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

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Reserved on: 01.03.2024

Pronounced on: 19.03.2024

+ **BAIL APPLN. 323/2024**

AKHILESH MISHRA

.....Petitioner

Through: Mr. K.K. Manan, Sr. Advocate
along with Ms. Udit Bali, Mr.
Rahul Guatam, Mr. Rahul
Khan, Mr. Ritik, Mr.
Karmanya Singh Choudhary
and Mr. Lavish Chandra,
Advocates

versus

STATE (THE NCT OF DELHI

..... Respondent

Through: Mr. Manoj Pant, APP for the
State with Ms. Udit Bail, Mr.
Rahul Gautam, Mr. Rahul
Khan, Mr. Ritik, Mr.
Karmanya Singh Choudhary
and Mr. Lavish Chandra,
Advocates.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. By way of present application filed under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') the applicant Akhilesh



Mishra seeks grant of regular bail in case FIR No. 264/2022, registered at Police Station Crime Branch, New Delhi, under Sections 170/389/387/465/ 471/120B/34 of Indian Penal Code, 1860 (‘IPC’).

2. Brief facts of the case are that the present FIR was registered at PS Crime Branch, Delhi on the complaint of Sh. Vipul Kaushik, which he had filed on behalf of Sh. Hardev Singh SB, who is the Industrial Unit President of Nippon Paint India Ltd. having its office in Mumbai and Vipul Kaushik is the channel partner of the company. In the complaint, Sh. Hardev Singh had alleged that on 08.11.2022, he had received two separate notices of Enforcement Directorate on his Whatsapp, one for his appearance and another for his colleague Kumar Hakim (who is the Director of procurement in the factory situated at Nippon Paint India - Mumbai), directing Hardev Singh and Kumar Hakim to appear before Enforcement Directorate officer Manoj Kumar Teekla in his office in Delhi on 14.11.2022. On 10.11.2022, the same notices had also been received by them via speed post. Hardev Singh had further alleged that on 05.11.2022, before receiving the said notice of the Enforcement Directorate, one Akhilesh Mishra (who is the supplier of solvents on commission basis in Nippon Paint India) had called Kumar Hakim and had told him that a big trouble was about to come over Hardev Singh however, he could help him to get rid of that trouble with the help of his contacts in Ministries. On 08.11.2022, Akhilesh Mishra had again called Kumar Hakim and confirmed about the trouble. On 10.11.2022, Hardev Singh had asked Kumar Hakim to meet Akhilesh



Mishra in this regard. Thereafter, Kumar Hakim had met Akhilesh Mishra, who had demanded Rs. 2-3 crores to settle the matter and had also asked Kumar Hakim to arrange a meeting with Hardev Singh. On 11.11.2022, Hardev Singh had informed Enforcement Directorate, Delhi about the said notices through his friend Vipul Kaushik, and from the office of Enforcement Directorate, Delhi, Hardev Singh had come to know that the said notices were fake. Accordingly, to catch the culprits red-handed, Hardev Singh had kept his conversation going on with Akhilesh Mishra and Darshan Harish Joshi (who is the buyer of mix solvents from Nippon Paint Ltd., Mumbai) to settle the matter. Akhilesh Mishra and Darshan Harish Joshi had told Hardev Singh that they have to visit Delhi to manage the matter at a higher level in the department, for which Hardev Singh has to bear their expenses and thus, Hardev Singh had arranged their flight tickets from Mumbai to Delhi and had also booked a room in Hotel The Ashok in Delhi.

3. On 14.11.2022, the Enforcement Directorate, New Delhi, had informed Crime Branch, Delhi that some individuals were attempting to extort money from a person, who lives in Mumbai, under the guise of being Enforcement Directorate officials. Thereafter, a raid was conducted at Hotel the Ashok, Chankyapuri, Delhi by Crime Branch, Delhi along with the officials of ED and a representative of the complainant i.e. Sh. Vipul Kaushik. During the raid, the accused persons Akhilesh Mishra, Darshan Harish Joshi, Vinod Kumar Patel, Dharmender Kumar Giri and Naresh Mahto were arrested. During the



investigation, it was revealed that a person had arrived at the Ashok Hotel in a Ciaz car on which "Government of India" had been written. Accused Akhilesh Mishra, Darshan Harish Joshi, and Vinod Kumar had introduced him to Vipul Kaushik as the official of the Enforcement Directorate. The said person had impersonated himself as an officer of the Enforcement Directorate and had threatened the complainant to settle the matter or else he would get an arrest warrant issued against Hardev Singh. The accused persons had also disclosed that the said fake ED officer and other accused persons were present at Gole Market, Delhi. A raid was conducted near Gole Market, Delhi, and accused persons namely Devender Kumar Dubey (who had impersonated himself as an ED officer), Asrar Ali and Vishnu Prasad were arrested. It was also revealed that one Gajendra @ Guddu had driven the Maruti Ciaz car to the Ashok Hotel with fake ED official i.e. Devender Dubey. Thereafter, Gajendra @ Guddu was arrested and the said Maruti Ciaz car bearing registration number HR 51 CG 8834, on which "Government of India" was written was also recovered and seized in the present case. On 15.11.2022, during the investigation, complainant Vipul Kaushik had further revealed that on 14.11.2022, after meeting with the fake ED official at the Ashok Hotel, Delhi, Akhilesh Mishra had threatened to kill him and Hardev Singh, if they did not pay the money. On the basis of this additional information, Section 387 of IPC was added in the present case. On 18.11.2022, during further investigation, accused Arun Kumar Singh was also arrested in the present case on the basis of disclosure



statements made by the accused persons and Call Detail Records (CDR). During the investigation, call recordings were found in the mobile phone of Akhilesh Mishra, which revealed the active participation of Darshan Harish Joshi in this conspiracy.

4. After concluding investigation, charge-sheet was filed on 14.01.2023. The FSL report/result regarding the CCTV footage and mobile phones of the accused persons is still awaited and will be filed through supplementary charge-sheet.

5. Learned Senior counsel for the present accused/applicant argues that the applicant has been falsely implicated in the present case and there is no cogent evidence against the applicant. It is stated that apart from Section 387 of IPC, all other Sections invoked in the present case are bailable in nature and even the maximum punishment under Section 387 of IPC is seven years. It is contended that the applicant was oblivious to the conspiracy planned by his senior officials as he was sent to Delhi for official business. It is further submitted that the investigation in the present case is complete, chargesheet has already been filed and, therefore, the custody of the present accused/applicant is no more required. It is also argued by learned Senior Counsel that after this Court had dismissed the last bail application of the applicant on 22.12.2023, the trial has not yet begun, and one co-accused i.e. Mohd. Meer Ismail has been granted regular bail by the learned Sessions Court on 27.01.2024. Therefore, it is prayed that the applicant be enlarged on regular bail.



6. Learned APP for the State, on the other hand, argues that the applicant was apprehended from the Hotel Ashok in the raid conducted on 14.11.2022 and he along with co-accused Darshan Joshi had proposed a settlement to the complainant saying that they could get the matter resolved for which they had earlier demanded a sum of Rs. 2-3 crores and later Rs. 15-20 crores. It is stated that the present applicant is the main conspirator who had initiated this conspiracy, and he had introduced the complainant to the fake ED Officer at the Ashok Hotel. It is further argued that this Court had dismissed the regular bail application of the present applicant vide order dated 22.12.2023 and there is no change of circumstances, and the role of co-accused who has been granted regular bail by the learned Sessions Court is entirely different whereas the applicant is the main conspirator and main accused in this case. Therefore, it is prayed that the present bail application be dismissed.

7. This Court has heard arguments addressed on behalf of both the parties, and has perused the material on record.

8. The case of prosecution, in a nutshell, is that the accused persons had impersonated as officers of Enforcement Directorate and had attempted to extort money by extending threats of implication in a false case as well as threats of dire consequences to the complainants.

9. This Court notes that vide judgment dated 22.12.2023 passed in BAIL APPLN. 3455/2023, the previous regular bail application filed by the applicant was dismissed after recording detailed reasons



and taking note of the material against the applicant including telephone conversations, CCTV footage, hotel records and the fact that applicant was arrested from the spot itself i.e. Hotel Ashok and that he was the main conspirator in the entire case. The relevant observations of order dated 22.12.2023 are extracted hereunder:

“9. A perusal of record and chargesheet reveals that there are **conversations between the applicant Akhilesh Mishra and co-accused Darshan Harish Joshi which reveal the active participation of applicant** in the entire conspiracy. The conspiracy in the present case had started when after sending fake ED notices to Hardev Singh and Kumar Hakim, the **present applicant had called the Hardev Singh and demanded Rs. 2-3 crores to settle the matter.** The present applicant had travelled from Mumbai to Delhi, to commit the offence in question, and had stayed in a hotel in Delhi, details of which have been mentioned in the chargesheet. The **applicant alongwith co-accused had also introduced the fake officer of ED to the complainant who had threatened him to pay the amount.** It was the applicant and the co-accused Darshan Harish Joshi who had told the complainant to settle the matter by paying Rs.15-20 crores to them, and had threatened him with dire consequences in case of failure to make the payment. The police had arrested the applicant from the spot i.e. hotel in question, while negotiating with the complainant Vipul Kaushik. The room in hotel, from which three other-accused persons were arrested, had been booked in the name of applicant Akhilesh Mishra. CCTV footage also reveals that the accused was present in the hotel in question at the time of commission of alleged offence.

10. Thus, the present case is a case of criminal conspiracy hatched by all the accused persons in furtherance of their common intention to extort money from the Hardev Singh and Kumar Hakim, who were President and Director of Nippon Paints India-Mumbai respectively and having, therefore, worked towards the same by making phone calls, meeting the complainant and other facts enumerated in the preceding paragraphs. This Court is of the opinion that the allegations against the accused persons are serious and grave in nature. Furthermore, since the money was being



taken in the name of Enforcement Directorate on pretext of getting them exonerated from fictitious case which was never registered, and fake summons allegedly issued by ED were also prepared and issued by the accused persons in furtherance of their common intention, this Court finds no ground for grant of bail, at this stage, as the trial is yet to commence.”

(Emphasis supplied)

10. As far as the grounds for filing the present bail application are concerned, no fresh ground or new circumstance has been mentioned in the bail application. However, during the course of arguments, learned Senior Counsel for the applicant had argued that one of the co-accused persons i.e. Mohd. Ismail has been granted regular bail by the learned Sessions Court.

11. In this regard, this Court has taken note of order dated 27.01.2024 passed by learned Additional Sessions Judge-06, Patiala House Courts, New Delhi vide which co-accused Mohd. Ismail has been granted regular bail on the grounds that (i) he was arrested on the disclosure statement of co-accused Vinod Patel and Asrar; (ii) he had allegedly prepared a fake notice of Enforcement Directorate and sent the same to the complainant on his WhatsApp number; (iii) nothing incriminating was recovered from his possession during police remand. In this Court’s opinion, the role of co-accused Mohd. Ismail is entirely different from the role of present applicant. As per prosecution, Mohd. Ismail had only been roped in the present conspiracy for the purpose of preparation of fake notices of Enforcement Directorate. However, as noted above, the applicant herein is the main accused in the present case, who was arrested from



the Hotel in question and who had hatched the entire conspiracy and had also threatened the victim/complainant to pay crores of rupees to settle the matter.

12. Therefore, the applicant is not entitled to grant of bail on grounds of parity with co-accused Mohd. Ismail. There is also no change in circumstances from the dismissal of the previous bail application of the applicant. Thus, the applicant's prayer for grant of regular bail is rejected.

13. However, this Court is also concerned about the fact that even though the accused herein as well as some other co-accused persons were apprehended and arrested on 14.11.2022 and chargesheet was filed on 14.01.2023, the trial has yet not begun. As discernible from the records of the case, the FSL result regarding CCTV footage and mobile phones of the accused persons is still awaited. Furthermore, an application for obtaining voice samples of the applicant and co-accused persons is also pending with the FSL, owing to which the proceedings in the present case have been delayed.

14. In such circumstances, it is directed that the Investigating Officer shall take immediate and effective steps, including writing priority letters to the Director, FSL, for ensuring that the FSL report regarding CCTV footage etc. is received within a period of one month and the voice samples of the accused persons are taken and analysed at the earliest. Copy of this order shall also be placed by the IO before the Director, FSL, who shall ensure that necessary samples



are obtained and reports are prepared expeditiously in the present case.

15. In above terms, the present application stands disposed of.

16. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

17. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MARCH 19, 2024/ZP