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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 20th October, 2023

+ BAIL APPLN. 884/2023 & CRL.M.A. 7069/2023 (Interim Protection)
PARSHANT JAIN Petitioner

Through: Mr. D.K. Sharma, Mr. Vishal Tyagi
and Mr. Gaurav Kumar, Advocates.

versus

THE STATE (NCT OF DELHI) Respondent

Through: Ms. Priyanka Dalal, APP for the State
with SI Varun Chechi, P.S.
Barakhamba Road.
Mr. Anil Sethi & Mr. Samarth Raj
Sethi, Advocate for complainant
alongwith complainant in person.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present application under Section 438 of the Code of Criminal Procedure, 1973 ('CrPC') seeks anticipatory bail in case FIR No. 130/2022,



under Sections 406/409/420/120B of the Indian Penal Code, 1860 ('IPC'), registered at P.S. Barakhamba Road.

2. The case of the prosecution is that the present FIR was registered at the instance of Sumit Agarwal (hereinafter referred as the 'complainant') against the present applicant as well as other accused persons. The case of the complainant is that he is engaged in business of wholesale trade of synthetic yarns. It is alleged that in July 2021, one Mr. Rishab Jain (co-accused), who was known to him, introduced the complainant to the present applicant and suggested that the complainant could sell yarn through the applicant's proprietorship firm, i.e., M/s Prashant Zippers. It is further alleged that the present applicant introduced him to one Mr. Jitender Goyal, who claimed to be the former's father-in-law and subsequently induced him to enter into a transaction whereby they would purchase yarn from the company of the complainant at a discounted price in lieu of their fee/commission and thereafter sell it in the market and that they would make the payment to the complainant within 07 days from the date of invoice. It is alleged that on the basis of the aforesaid inducement, the complainant supplied polyester yarn to them *vide* various invoices, for a total amount of Rs. 1,63,10,109/-. It is alleged in the FIR that the present applicant made a part payment of Rs. 21,08,575/-. It is further alleged that on 01.06.2022, the complainant received a hand-written note on WhatsApp from the present applicant asking all his creditors who were wholesale yarn dealers to come to his factory at Narela on 02.06.2022 at 11:00 AM. It is alleged that at the said factory, the present applicant came to the said factory alongwith his father Surender Jain and in presence of all the traders stated that his total liability towards all of them has



become zero and that he would not pay anyone for their goods. It is further alleged that the present applicant used to buy yarn from the wholesale dealers and sell the same on a lower price and by adopting this practice, the applicant caused a loss of Rs. 50 Crores to wholesale dealers including the present complainant. The present FIR was registered and investigation was conducted.

3. Learned counsel appearing on behalf of the applicant submits that the present dispute is purely civil in nature. It is pointed out that the applicant and the complainant had a running account and as per the accounts, the complainant in fact owes an amount of Rs. 1,81,41,323/- to the firm of co-accused Rishab Jain which has been intentionally concealed by the complainant in the present FIR. It is further submitted that the applicant made a payment of Rs. 3 lakhs even after registration of the FIR on 18.01.2023. It is further submitted that the applicant has joined investigation in pursuance of the interim protection granted by this Court and is cooperating with the Investigating Officer. It is further submitted that so far as the other FIRs pending against the present applicant are concerned, the applicant is either on bail or interim protection granted by the Court of competent jurisdiction.

4. Learned counsel for the applicant relied upon following judgments:

- i. **Anil Mahajan v. Bhor Industries Ltd, (2005) 10 SCC 228** - It was submitted that in the said case, the Hon'ble Supreme Court observed that in order to constitute an offence of cheating, the substance of the complaint is required to be seen. Mere use of the words like 'cheating' is of no consequence.



- ii. **Satishchandra Ratanlal Shah v. State of Gujarat, 2019 (2) RCR (Criminal) 145** - Reliance on this case was placed to submit that the present dispute is essentially of a civil nature and ought not to be criminalized.
 - iii. **Mitesh Kumar J. Sha v. State of Karnataka, 2021 (4) RCR (Criminal) 573** - Learned counsel for the applicant submitted that the Hon'ble Supreme Court, in this case, observed that a mere breach of contract cannot give rise to criminal proceedings for cheating unless fraudulent or dishonest intention is shown.
 - iv. **Ravi Kukreja & Anr. V. State of Haryana & Anr., 2020 (1) RCR (Criminal) 477** - Relying on the said judgment of the Hon'ble High Court of Punjab and Haryana, learned counsel for the applicant submitted that breach of contractual obligations normally do not give rise to a criminal offence when the dispute is essentially of a civil nature.
 - v. **Ravi Kumar Gupta v. Narinder Kumar & Co, 2007 (3) RCR (Criminal) 511** - It was submitted that in this case, the Hon'ble High Court of Punjab and Haryana held that *mens rea* is an essential ingredient of cheating, without which allegations cannot be sustained.
5. *Per contra*, learned APP for the State, assisted by learned counsel for the complainant, submits that the present applicant is involved in 4 different FIRs with respect to similar allegations. It is argued that the *modus operandi* of the present applicant is to initially gain confidence of the victims by paying a small amount of supplied yarn and thereafter, taking huge quantities of the said yarn and then selling the same at a lesser price without giving any



payment to the said suppliers. Learned APP for the State draws the attention of this Court to additional status report filed in pursuance to the interrogation of the present applicant with regard to sale of the yarn supplied by the complainant. As per learned APP for the State it is pointed out that the material purchased from the complainant were sold to different parties and even after receiving payment for the same, the complainant was not paid.

6. It is further argued that the applicant's firm M/s Prashant Zippers's turnover had increased from 73 crores to 370 crores in one year, i.e., from 2021 to 2022, which shows that the present applicant, after purchasing the yarn from the supplier sold the same at a lesser value in the market and without paying the supplier, misappropriated the value of the goods supplied to him. It is submitted that the custodial interrogation of the present applicant is necessary.

7. Heard learned counsel for the parties and perused the record.

8. In the present case, the primary contention of the applicant that dispute in the FIR is essentially of a commercial or civil nature appears attractive at the first instance. However, learned counsel appearing on behalf of the applicant could not give any explanation for the fact that as to why material purchased at a higher price was in fact, sold at a lesser price. No explanation for the same is forthcoming. The case of the complainant is that the applicant, after receiving goods from the former, without making any payment, sold the same in the market at a cheaper price and thus, misappropriated the entire sale consideration for himself. It is also the case of the prosecution that while selling these goods at a cheaper rate, the applicant created a market for himself and this *modus operandi* was used by him with various people,



resulting in registration of other FIRs against him. It was pointed out that all the FIRs pertained to a similar transaction, as in the present case. Decisions relied upon by the learned counsel for the applicant are distinguishable from the facts of the present case. The *modus operandi* adopted by the present applicant *prima facie* amply demonstrates his dishonest intention. Furthermore, the applicant is seeking anticipatory bail and even after being granted interim protection, he did not cooperate with the investigation. The Hon'ble Supreme Court, in **State Rep. by the C.B.I. v. Anil Sharma, (1997) 7 SCC 187**, while dealing with a plea for anticipatory bail, observed and held as under:

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

9. In view of the facts and circumstances of the case, this Court is of the opinion that custodial interrogation of the present applicant is required to unearth the money trail in the present case.

10. The present application is dismissed at this stage and disposed of



accordingly.

11. Pending applications, if any, also stand disposed of.
12. The interim protection granted to the applicant *vide* order dated 17.03.2023 is withdrawn.
13. Needless to state, nothing stated hereinabove is an opinion on the merits of the case and is only for the purpose of the present application.
14. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
JUDGE

OCTOBER 20, 2023/sn