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

Reserved on : 23.11.2023

% **Pronounced on : 13.12.2023**

\+ **BAIL APPLN. 302/2023 AND CRL.M.A. 30384-85/2023 & CRL.M.A. 30384/2023**

BHUPENDER SINGH ..... Petitioner

Through: Mr. Mohit Gupta, Mr. Rajiv T., Mr. Lakshya Marwaha & Ms. Ayushi Jain, Advocates.

versus

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

Through: Mr. Amit Ahlawat, APP for the State with Insp. Harpal Madan, P.S. EOW. Mr. K. Sachdeva & Mr. M.N. Dudeja, Advocates for complainant.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JDUGMENT

RAJNISH BHATNAGAR, J.

1. The present petition has been filed under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No. 0160/2022 under Section 406 IPC registered by Police Station EOW Delhi.

2. Briefly stated, the facts of the prosecution case are that on 19.10.2022, on the basis of a complaint against the petitioner who is a devotee of Baba Jaswant Singh (chairman of Baba Jaswant Singh Trust), an FIR bearing No. 0160/2022, U/s 406 IPC was registered.

3. In the complaint, the complainant namely, Sh. Amarjit Singh who is stated to be the legal heir of late Baba Jaswant Singh (Chairman) and Vice Chairman of Baba Jaswant Singh Charitable Trust, which runs dental college in the name of BJS Dental College at Ludhiana.

4. It is alleged that late Baba Jaswant Singh being Chairman of the Trust promoted various charitable institutions such as abovementioned dental college and hospital as well as one charitable hospital of 500 beds by name of Shri Guru Amar Das. It is further alleged that Baba Jaswant Singh used to manage and reserve all funds in the bank account no. 51112010001360 and 51112010000120 of Oriental Bank of Commerce (now merged into PNB), BJS Dental College branch, Ludhiana.

5. It is further alleged that the petitioner was deputed to bring architects/consultants from Delhi to Ludhiana for ongoing construction work of charitable hospital and for that purpose, he was provided a car bearing registration no. PB-10EW-0077 from the Trust. Meanwhile, late Baba Jaswant Singh died on 20.11.2020. It is further alleged that prior to death of the Baba, when he was seriously ill and was unable to hold even a pen, the petitioner allegedly obtained some cheques and forged the signatures of Baba Jaswant Singh on 14.10.2020 and fraudulently transferred total amount of ₹9.5 crores (₹6 crores by cheque no.548258 from account no. 51112010001360, and another cheque no.548082 of ₹3.5 crores from account no.51112010000120 of PNB BJS Dental College branch,

Ludhiana) and transferred such amount in a joint account no. 3666001001035 of ICICI Bank, Baba Than Singh Chowk Branch, Ludhiana.

6. It is also alleged that after the demise of Baba Jaswant Singh and Dr. Veena Kataria (authorized signatory of late Baba Jaswant Singh), the petitioner allegedly concealed his bank account of ICICI Bank and transferred the above amount into an account in his name at Delhi. It is further alleged that above said amount of ₹9.5 crores credited in the account of petitioner herein out of which he transferred ₹1.50 crores by way of an FDR in his name on 10.03.2022. It is alleged that later that amount stood transferred to the personal account of accused/applicant. On the basis of the aforesaid allegations, the present case was registered and the investigation was taken up by EOW.

7. I have heard the learned counsel for the petitioner, learned APP for the State duly assisted by learned counsel for the complainant and perused the status report filed by the state.

8. It was submitted by learned counsel for the petitioner that the signatures on the cheques were not of one Baba Jaswant Singh so there are no question of petitioner's forging the signature. It was further submitted that cheques were signed by the authorized signatory of Baba Jaswant Singh, Ms. Veeena Kataria, therefore the allegations against the petitioner are false and fabricated. It was further argued that no funds were transferred in the name of late Baba Jaswant Singh, Ms. Veena Kataria or the petitioner and hence, no

question of misusing the same arises. It was further argued that joint account bearing no. **366600100103519** ICICI bank was opened by late Baba Jaswant Singh, Ms. Veena Kataria and the present petitioner. It was further argued that the joint account bearing no. **366600100103519** ICICI bank was frozen at the instance of the petitioner himself. It was further submitted that the amount transferred by the late Baba Jaswant Singh was his personal amount and not the amount of the trust, namely, Baba Jaswant Singh Charitable Trust. It was further submitted that petitioner is the self proclaimed custodial of the joint account bearing no. **366600100103519** ICICI Bank. It was argued that the present FIR is nothing but a pressurizing tactic so that the petitioner transfers the entire amount to the complainant. It was further argued that petitioner has joined the investigation and nothing is to be recovered from the petitioner.

9. It was contended by the counsel for the petitioner that in the entire FIR, it is not stated that petitioner has committed any forgery while opening this account. It was further contended by the learned counsel for the petitioner that the petitioner had never transferred any amount from the joint account to his personal bank account except the income tax payments of the Baba Jaswant Singh Ji and the money deposited in the joint account is either lying in the savings account (ICICI Bank) or in the form of Fixed Deposit linked to the joint account. It was further contended that petitioner is an old person aged around 60 Years and is a manufacturer of Air Conditioner parts in Delhi and is the sole bread earner of the family, further, petitioner is a

permanent resident of Delhi since last 50 years having deep roots in the society and has clean antecedents so there is no chance of petitioner to flee from the Justice.

10. In contrast, it was submitted by learned APP duly assisted by the learned counsel for the complainant, while vehemently opposing the present anticipatory bail that the allegations against the petitioner are serious in nature. It was further submitted that the petitioner is the devotee of Baba Jaswant Singh from 1988 and he was able to misappropriate with the funds by every means and could easily use them for his personal gain. It was further submitted that as per the FSL report, it is clear that the application form for a savings account no. 3666001001035 with ICICI Bank was not signed by late Baba Jaswant Singh and, hence, Sections 467/468/471/120B IPC were added in the present case. It was further submitted that the cheques of ₹3.5 crores and ₹6 crores were also filled by the petitioner herein and thus, it is clear that there was an active participation of petitioner in conspiracy to embezzle the funds belonging to late Baba Jaswant Singh. It was further submitted that a person, namely, Darshan Singh who is residing at Nanaksar Gurudwara and was responsible for all the personal affairs of Baba Jaswant Singh, categorically denied that the signatures had been appended by late Baba Jaswant Singh. It was further submitted that a chartered accountant, namely, Iqbal Singh, who has been associated with Baba Jaswant Singh Trust for the last 20 years and looks after financial and accounting affairs of Baba Jaswant Singh, had stated that no new bank account was opened by

late Baba Jaswant Singh. It was further argued that there is no reason to believe that a new bank account would be opened at such a distant location whereas the said Bank's branch is situated within the premises.

11. In the instant case, the present petitioner is an accused for committing an offence of criminal breach of trust punishable under Section 406 IPC. Section 406 IPC prescribes punishment for criminal breach of trust. 'Criminal breach of trust' has been defined in Section 405 IPC which is reproduced as under:-

> *"405. Criminal breach of trust.- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."*

The scope of S. 405 is very wide. Use of the expression 'in any manner' signifies that the section applies to the person who is in any manner entrusted with or dominion over the property. The essential ingredients of the offense of criminal breach of trust are:- (1) The accused must be entrusted with the property or with dominion over it; (2) The person so entrusted must dishonestly use or convert to his own use that property, or; (3) The accused must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation (a) of any direction of law prescribing the mode in which such trust is to be discharged, or; (b) of any legal contract made touching the discharge of such trust.

12. The word 'dishonestly' has been defined in Section 24 of IPC in the words that whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly'. So, the gist of the offence under Section 405 IPC is that entrustment of property and dishonest misappropriation thereof. A breach of trust may involve a civil wrong and the person wronged may seek civil remedy but a breach of trust with *mens rea* gives rise to criminal prosecution as well.

13. In ***Anwar Chand Sab Nanadikar v. State of Karnataka*** a two-judge bench restated the essential ingredients of the offence of criminal breach of trust in the following words:

> *"7. The basic requirement to bring home the accusations under Section 405 are the requirements to prove conjointly (1) entrustment, and (2) whether the accused was actuated by the dishonest intention or not misappropriated it or converted it to his own use to the detriment of the persons who entrusted it. As the question of intention is not a matter of direct proof, certain broad tests are envisaged which would generally afford useful guidance in deciding whether in a particular case the accused had mens rea for the crime."*

14. In ***Vijay Kumar Ghai v. State of West Bengal*** another two-judge bench held that entrustment of property is pivotal to constitute

an offence under section 405 of the IPC. The relevant extract reads as follows:

> *"28. "Entrustment" of property under Section 405 of the Penal Code, 1860 is pivotal to constitute an offence under this. The words used are, "in any manner entrusted with property". So, it extends to entrustments of all kinds whether to clerks, servants, business partners or other persons, provided they are holding a position of "trust". A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section 406 of the Penal Code."*

15. A cursory reading of the Section shows that a person having dominion of property misappropriates for his own use and disposes by violating any direction wilfully is said to have committed the said offence. In the present case in hand, the facts of the case are clear that the petitioner is a devotee of Baba Jaswant Singh since 1988 as mentioned in the petition.

16. It is pertinent to note here that a person doing *sewa* for such a long period must be aware of the financial position and the way to work through out in case of distress. Moreover, one cannot lose sight of the fact that an amount of ₹9.5 crores has been transferred without any plausible explanation. The transfer of the amount is shrouded in questionable circumstances and creates doubts about the entire transaction suggesting the presence of potential criminal intention.

17. A perusal of the records indicate that previous attempts were undertaken to reach a conciliatory understanding, aiming to return the transferred amount to the Trust's account for the rightful construction of a charitable hospital. Unfortunately, despite referral to the Mediation, the matter remained unsettled for various reasons.

18. Furthermore, there is no reason to believe as to why the petitioner had converted ₹1.5 crores into FDR and named his wife as nominee under good faith but rather he failed to provide an explanation to this fact. There is nothing before this Court to show that late Baba Jaswant Singh had intention to gift or transfer such a huge amount only for being an old *sewadar*. Besides this, the petitioner is claiming himself as a self proclaimed custodian of the trust amount without any basis or authority.

19. However, this is quite unimaginable as to why the amount of ₹9.5 crores was transferred to the personal account of the petitioner and his wife was made nominee to the FDR of ₹1.5 crores. Further, it does not strike logic as to why, this amount of ₹9.5 crores and the FDR of ₹1.5 crores were transferred by him in his own bank account and how the petitioner is treating the said amount as his own which smacks *mala fide*.

20. Moreover, in the present situation, much water has flown under the bridge by way of the FSL report filed along with the status report by the State which clearly reveals that the signatures in the account opening form are not appended by late Baba Jaswant Singh and two cheques of ₹3.5 crores and ₹6 crores were also signed by the present

petitioner and consequently, Sections 467/468/471/120B IPC were invoked in the present FIR against the present petitioner.

21. Therefore, taking into account the totality of facts and considering the circumstances that now Sections 467/468/471/120B IPC have been invoked which include the punishment of imprisonment for life, I am of the opinion that since the allegation against the petitioner are serious in nature, custodial interrogation of the petitioner is required. The petitioner has failed to make the case for the grant of anticipatory bail, as a result, the present bail application is dismissed.

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

RAJNISH BHATNAGAR, J

DECEMBER 13, 2023/p