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

Reserved on : 10.08.2023

% **Pronounced on : 29.08.2023**

\+ **BAIL APPLN. 3886/2022**

VISHAL GUPTA @ VISHAL MAHAJAN ..... Petitioner

Through: Mr. R. D. Sharma, Mr. Lokesh Ahlawat, Mr. Garvit Gupta, Mr. Deepansh Katari and Ms. Muskan, Advocates.

versus

STATE ..... Respondents

Through: Mr. Amit Ahlawat, APP for the State with Insp. Robin Singh, PS Lahori Gate.
Dr. Ram Avtar Sharma and Ms. Jaya, Advocates for complainant.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. This is a petition filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case FIR No. 212/2022 under Sections 420/406/34/120B IPC registered at Police Station Lahori Gate, Delhi. As per the case of the prosecution, that complainant namely Mr. Raj Kamal Sharma, filed a complaint alleging he is engaged in business of dry fruits and having store in the name of Rajshree Trading Company situated at 437, 1st Floor, Gali Mandir Wali, Naya Bansh Khari Baoli, Delhi. It is further alleged that due to COVID 19 he was facing financial crunch and thereafter, consulting his business friend, got the

phone number of a loan financer, namely Geetesh Jain based in Ahmadabad, Gujarat for the purpose of taking loan.

2. It is further alleged that on 14-15.10.2020 Geetesh Jain came to the office of the complainant at Khari Baoli and prepared a loan file, in which the complainant provided him ITR statement of 3 years, Bank Statement, Adhar Card, Pan Card. Thereafter, the said person Geetesh Jain expressed his possibility of providing loan to the tune of ₹ 10 Crores. It is further alleged that in March 2021, again Geetesh Jain called the complainant and stated that loan will be sanctioned from a private financier and he therefore introduced the complainant with another person, namely, Bankim Chandra Pandit Ji, proprietor of 7 Star Consultancy and Services, office at A-7/42, Goyal Intercity, Ahmadabad, Gujarat, who discussed the loan terms with the complainant and also demanded the loan processing fees in advance.

3. It is further alleged that after discussing the terms for loan and agreeing on advance payment for ₹40,00,000/-, the complainant deposited ₹33,50,000/- through RTGS in Geetesh Jain's bank account bearing No. 182801000674 (ICICI Bank) from 08.07.2021 to 30.09.2021 and ₹6,50,000/- in October.

4. Further alleged that both the above mentioned person called the complainant to Ahmadabad, and then Bankim Chandra introduced him to his partner, namely Vishal Mahajan *i.e. petitioner herein*. Further alleged that Bankim Chandra and Geetesh Jain asked the complainant to provide ₹20 crores as loan and further demanded ₹35 lacs from the complainant.

5. Further, on 14.10.2021, the complainant further deposited ₹35,01,000/- through RTGS in 7 Star Service Consultancy Account No. 921020016191619 Axis Bank and was assured by Bankim Chandra and Geetesh Jain to provide him loan, and demanded the money for loan fees and advance interest and deposited Rs.3,40,000/- in his personal account. It is further alleged that whenever the complainant demanded his money, Geetesh Jain and Bankim Chandra threatened him and his family with dire consequences and till date the complainant had not received the loan money. The complainant being cheated by the aforesaid persons got the present FIR registered.

6. I have heard the learned counsel for the petitioner, APP for the State duly assisted by learned counsel for the complainant. I have also perused the record of the case and status report filed by the State.

7. It is submitted by the learned counsel for the petitioner that the petitioner is in judicial custody since 26.07.2022. It is further submitted that petitioner has been falsely implicated in the present case, and at no point of time any inducement was given by him to the complainant. It is further submitted that the money as alleged by the prosecution which was received by the petitioner from the co-accused persons was only towards business transaction, and even before the transfer of the money by the complainant in the bank account of other co-accused persons, he had been receiving money from co-accused Bankim Chandra on account of old business relations. It is further submitted by the learned counsel for the petitioner that petitioner at no point of time has executed any agreement with the complainant and

has no role to play in the present case. It is further submitted that the chargesheet has been filed and investigation is complete. It is further submitted that the maximum punishment provided for the offence for which the petitioner has been charged is 7 years. In support this contention learned counsel for the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273***.

8. On the other hand, learned APP has argued on the lines of the status report and with the assistance of the learned counsel for the complainant and submitted that petitioner and his co-accused have hatched conspiracy and have cheated the complainant for a sum of ₹70 lacs and the petitioner is the beneficiary of the cheated amount. Learned counsel for the complainant submitted that petitioner after receiving the cheated amount in his bank account has transferred amount of ₹8 to 10 lacs in the bank account of the co-accused as his share in the cheated amount. He further submitted that there is no recovery of the cheated amount which was received by the petitioner and allegations against the petitioner are grave and serious in nature.

9. Learned APP further submitted that petitioner has even evaded the process of law and proceedings under Section 82 and 83 Cr.P.C were issued against him. It is further submitted that the bank account of the petitioner in which the money was transferred by the co-accused was got opened on the basis of the fake documents.

10. In the instant case, petitioner is in judicial custody since 26.07.2022 and charge sheet has already been filed. The evidence in

this case is documentary in nature which is already seized and filed along with the charge sheet. There are no allegations brought forth by the prosecution regarding tampering with evidence. The contention of the petitioner that co-accused Bankim Chandra and Raj Kumar Pandit was having business relations with the petitioner prior to the transaction between the co-accused and the complainant is a matter of trial and would be taken care of at the appropriate stage.

11. Moreover, all the bank details have already been obtained by the Investigating Officer and placed before the trial court along with the charge sheet. Further the offences for which the petitioner has been charged entails maximum punishment of 7 years. As far as the contention of the learned APP that the petitioner may flee from justice as he could be only arrested when proceedings under Sections 82/83 Cr.P.C were initiated against him is concerned, in this regard reliance can be placed upon the judgment of this Court in the case of ***Ashok Sagar Vs. State (NCT of Delhi) 2018 SCC Online Del 9548,*** relevant portion of which reads as follows:-

> *".....While examining the issue, courts are not to presume that the accused would flee justice, were he to be released, and search for evidence indicating to the contrary. Logistically, every accused, who is released during trial, has the potentiality of fleeing. Were this potentiality to be allowed to influence the mind of the court, no accused would be entitled to bail."*

12. Keeping in view the facts and circumstances, since the petitioner is in judicial custody since 26.07.2022 and charge sheet has already been filed, he is no more required for investigation purposes. So, petitioner is admitted to bail on the following conditions:-

i. The Petitioner shall furnish personal bond in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of the concerned trial court.

ii. The petitioner shall provide his mobile phone number to the Investigating Officer (IO) concerned – at the time of release, which shall be kept in working condition at all times. The petitioner shall not switch-off, or change the same without prior intimation to the IO concerned, during the period of bail;

iii. The petitioner shall not leave the NCT of Delhi without the prior permission of the concerned trial court.;

iv. The petitioner shall not indulge in any criminal activity during the bail period;

v. The petitioner shall not communicate with, or come into contact with any of the prosecution witnesses, or tamper with the evidence of the case or threaten any witnesses.

13. The application stands disposed of in the aforesaid terms.

14. Needless to say that nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of the case.

RAJNISH BHATNAGAR, J

AUGUST 29, 2023/ib