IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

MISC. CRIMINAL CASE No. 57439 of 2023

BETWEEN:-

CHETANBHAI S/O NARSHIBHAI MAVANI OCCUPATION: BUSINESS R/O 1 BHOOMI RAO HOUSES GURUKUL ROAD SURAT GUJRAT (GUJARAT)

.....APPLICANT

(BY SHRI VEER KUMAR JAIN, SENIOR ADVOCATE ALONGWITH SHRI ARIHANT KUMAR NAHAR, ADVOCATE)

AND

THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THROUGH POLICE STATION CRIME BRANCH DISTT.INDORE (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI H.S. RATHORE, GOVERNMENT ADVOCATE).
(BY SHRI SUDHANSHU VYAS, ADVOCATE FOR OBJECTOR)
(BY SHRI GAURAV CHHABRA, ADVOCATE FOR OBJECTOR)

Reserved on : 01.02.2024
Pronounced on : 02.02.2024

This application having been heard and reserved for order and the Court pronounced this day following:

ORDER

Heard and perused the case diary.

1. This is **first** bail application filed by the applicant under Section 438 of the Cr.P.C. for grant of anticipatory bail who is apprehending his arrest in relating to F.I.R. No.54/2023 dated 22.09.2023, registered at Police Station-Crime Branch, District-Indore (M.P.) for the offence under Sections 420, 409, 467, 468 & 470 of IPC, 1860.

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2. In brief, the prosecution case is that the wife of applicant has received amount of Rs.99,00,000/- for procuring cumin seeds. However, she has neither supplied cumin seeds nor returned the money to the complainant. As per prosecution case, Rs.40,00,000/- was received by the present applicant from his wife, the main accused Roopal Mavani. That apart, he has also intimidated the complainant for dire consequences, if she tries to recover the amount from his wife.

3. Learned Senior counsel for the applicant submits that applicant is innocent and has falsely been implicated in the present case. The applicant has not played any role in the prosecution case, he is only Director of Sonal Cultivation. The money involved in this case was received by Sonal wife of the applicant and who is representative of Sonal Cultivation. The only allegation against the applicant is to threaten the complainant for dire consequences. He also submits that ther is no single evidence which depicts the role of applicant in this case. The applicant is ready to abide all the conditions as may be imposed by this Court. Therefore, he may be enlarged on anticipatory bail.

4 . To bolster his contentions, counsel for the applicant has drawn attention of this Court to the provision of Section 41a of Cr.P.C. that the arrest in every case is not necessary and personal presence of accused can be called by notice under aforesaid provision of law. Hon'ble Apex as well as High Court in catena of judgments that the arrest is not necessary in every case. He further placed reliance over the judgment of Hon'ble Apex Court passed in the case of **Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273, relevant para of the judgment is as under :-**

"In pith and core, the police office before arrest must put a question to himself, why arrest? Is it really required? What purpose it

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will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 of Cr.PC."

5. On the other hand, learned Government Advocate and counsel for the objector has pleaded that this is a case for anticipatory bail, the applicant has committed cheating and also in conspiracy with his wife, played leading role in prosecution case. It is clearly established from the statement of applicant's wife that the money received by his wife, out of which Rs.40,00,000/- was transferred in the account of present applicant. Counsel for the objector has placed reliance upon the judgment passed by Hon'ble Apex Court in the case of ***Adri Dharan Das Vs. State of W.B.*** reported in ***2005 SCC OnLine SC 357***, where it has been held that :-

"Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his dis-

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> appearance to maintain law and order in the locality. For these or other reasons, arrest may become inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in an application under Section 438 o f the Code. The role of the investigator is well-defined and the jurisdictional scope of interference by the Court in the process of investigation is limited. The Court ordinarily will not interfere with the investigation of a crime or with the arrest of accused in a cognizable offence. An interim order restraining arrest, if passed while dealing with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code."

Counsel has opposed the prayer stating that in the present circumstances of the case, the applicant may not be enlarged on bail. Hence, prays for dismissal of the application.

6. I have heard the counsel for the parties and perused the record.

7 . From the face of record, it is crystal clear that the applicant has committed conspiracy with the complainant and also received amount of cheating in his account through his wife.

8. Further, the Hon'ble Apex Court in the case of **Jai Prakash Singh vs. State of Bihar and others [2012 (4) SCC 379]** while canceling the anticipatory bail of the applicant therein so granted concerned High Court, has clearly observed that:-

> "13.....The anticipatory bail being an extraordinary privilege should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after proper application of mind to

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decide whether it is a fit case for grant of anticipatory bail.

21.....The court may not exercise its discretion in derogation of established principles of law, rather it has to be in strict adherence to them. Discretion has to be guided by law; duly governed by rule and cannot be arbitrary, fanciful or vague. The court must not yield to spasmodic sentiment to unregulated benevolence. The order dehors the grounds provided in Section 438 Cr.P.C. itself suffers from non- application of mind and therefore, cannot be sustained in the eyes of law."

9. In view of the aforesaid facts and circumstances of the case and the settled proposition of law laid down by Ho'ble Apex Court in the case of **Jai Prakash Singh (supra)**, no case for anticipatory bail is made out. Hence, the application is liable to be and is hereby rejected.

(PREM NARAYAN SINGH)
JUDGE

Vindesh

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