IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR

ON THE 24th OF JANUARY, 2024

MISC. CRIMINAL CASE No. 56907 of 2023

BETWEEN:-

MOHAMMAD ARIF S/O SHRI MOHAMMAD AJHAR AHMAD, AGED ABOUT 64 YEARS, OCCUPATION: PRIVATE WORK JANIPUR ROAD NAYA TAAL JAMA MASJID KE PASS PHALWARI PATNA BIHAR (BIHAR)

.....APPLICANT

(SHRI DESHRAJ BHARGAVA, LEARNED COUNSEL),

AND

THE STATE OF MADHYA PRADESH INCHARGE POLICE STATION THROUGH POLICE THANA SIROL DISTRICT GWALIOR MP (MADHYA PRADESH)

.....RESPONDENTS

(SHRI R.K. AWASTHI, LEARNED PP),

This application coming on for HEARING this day, the court passed the following:

ORDER

This first bail application has been filed by the applicant under Section 438 of Code of Criminal Procedure, 1973 for grant of anticipatory bail to the applicant, who is apprehending his arrest in connection with Crime No.138 of 2023, registered at Police Station Sirol District Gwalior (M.P.) for offences punishable under Sections 420, 409 and 34 of IPC.

As per the case of prosecution, Sahab Singh Yadav submitted a written complaint to Station House Officer, Police Station Sirol, District Gwalior on 13-05-2023 *inter-alia* alleging that he is Proprietor of Mohini Enterprises, Gwalior.

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One Arun Kumar Soni and Gajendra Sharma, approached him and proposed to provide him stockist work of Bajaj Company. They informed that Arun Soni is working as VSM with Bajaj Appliances and Gajendra Sharma is head of the state in the Company. They will provide appliances of the Company for sale on deposit of money. They further introduced him with Naveen Bajaj Managing Director of the Company, Mohd. Arif Sales (applicant) as Head of company and Prince Bajaj as brother of M.D. Navin Bajaj at Delhi Head Office. All the accused fraudulently induced him to deposit an amount of Rs.30,00,000/- in the account of Bajaj Appliances and forced him to execute an agreement with the Company. Initially, certain goods were sent to his godown but later, they were taken back. The accused have not paid him the money as promised. Further, the Company and the accused have refused re-payment of invested amount of Rs.30,00,000/-.

On such allegations, FIR at Crime No.138 of 2023 was registered at Police Station Sirol, District Gwalior for offences punishable under Sections 420, 409, 34 of IPC. Statements of witnesses have been recorded. During investigation, another complainant Gopal Gupta also submitted a written complaint against applicant and other co-accused alleging cheating on similar offence with him. Co-accused Navin Bajaj was arrested on 05-09-2023. His statement under Section 27 of Evidence Act was recorded. Co-accused Arun Soni was also arrested. His statement under Section 27 of Evidence Act was also recorded. Relevant seizures have been made. Further investigation is underway.

Learned counsel for the applicant, in addition to the grounds mentioned in the application, submits that he has falsely been implicated in the matter as he was working as Sales head of Bajaj Appliances. Learned counsel further

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contends that it is a commercial transaction which has been given colour of criminal prosecution. Applicant has not committed any cheating with the complainants. Applicant and his Company have been pressurized for taking back the goods in damaged condition which were delivered to complainant in fresh condition. The dispute relates to settlement of account. The intention to cheat cannot be inferred against the applicant. Learned counsel further submits that there is no likelihood of his absconsion of applicant leaving behind his family and profession. The case of the prosecution is based on documentary evidence. Therefore, there is no likelihood of interfering with the investigation or tampering with the evidence by applicant. No further custodial interrogation is required. Furthermore, main accused Navin Bajaj, Gajendra and Arun Kumar Soni were extended benefit of bail vide orders dated 16.10.2023 and 25.09.2023 passed by this Court in M.Cr.C. Nos.44474 of 2023 and 42860 of 2023 respectively. The trial would take time to complete. On these grounds, learned counsel for the applicant submits that the present applicant may be extended the benefit of anticipatory bail.

Per contra, learned counsel for the State opposes the bail application on the ground of gravity of alleged offence and that the applicant is resident of Patna, so he may abscond after getting bail.

Heard learned counsel for the parties and perused the case diary.

Considering the arguments advanced by both the parties and overall circumstances of the case but without commencing on merits of the case, this Court inclined to grant anticipatory bail to the applicant. Thus, the application is allowed.

Accordingly, it is directed that in the event of arrest of applicant, applicant **- Mohd. Arif** shall be released on bail in relation to Crime No.138 of 2023,

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registered at Police Station Sirol District Gwalior (M.P.) for offences punishable under Sections 420, 409 and 34 of IPC, upon furnishing a personal bond in the sum of **Rs.1,00,000/-(Rupees One lac Only) with one solvent surety** of the same amount to the satisfaction of the Officer making arrest, for compliance with the following conditions: **(For the sake of convenience of understanding by accused and surety, the conditions of bail are also reproduced in Hindi as under):-**

(1) Applicant shall make themselves available for investigation as may directed by the officer, in-charge of investigation;

(1) अन्वेषणकर्ता पुलिस अधिकारी के निर्देशानुसार अन्वेषण हेतु आवेदक उपलब्ध रहेगा।

(2) Applicant shall not commit or get involved in any offence of similar nature;

(2) आवेदक समान प्रकृति का कोई अपराध नहीं करेगा या उसमें सम्मिलित नहीं होगा।

(3) Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them/him/her from disclosing such facts to the Court or to the police officer;

(3) आवेदक प्रकरण के तथ्यों से परिचित किसी व्यक्ति को प्रत्यक्ष या अप्रत्यक्ष रूप से प्रलोभन, धमकी या वचन नहीं देगा, जिससे ऐसा व्यक्ति ऐसे तथ्यों को न्यायालय या पुलिस अधिकारी को प्रकट करने से निवारित हो।

(4) Applicant shall not directly or indirectly attempt to temper with the evidence or allure, pressurize or threaten the witness;

(4) आवेदक प्रत्यक्ष या अप्रत्यक्ष रूप से साक्ष्य के साथ छेडछाड करने का या साक्षी या साक्षियों को बहलाने–फुसलाने, दबाव डालने या धमकाने का प्रयास नहीं करेगा।

(5) Upon submission of final report under Section 173 of Cr.P.C, the

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applicants shall furnish fresh personal bond and solvent surety of aforementioned amount to the satisfaction of the Trial Court, if so directed and thereafter, shall remain present on every date of hearing as may be directed by the concerned Court;

(5) धारा 173 दं.प्र.सं. के तहत अंतिम प्रतिवेदन प्रस्तुत होने पर, यदि ऐसा निर्देशित किया जाता हैं, आवेदक विचारण न्यायालय की संतुष्टिप्रद पूर्व उल्लेखित राशि का नवीन वैयक्तिक बंधपत्र एवं प्रतिभू बंधपत्र प्रस्तुत करेगा और उसके उपरांत संबंधित न्यायालय के निर्देशानुसार सुनवाई की प्रत्येक तिथि पर उपस्थित रहेगा।

(6) During trial, the applicants shall ensure due compliance of provisions of Section 309 of Cr.P.C. regarding examination of witnesses in attendance;

(6) विचारण के दौरान, उपस्थित गवाहों से परीक्षण के संबंध में आवेदक धारा 309 दं.प्र.सं. के प्रावधानों का उचित अनुपालन सुनिश्चित करेगा।

This order shall be effective till the end of trial. However, in case of breach of any of the precondition of bail, it shall become ineffective without reference to the Court.

The trial Court shall get these conditions reproduced on the personal bond by the accused and on surety bond by the surety concerned, if any of them is unable to write, the scribe shall certify that he had explained the conditions to the concerned accused or the surety.

C.C. as per rules.

(SANJEEV S KALGAONKAR)
JUDGE

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