



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

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Reserved on : 19.04.2023

Pronounced on : 25.05.2023

+ **BAIL APPLN. 543/2023**

DARSHAN HARISH JOSHI

..... Petitioner

Through: Mr. Rakesh Khanna, Sr. Advocate
with Mr. Aman Vachher, Mr. Dhiraj,
Mr. Omkar Dave, Mr. Ashutosh
Dubey, Ms. Anshu Vachher, Mr.
Abhishek Chauhan, Mr. Amit Kumar
and Ms. Shakshi Sharma, Advocates.

versus

THE STATE GOVT OF NCT DELHI

.... Respondent

Through: Ms. Priyanka Dalal, APP for the State
with SI Nitin Singh.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. The present bail application has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case FIR No. 264/2022 under Section 170/389/465/471/120B/34 IPC registered at Police Station Crime Branch, Delhi.



2. Briefly stated, the facts of the case are that the present case was registered at PS Crime Branch, Delhi on the complaint of Sh.Vipul Kaushik. He filed this case on behalf of Sh. Hardev Singh, who is the Industrial Unit President of Nippon Paint India Ltd having its office in Mumbai and Vipul Kaushik is the channel partner of the company.

3. The case of the complainant is that all the accused persons in pursuance of a criminal conspiracy sent two fake notices in the name of Enforcement Directorate on the Whatsapp of Hardev Singh on 08.11.2022. One notice was for appearance of Hardev Singh and another one for his colleague Kumar Hakim (who is the Director of Procurement in the factory situated at Nippon Paint India-Mumbai), directing them to appear before Enforcement Directorate Officer Manoj Kumar Teekla in his office in Delhi on 14.11.2022. The said notices were also received via Speed Post on 10.11.2022.

4. It is alleged that on 05.11.2022, before receiving the said notices, accused Akhilesh Mishra (who is the supplier of solvents on commission basis in Nippon Paint India) called Kumar Hakim and told him that a big trouble is about to come over Hardev Singh but he can help him to get rid of that trouble with the help of his contacts in the Ministries. Further on 08.11.2022, Akhilesh Mishra again called Kumar Hakim and confirmed about the trouble.



5. It is further alleged that on 10.11.2022, Hardev Singh asked Kumar Hakim to meet accused Akhilesh Mishra. Accordingly, Kumar Hakim met him and accused Akhilesh Mishra demanded Rs. 2-3 Crores to settle the matter and also asked Kumar Hakim to arrange a meeting with Hardev Singh.

6. On 11.11.2022, Hardev Singh informed Enforcement Directorate, Delhi about the said notices through his friend Vipul Kaushik from where, Hardev Singh came to know that the said notices are fake. For catching the culprits red-handed, Hardev Singh kept his conversation going on with accused Akhilesh Mishra and Darshan Harish Joshi (petitioner herein) to settle the matter. Accused Akhilesh Mishra and petitioner Darshan Harish Joshi told Hardev Singh that they have to go to Delhi to manage the matter in the department at a higher level, expenses of which has to bear by him. Accordingly, Hardev Singh arranged their flight tickets from Mumbai to Delhi and also booked a room in Hotel Ashoka, Delhi.

7. On 14.11.2022, Enforcement Directorate, New Delhi, informed Crime Branch, Delhi that some individuals are attempting to extort a person under the guise of being Enforcement Directorate officials. Thereafter a raid was conducted at Hotel Ashoka, Chankyapuri, Delhi by crime Branch Delhi alongwith the officials of Enforcement Directorate and a representative of complainant i.e. Vipul Kaushik.

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During the raid accused Akhilesh Mishra, Darshan Harish Joshi (petitioner herein), Vinod Kumar Patel, Dharmender Kumar Giri and Naresh Mahto were apprehended.

8. According to the case of the prosecution, one person arrived at Ashoka Hotel in the Ciaz car on which Government of India was written, then accused Akhilesh Mishra, Darshan Harish Joshi (present petitioner) and Vinod Kumar introduced him to Vipul Kaushik as the official of the Enforcement Directorate. According to the prosecution the said person then threatened the complainant to settle the matter otherwise an arrest warrant will be issued against Hardev Singh.

9. It was revealed during the interrogation of the above accused persons that said fake ED officer alongwith other accused persons was present at Gol Market, Delhi. Accordingly, a raid was conducted near Gol Market, Delhi and accused Asrar Ali, Vishnu Prasad and accused Devender Kumar Dubey were also arrested.

10. I have heard the Ld. counsel for the petitioner, Ld. APP for the State, perused the Status Report and also perused the records of this case.

11. It is submitted by the Ld. counsel for the petitioner that except Section 170 IPC all the other sections are bailable and it was later on upon the statement of complainant section 387 IPC was added. It is
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further submitted by the Ld. APP that co-accused Vishnu Prasad has been granted bail. The petitioner is in J.C. since 80 days, charge sheet has already been filed and the petitioner has clean past antecedents.

12. He further submitted that the petitioner has been falsely implicated and no useful purpose would be served by keeping him in judicial custody. He further submitted that the petitioner is a patient of diabetes and blood pressure and his health is deteriorating. He further submitted that the story of the prosecution about the incident which took place at Ashoka Hotel cannot be believed in the absence of independent witnesses. He has relied upon "*Sanjay Chandra Vs. Central Bureau of Investigation*" [(2012) 1 SCC 40].

13. On the other hand, it is submitted by the Ld. APP for the state that the petitioner is the mastermind of the conspiracy and he alongwith co-accused proposed a settlement to Hardev Singh that they can get the matter settled with Enforcement Directorate for a sum of Rs. 2-3 crores. The petitioner was apprehended from Ashok Hotel in the raid conducted on 14.11.2022. It is further submitted by the Ld. APP that the petitioner and other co-accused had claimed that they have connections with India's top agencies like CBI, ED and NIA as well as judges. It is further submitted by the Ld. APP that the petitioner is not entitled to party with co-accused as he was arrested from Ashok Hotel in a raid conducted by the agency.

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14. In the instant case, there are specific allegations against the petitioner, who alongwith his co-accused had told the complainant that they can get the matter settled for Rs. 2 to 3 crores. The petitioner was arrested from Ashok Hotel alongwith other co-accused and the contention of the Ld. counsel for the petitioner that no independent witness has been joined by the IO, this contention has no force in it as it is a matter of experience that public persons are reluctant to join the investigation and the petitioner will have his chance to cross examine the arresting witness during the course of the trial.

15. The charge sheet shows conversations between the co-accused Akhilesh Mishra and Darshan Harish Joshi (present petitioner) that they have proposed the settlement to the complainant. The petitioner had come to Delhi from Mumbai and stayed at Ashoka Hotel from where they were arrested. The petitioner alongwith co-accused persons has introduced one Devender Kumar Dubey as an ED official to Vipul Kaushik who threatened Vipul Kaushik and thereafter the said fake ED official left and it is alleged that the petitioner alongwith his co-accused persons demanded Rs. 15 to 20 crores to settle the matter and it is at that time the raid was conducted and the petitioner was apprehended at the spot while negotiating with the complainant.

16. There is no dispute with regard to the propositions of law laid down in the judgment "*supra*" relied upon by the Ld. counsel for the

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petitioner but each case has to be decided on the basis of its own peculiar facts and circumstances and the judgment "*supra*" relied upon by the Ld. counsel for the petitioner is not applicable to the facts of the present case.

17. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:- (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; (iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused; (v) larger interest of the public or the State and similar other considerations (vide *Prahlad Singh Bhati v. NCT, Delhi and another (2001) 4 SCC 280*). There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits.

18. In *Jayendra Saraswathi Swamigal v. State of Tamil Nadu* (2005) 2 SCC 13, it was held as under:-

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“16. The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in State v. Capt. Jagjit Singh AIR 1962 SC 253 and Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 118 and basically they are the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case.”

19. Therefore, looking into the modus operandi adopted by the petitioner, the allegations against him which are grave and serious in nature and he alongwith co-accused persons had the audacity to introduce the complainant with a fake ED officials which is quite a serious thing, no ground for bail is made out at this stage. The bail application is, therefore dismissed.

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

RAJNISH BHATNAGAR, J

MAY 25, 2023

Sumant