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

Order reserved on :07/07/2022
Order pronounced on :20/07/2022

\+ **BAIL APPLN. 4332/2021**

MITHUN BHATNAGAR ..... Petitioner
Through: Mr. Tarun Khanna, Adv.

versus

STATE ..... Respondent
Through: Mr. Amit Ahlawat, ld. APP for State with Mr. Gagan Kumar, Adv.
IO SI Gaurav, PS EOW

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

POONAM A. BAMBA, J.:

1.0 Vide this petition under Section 439 read with Section 482 Cr.P.C, the petitioner/accused Mithun Bhatnagar has sought bail in case FIR no. 193/2020 dated 12.11.2020 under Sections 406/419/420/468/471/120 IPC, PS Econonic Offences Wing, (EOW).

2.0 It is submitted that the petitioner has been falsely implicated in the present case. He was not named in the FIR but was subsequently implicated on the basis of the disclosure statement of the co-accused Vikram Saxena, his brother-in-law. The petitioner was formally arrested on 13.03.2021, four months after the registration of the FIR, from Tihar Jail, where he was already lodged/in judicial custody in other two FIRs i.e. no. 45/2020 and 46/2020, PS Connaught Place, involving same allegations/transactions.

2.1 It is further submitted that the petitioner had nothing to do with the matter. Co-accused Vikram Saxena was the master mind behind the entire incident and had fabricated bank account in the name of Dev Sewa Income Development Company (DSIDC) and siphoned off huge amount of money to his personal account as well as to the account of M/s Dream Housing, owned by another co-accused Nikhil Arora, a chartered accountant, who played a crucial role in the entire incident.

2.2 It is also submitted that the petitioner has been implicated merely because he visited the bank, (where his wife is having a saving account) ; and on 18.11.2019, withdrew a sum of Rs. 7,00,000/- (Rs. Seven lacs only) vide self cheque bearing no. 459844 from the account of DSIDC at the request of his brother-in-law/co-accused Vikram Saxena. The petitioner never utilized a penny out of the said amount and had no role to play in the entire incident. There are no allegations of misuse of the said amount by the petitioner.

2.3 It is further submitted that charge sheet in the matter has been filed but there are no specific allegations against the petitioner except as have come in the disclosure statement of the co-accused Vikram Saxena to the effect that a person introduced as Mudit Kumar to various rejected applicants as an officer of DSIIDC, was actually Mithun Bhatnagar, the petitioner herein.

2.4 The petitioner has also submitted that in other two FIRs i.e.,no. 45 and 46 of 2020, PS Cannaught Place, this Court vide order dated 21.10.2021, has granted regular bail to the petitioner, while observing in para 13 that the co-accused Vikram Saxena is the king-pin of the entire episode.

2.5 It is also submitted that other co-accused Nikhil Arora, the Chartered Accountant, who played an important role, has also been granted regular bail by Ld. ASJ vide order dated 17.04.2021.(Annexure A-7). Further, even the master mind of the entire incident co-accused Vikram Saxena has been admitted to bail vide order dated 29.09.2021 in Bail application No. 1729/2021. Thus, the petitioner is also entitled to grant of bail on the ground of parity.

2.6 The petitioner has also submitted that he has no previous involvement in any case except his false implication in the case FIRs no. 45 and 46 of 2020, PS Conaught Place ; mere involvement in those cases can not come in the way of the petitioner and has placed reliance upon the order of this court in bail application no. 913/2020 dated 18.06.2020 in case titled as "**Navendu Babbar vs. State (GNCT of Delhi**). It was submitted that in that case, the petitioner was granted bail despite involvement of the accused in five other cases.

2.7 It is also submitted that the petitioner is 39 years of age and is a practicing advocate at Saharanpur having Enrolment no. UPE05347/12. He is a family person and is the sole bread earner of his family consisting of his wife, two minor daughters aged about 2-1/2 years and 1-1/2 years, respectively and his aged and ailing parents, who are senior citizens. Thus, he has deep roots in society and there are no chances of his absconding.

3.0 Learned Additional Public Prosecutor strongly opposed this bail application. Vide status report dated 05.01.2022, it is mentioned that the present FIR no. 193/2020, PS EOW against the petitioner came to be registered on the complaint of one Naresh Jindal s/o. Sh. Ram Kumar, r/o. H.No. 239, Karan Singh Garg Marg, Kewal Park, Azadpur, Delhi, regarding cheating by the petitioner and other accused persons faking as DSIIDC employees. It mentions that the complainant's application for industrial plot of DSIIDC (under the relocation scheme) was rejected in the draw. Later on, on 04.06.2018, two persons/accused persons Vikram Singh and Ajay approached him, representing as the employees of DSIIDC and showed him, his original application form which was earlier rejected. They even showed their identity cards and their office/DSIIDC office in Connaught Place behind Coffee Home. They assured the complainant that he can get that industrial plot by paying an extra amount, to which he agreed. Complainant was asked to fill certain forms and also to give initially Rs.20,000/-, towards processing fees, which he gave. Complainant has further submitted that subsequently he was asked to introduce other known persons who were interested in taking industrial plots. Accordingly, the complainant introduced six known persons to them, who also paid Rs.20,000/- each through the complainant. The status report also gives details of further amount of Rs.50,000/- paid by the complainant. It also mentions that subsequently, the accused persons were not traceable either at the given address or at their phone numbers.

3.1 Status report also mentions that during the course of investigation, few more similar complaints were received in respect of "relocation scheme of industrial plots", which had earlier been rejected by DSIIDC. These complaints revealed that the present petitioner Mithun Bhatnagar @ Mudit Kumar, Vikram Saxena, Ajay Saxena and Nikhil Arora along with other accused persons cheated the complainant/victims using similar *modus operandi* pursuant to conspiracy, deception and dishonest inducement. Total 26 complaints have been filed, which are clubbed in the present FIR no. 193/2020; these 26 complainants have been cheated of total amount of Rs.7,29,17,465/-, as detailed in para 4 of the status report.

3.2 It further mentions that during the course of investigation, 18 out of 26 victims named the petitioner Mithun Bhatnagar @ Mudit Kumar, details of whom are given in para 19 of the status report.

3.3 Report also mentions that during the course of investigation, it has come on record that the accused persons Mithun Bhatnagar @ Mudit Kumar, Vikram Saxena and Ajay Saxena procured rejected applicants' list of industrial plots on the official website of DSIIDC. Thereafter, they contacted the concerned rejected applicants through different modes and misrepresented to them and made false assurances that they will re-allocate the rejected industrial plots in lieu of extra expenditure. On said false assurances, the innocent victims paid the demanded amount to them which was misappropriated by the accused Vikram Saxena, Mithun Bhatnagar, Nikhil Arora, in conspiracy with other persons. So far, 26 victims have made complaints and alleged cheated amount is Rs.7,29,17,465/-.

3.4. The status report further mentions that at the given time, name of

DSIIDC was DSIDC. The accused persons opened a bank account bearing no. 201002459227, in the name of DSIDC (Dev Sewa Income Development Company) with Indusind Bank, Tilak Nagar, of which accused Ajay Saxena and Vikram Saxena were authorized signatories. During investigation it was revealed that on 18.11.2019, the petitioner/accused Mithun Bhatnagar @ Mudit Kumar had withdrawn an amount of Rs.7 lacs vide self cheque no. 459844.

3.5. Ld. Prosecutor submitted that the petitioner/accused Mithun Bhatnagar @ Mudit Kumar was not working/actively practicing though registered as an advocate at Saharanpur, Uttar Pradesh and hardly had any income ; but he had made cash deposit of Rs.5.87 lacs in his joint account with his wife Deepika Saxena, bearing account no. 159837000437, maintained with Indusind Bank, Rajouri Garden, From the said account, petitioner transferred an amount of Rs.4.20 lacs in another saving bank account bearing no. 30188293157, maintained jointly with his father namely Subhash Bhatnagar at SBI, Railway Road, Saharanpur. The details of the cash deposits are given in para 11 of the status report. Further investigation also revealed that a sum of Rs.3.15 lacs was transferred from co-accused Vikram Saxena's account no. 157042727044 to two different Saving Bank Accounts (i) A/C no. 30188293157 to the petitioner's aforesaid joint account with his father at SBI, Railway Road, Saharanpur and (ii) A/C no. 159837000437, Indusind Bank, Branch – Rajouri Garden in the joint name of the petitioner and his wife.

3.6. It is also submitted that during the course of investigation, complainants/victims even identified the present petitioner Mithun Bhatnagar @ Mudit Kumar.

3.7. Ld. Prosecutor argued that for the aforesaid reasons, petitioner does not deserve to be admitted to bail and his bail application is liable to be dismissed.

4.0. In rebuttal, Ld. counsel for the petitioner submitted that charge sheet in the matter has already been filed ; entire evidence, which is documentary in nature, has already been collected. Thus, no purpose would be served in keeping the petitioner behind bars. He also argued that the trial in the matter will take a long time and the petitioner cannot be deprived of his liberty merely because of pendency of the case.

4.1. During the course of arguments, Ld. counsel for the petitioner, on instructions, expressed petitioner's inclination to deposit a sum of Rs. 7,00,000/- with this court in a phased manner without prejudice to his rights and contentions.

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

6.0 The petitioner is in judicial custody in the present case since 13.03.2021 though he was already in judicial custody in FIR no. 45/2020 under Sections 420/468/471/120B IPC and FIR no. 46/2020 under Sections 420/468/471/120B IPC, PS Connaught Place.

6.1 It is not disputed that in other two FIRs no. 45/2020 and 46/2020, which were registered on similar complaints, the petitioner has been admitted to bail by the Co-ordinate Bench of this Court in Bail Applications No. 1547/2021 and 1715/2021, vide order dated 21.10.2021.

6.2. Learned Prosecutor also confirms that the co-accused/main accused Vikram Saxena, who expressed his inclination to pay a sum of Rs. 70 lacs, has also been admitted to interim bail in the aforesaid FIRs i.e. 45/2000 and 46/2000 besides FIRs No. 44/2020 and 47/2020, PS Connaught Place, vide order dated 29.09.2021 of Co-ordinate Bench of this court in Bail Application no. 1729/2021.

6.3 Charge sheet in the matter has been filed.

6.4. During the course of these proceedings, on instructions, learned counsel for the petitioner submitted that without prejudice to his rights and contentions, the petitioner is inclined to deposit a sum of Rs 7 Lakhs with this court. Ld. counsel also submitted that the petitioner would require 2-3 months' time to arrange/pay the said amount and therefore, he be allowed to deposit the said amount in two instalments ; he may pay Rs. 2,00,000/- initially and balance amount of Rs. 5,00,000/- in two months.

7.0. Considering the above facts and circumstance in entirety and that in FIRs no. 45/2020 and 46/2020, PS Connaught Place registered on similar complaints, the petitioner/accused has already been admitted to bail ; and the main accused Vikram Saxena has also been admitted to interim bail in the said FIRs as well as in FIRs no. 46/2020 and 47/2020, PS Connaught Place involving similar complainants, the petitioner is admitted to bail on his furnishing a personal bond in a sum of Rs. 5,00,000/- with one surety in the like amount, to the satisfaction of Ld. trial court, subject to the following conditions :-

a) the petitioner shall deposit his passport with the Ld. trial court ; and if he does not possess a passport, he shall file an affidavit to that effect ;

b) the petitioner shall not leave the country without prior permission of the court;

c) the petitioner shall not contact any witness in this case; and shall not threaten or influence or intimidate any witness, in any manner;

d) the petitioner shall not tamper with evidence in any manner.

e) as undertaken, the petitioner shall deposit with the learned Trial Court, a sum of Rs. 2,00,000/- (Rs. Two lacs only) in the form of FDR in the name of the Court, initially for a period of one year with an automatic renewal clause, prior to his release from the judicial custody ; and further amount of Rs. 5,00,000/- (Rs. Five lacs only) shall be deposited by the petitioner in the same manner, within two months of his release from judicial custody;

7.1. Violation of any of the above terms and conditions by the petitioner shall be a ground for cancellation of bail.

8.0. The bail application of the petitioner Mithun Bhatnagar @ Mudit Kumar is disposed of, accordingly.

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

POONAM A. BAMBA, J

JULY 20, 2022/*chandan*

Click here to check corrigendum, if any