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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 6th January, 2023

Pronounced on: 11th January, 2023

+ BAIL APPLN. 3577/2022

KAPIL TANEJA (IN JC)

..... Petitioner

Through: Mr. Saket Sikri, Mr. R.S. Sahni, Mr. Gautam Khazanchi, Mr. Ajay Pal Singh Kullar, Ms. Priya Singh, Mr. K.V. Sriwas Narayanan & Mr. Vinayak Chawla, Advocates.

versus

STATE, (GOVT. NCT OF DELHI)

..... Respondent

Through: Mr. Amit Ahlawat, APP for State alongwith Mr. Gagan Kumar, Advocate & SI Manish Kumar, NR-I/Crime Branch.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA J.

1. The present application under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') has been moved on behalf of Sh. Kapil Taneja (hereinafter referred to as the 'applicant') seeking regular

bail in case FIR No. 217/2022, under Sections 419/420/120B/34/389 of the Indian Penal Code, 1860 read with Sections 66C and 66D of the Information Technology Act, 2000, registered at PS Crime Branch.

2. Learned counsel for the applicant submits that the applicant was arrested in the present case on 21.09.2022. It is submitted that the Investigating Officer was granted 5 days police remand during investigation from 21.09.2022 to 26.09.2022 and thereafter, the applicant has been in judicial custody.

3. Learned counsel for the applicant further submits that there was non-compliance of Section 41A of Cr.P.C and relies upon the following judgments, in support thereof:

- i. Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273
- ii. Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51
- iii. Sunny v. State NCT of Delhi, BAIL APPLN. 1107/2022
- iv. Munawar v. State of M.P., 2021 (3) SCC 712
- v. Rakesh Kumar v. Vijayanta Arya (DCP) & Ors., 2021 SCC OnLine Del 5574.

4. It is further submitted that the investigation *qua* the present applicant is complete and chargesheet has been filed against the present applicant and 33 others on 17.11.2022. It is pointed out that only the present applicant is in judicial custody and the chargesheet *qua* other 33 persons was filed without arrest.

5. It is further urged that the allegation in the chargesheet is that the applicant alongwith 33 other persons were found engaged in cheating citizens of the United States of America (hereinafter referred to as 'USA') from a fake

call centre. However, it is submitted that no evidence has been placed on record by the prosecution agency to support the aforesaid allegation.

6. In support of his application, the learned counsel for the petitioner further relied upon;

- i. Amandeep Singh Johar v. State (NCT of Delhi), 2018 SCC OnLine Del 13448.
- ii. Delhi Police Standing Order No. 109/2020.
- iii. Santosh s/o Dwarkadas Fafat v. State of Maharashtra, (2017) 9 SCC 714.
- iv. Manoj Kumar Hota v. State NCT of Delhi, BAIL APPLN. 3050 of 2021.
- v. Devender Kumar Mishra v. State, BAIL APPLN. 2854 of 2021.

7. *Per contra*, learned APP for the State submits that the present applicant and the other co-accused persons as mentioned in Column 11 of the chargesheet were cheating foreign nationals and the same was bringing bad name to the country. He further submits that the further investigation under Section 173(8) of the Cr.P.C. is continuing. It is further submitted that co-accused Akash @ Ankush Sachdeva is evading investigation.

8. Learned APP for the State relied upon the status report dated 31.12.2022, authored by the Investigating Officer, Inspector Satish Malik, PS Crime Branch. The prosecution case, as per the said status report, is as under:

"1. That the brief facts of the case are that on 20.09.2022, a secret information was received that a large scale cyber scam call centre is operating in Okhla, Phase-I, Delhi which is involved in cheating innocent people online. The police team led by SI Jitender and staff reached at the location as per pointing out of the secret informer. Meanwhile one man was seen coming out of a building later on identified as D-1/94, 2 First Floor, Phase-I, Okhla, Delhi pointed out by secret informer. He became

suspicious about the presence of police party and turned back and rushed inside the building. He was chased and caught hold outside First Floor. He revealed his name as Kapil Taneja S/o Govind Parkash, R/o G-49, GF Gali No. 12, Hari Nagar Extn., New Delhi-110058, Age-44 yrs, Mobile No. 9999452798. During enquiry he told that he is running fake call centre along with his associates and at present tele callers are inside the hall. Those persons/operators were engaged in communicating with the US resident victims. Impersonating the tele callers were being continuously monitored & guided by the aforesaid Kapil Taneja. On inspection of Laptops and mobile phones in the call center, it is established that these people are using AnyDesk software, Ultra Viewer, X-Lite etc. and cheating innocent USA residents. The names of other owners of the call center were revealed as Ankush who is using +38670134126 and one Sushil Sachdeva. **Total thirty three male tele callers and nine female tele callers were found present who are involved in the process of cheating. All these persons were interrogated and they were asked to produce any license for operating the call center or authorization from Microsoft / Amazon but they were not found in possession of any such things. They initially tried to mislead but on sustained interrogation, they divulged that they have no authorization and are running this scam call center just to cheat the innocent USA residents by creating fear in them of loosing personal details to hackers. All the laptop and mobile 3 used by these persons were checked and some details of cheated money were also found. On interrogation of above 33 tele-callers and applicant accused Kapil Taneja admitted their role in operating the call center. It was revealed that they all with complete knowledge of cheating process in an organized manner are cheating overseas victims of United States.** The laptops and mobile phones had an elaborate script which was being used to converse with the victims and cheat them. Devices used in the scam process including 40 laptops were packed in four cardboard cartoons, and 20 mobile phones were packed in one transparent plastic container. All the five packings were wrapped in white clothes and were sealed with the seal of 'BD' and seized through seizure memo. On the basis of the above and material recovered and facts found out, a case vide FIR No. 217/22 dt 21.09.2022 u/s 419/420/ 120B/34 IPC and 66C/66D IT Act PS Crime Branch was got registered and investigation was taken up. The whole script used by the accused persons is mentioned in the FIR. Notice u/s 41A CrPC was served to Kapil Taneja and 33 tele callers. The accused Kapil Taneja did not cooperate in the investigation and did not divulge the whole gamut of

cheating that was being played by him. He also did not disclose anything about his partners. He was arrested accordingly on 21.09.2022."
(emphasis supplied)

9. With regard to the details of the victims alleged to have been cheated by the applicant and the other co-accused persons, the learned APP for the State relies upon Para 6 of the aforesaid status report, which records as under:

"6. That the assistance of FBI has been sought regarding the evidences from the victims. The FBI is in the process of interviewing the victims and has placed it on top priority. FBI has in its letter stated that it considers the issue as a priority matter. On the basis of telephonic conversation with the US Embassy, it has been established that they have been able to obtain the version of two US national victims regarding the cheating done with them. However, they will share the complete details once they are able to interview all the victims whose details have been shared with them. Report from FBI is awaited."

10. It is further submitted by learned APP for the State that if the applicant is released on bail, he can influence the witnesses and therefore, the present application is strongly opposed.

11. Heard the learned counsel for the parties.

12. The case of the prosecution, in a nutshell, is that the applicant was found at the premises of an alleged call centre being operated from D-1/91, 1st Floor, Phase-I, Okhla, Delhi, from where the present applicant alongwith other tele-callers were allegedly involved in a process of cheating overseas victim from USA.

13. It is further stated in the status report that on questioning, the present applicant disclosed that he was a partner in the aforesaid call centre and was leading a team of approximately 20 tele-callers. It is also a matter of record that the chargesheet in the present case has been filed *qua* 34 persons and the applicant is the only one who is in judicial custody. As per the case of the

prosecution, the investigation is continuing with regard to the identification of the alleged victims who were cheated by the applicant and his accomplices, as pointed out hereinbefore. In response to a request made by the investigating agency *vide* communication dated 21.09.2022, the Federal Bureau of Investigation (hereinafter referred to as 'FBI') *vide* a communication dated 11.10.2022 informed the former that they are under process of identifying the said alleged victims and would share the details with the Investigating Officer of the present case, once they are able to complete their inquiry.

14. It is a matter of record, as per the chargesheet, that the alleged victims are based in USA. Admittedly, there is no statement in the chargesheet on behalf of any witness who claims to be defrauded/cheated by the applicant or any other accused person. The investigation in respect of identifying the said alleged victims is underway in USA. The equipment, mobile phones and other devices being used in the call centre stand seized by the investigating agency. The evidence, as mentioned in the chargesheet at Para 24, against the present accused is being reproduced as under:

“24. EVIDENCE AGAINST ACCUSED KAPIL TANEJA

- a) He was present at the alleged call center at the time of raid.
- b) 40 Laptops and 20 mobile phones that were being used to cheat the US Nationals were recovered from the alleged call center.
- c) Three mobile phones were recovered from him in which chats were recovered which established his involvement in the cheating.
- d) Some documents having, details of cheated US Nationals were also recovered from him.
- e) Recovery of script used to cheat the victims.”

15. The Hon'ble Supreme Court, in Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40 has held as under:

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the

accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

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46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. **At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation.** We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.”

(emphasis supplied)

16. The present applicant has been in judicial custody since 26.09.2022, as

mentioned hereinabove. Recoveries have been effected. The chargesheet has been filed. The possibility of tampering with the evidence, as also of influencing the witnesses cannot be presumed at this stage, owing to the fact that the evidence, as pointed out in the chargesheet is already in possession of the investigating agency. Further, admittedly, yet to be identified alleged victims are residents of USA and therefore, cannot possibly be influenced by the present applicant. There is no apprehension expressed that applicant is a flight risk.

17. Further investigation, as pointed out by the learned APP for the State, is continuing but the same cannot be a ground for applicant's continued incarceration. Moreover, further investigation in the present case, pertains to an inquiry being conducted by the FBI in USA and no useful purpose will be served by keeping the present applicant in judicial custody.

18. In view of the facts and circumstances of the present case, the application is allowed.

19. The applicant is admitted to bail upon his furnishing a personal bond in the sum of Rs. 1,00,000/- alongwith two sureties of like amount to the satisfaction of the learned trial Court/Duty Magistrate, further subject to the following conditions:

- i. The memo of parties shows that the applicant is residing at F-8, Vikas Puri, Delhi. In case of any change of address, the applicant is directed to inform the same to the learned Trial Court and the Investigating Officer.
- ii. The applicant shall not leave India without the prior permission of the learned Trial Court.

- iii. The applicant is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
 - iv. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witnesses in any manner.
 - v. The applicant shall join the investigation, as and when required by the Investigating Officer.
 - vi. In case it is established that the applicant tried to tamper with the evidence, the bail granted to the applicant shall stand cancelled *forthwith*.
- 20.** Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case.
- 21.** The application stands disposed of along with all the pending application(s), if any.
- 22.** Let a copy of this order be communicated to the concerned Jail Superintendent.

AMIT SHARMA
JUDGE

JANUARY 11, 2023/ab