **Ld. Counsel for the complainant** submitted that the accused no. 7 Haralambos Tsiattalou are the solicitors, who filed the bank account statement of the complainant company in US Court. But at whose behest same were obtained and handed over to accused no. 7, is still to be found out. Ld. counsel also submitted that the buck has stopped at the petitioner and it is the petitioner only, who can reveal the person at whose instance, the aforesaid information/documents were illegally procured.

6.0. I have duly considered the submissions made by both the sides.

7.0. It is a serious matter of illegal procurement of the complainant company's bank account statement/documents and its filing in the US District Court allegedly causing loss of business opportunity to the complainant company. From the above it is apparent that the manner in which the complainant company's bank account statement were illegally procured, steadily unfolded on the basis of the disclosure statement of one accused after the other, on sustained interrogation.

7.1. As per the above material on record, the fact that the petitioner contacted accused no. 8 Omkar Nath Tripathi, is apparent from the confirmation of the mobile number 9318372229 to be in the name of the petitioner, from which the accused no. 8 Omkar Nath Tripathi received whatsapp call and whatsapp chat allegedly to procure bank account statements of the complainant company. The petitioner's mobile phone has already been sent to the FSL for retrieval of the deleted mobile data of whatsapp calls/chat of the relevant dates.

7.1.1. Further, the call details record of the above mobile number of petitioner have shown that the calls were made by the petitioner to the accused no. 8 Omkar Nath Tripathi on 23.06.2022, 24.06.2022, 25.06.2022 and 30.06.2022 i.e., during the period when the aforesaid bank account statement of the complainant company were leaked and filed in US District Court.

7.1.2. In view of the above, I am inclined to accept Ld. Prosecutor's submissions that it is not merely the disclosure statement of the accused no. 8 Omkar Nath Tripathi on the basis of which, the petitioner's interrogation is being sought. Reliance placed upon the judgment in 'Surinder Kumar Khanna vs. Intelligence Officer, Directorate of Revenue Intelligence (2018) 8 SCC 271 by Ld. Counsel for the petitioner is of no assistance to the petitioner. More so, as the observations that the conviction (under NDPS Act) can not be based merely on the basis of confessional statement of co-accused has no applicability to the present situation of consideration of bail application.

7.2. Ld. Prosecutor has also drawn attention of this Court to the disclosure statement of the accused no. 8 Omkar Nath Tripathi dated 31.05.2022. In his disclosure statement, the accused no. 8 has provided further details and has stated that the petitioner was very senior to him (in S.K. Bharti Enterprises and Associates), and asked him (A-8) and followed up with him, to procure the aforesaid bank statements of the complainant company on the pretext that same were required for his/petitioner's friend's client. Ld. Counsel for the petitioner has argued that A-8 has been making different disclosure statements from time to time. Ld. Prosecutor in this respect has submitted that only on sustained interrogation from time to time, the accused no. 8 Omkar Nath Tripathi disclosed these facts. Nothing contradictory could be pointed out by the petitioner in the disclosure statements of the accused no. 8. From perusal of the same, it is seen that the accused no. 8 has revealed further facts in his subsequent disclosure statement.

7.3. In view of the above, argument of the Ld. Counsel for the petitioner that from above phone calls (as reflected in CDR) nothing incriminating can be imputed to the petitioner, as the petitioner already knew accused no. 8 Omkar Nath Tripathi (who worked in the same firm, where the petitioner was earlier a partner) is a matter of investigation. Mobile Phone of the petitioner has been already sent to FSL for extraction of whatsapp calls/chats.

8.0. In view of the above facts and circumstances, parity as claimed by the petitioner with accused no. 8 Omkar Nath Tripathi, is not made out.

Thus, judgment in Deepak Talwar's case (supra) relied upon by the petitioner to espouse his argument that judicial propriety demands that the petitioner be granted interim protection as granted to accused no. 8 Omkar Nath Tripathi by the Hon'ble Supreme Court is of no assistance to the petitioner in the facts and circumstances of the present case.

9.0. Ld. Prosecutor has submitted that the petitioner has been evasive and therefore, his custodial interrogation is required to unearth the deep rooted conspiracy and to complete the chain.

9.1. Considering the above facts and circumstances in entirety, nature of allegations and the prosecutor's submission that custodial interrogation of the petitioner is required to unearth conspiracy, the petitioner does not deserve the benefit of Section 438 Cr.P.C.

10.0. Application is accordingly dismissed.

11.0. Needless to mention that nothing observed hereinabove shall tantamount to expression of opinion on merits of the case.

(POONAM A. BAMBA)
JUDGE

OCTOBER 20, 2022/*chandan*

Click here to check corrigendum, if any