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

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Reserved on: 05.02.2024
Pronounced on: 14.02.2024+ **CRL.M.C. 911/2024****BANWARI CHATURVEDI**

..... Petitioner

Through: Mr. Kirti Uppal, Sr. Advocate
along with Mr. Shrey Sharawat,
Mr. Sahil Yadav, Mr. Aditya
Raj, Mr. Himanshu S., and Ms.
Ishita Mishra, Advocates

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Manoj Pant, APP for the
State with Inspector Surender
Singh, P.S.R.K. Puram.**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. By way of present petition filed under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C. ') read with Article 227 of the Constitution of India, the petitioner seeks setting aside of order dated 01.02.2024 passed by learned Additional Sessions Judge/Roster Judge/Spl. FTC,Patiala House Courts, New Delhi,vide which the Criminal Miscellaneous Application No. 6/2024 filed on behalf of petitioner was dismissed.



2. As disclosed in the petition, the petitioner herein was arrested on 22.09.2023 incase arising out of FIR No. 0164/2023, registered on 12.05.2023, under Sections 420/468/471/120B of Indian Penal Code, 1860 ('IPC') at Police Station R.K. Puram, Delhi. Chargesheet in this case was filed on 15.12.2023.

3. *Vide* order dated 06.01.2024, the present petitioner was granted regular bail by the learned Additional Sessions Judge-05, Patiala House Courts, New Delhi. The relevant portion of the order dated 06.01.2024, insofar as it relates to the present petitioner, is reproduced hereunder:

“11. It is argued on behalf of applicant/accused BanwariChaturvedi that the said accused is ready to deposit the amount allegedlyreceived by him and therefore he stands at parity with co-accused RizwanSheikh who has already been granted bail by Id. Sessions Court.

13. With respect to the accused Banwari Chaturvedi it be noted that the said accused is alleged to have received a sum of Rs. 17.60 lacs in his bank account. At this stage of bail without commenting detailed on the merits of the case, it be noted that the said accused Banwari Chaturvedi without prejudice to his rights and contention ready and willing to deposit the amount allegedly received by him. The other co-accused Rizwan Sheikh who is alleged to have received a sum of Rs.5.25 lacs in the alleged conspiracy has already been released on bail by Ld. Roster Judge vide order dated 30.11.2023 subject to deposit of said amount. The investigation qua the accused Banwari Chaturvedi is already complete and no further recovery is sought to be recovered from him. Accused Banwari Chaturvedi is in JC since 22.09.2023. In view of aforesaid discussions, I am of the considered opinion that no useful purpose is going to be served by keeping the accused Banwari Chaturvedi in these circumstances.The applicant/accused Banwari Chaturvedi is admitted to bail on furnishing bail bond in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of Ld. CMM/Ld.MM/Duty MM/Link MM and



subject to the following conditions:

- (a) The applicant/accused Banwari Chaturvedi shall deposit an FDR/demand draft in the sum of Rs.17.60 lacs in the name of concerned Trial Court alongwith the bail bonds.
- (b) The applicant/accused Banwari Chaturvedi shall furnish to the Investigating Officer/ S.H.O., a cell phone number on which the applicant may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- (c) The applicant/accused Banwari Chaturvedi shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending matter;
- (d) The applicant/accused Banwari Chaturvedi shall not leave the country without prior permission of the court concerned.

4. Thereafter, an application was moved on behalf of the petitioner seeking modification of condition (a) of the aforesaid bail order, and it was contended that the investigating agency had already seized the car of the applicant valued at Rs. 22 lakhs, and had recovered Rs. 1.5 lakhs cash. It was also argued that the applicant had purchased this car by making down payment of Rs. 6.5 lakhs and had paid around Rs. 4 lakhs in EMI and therefore, it was prayed that the first condition be modified and the amount be reduced to the extent which has already been paid or seized by the investigating agency.

5. However, *vide* impugned order dated 01.02.2024, the application made on behalf of the petitioner was dismissed by the learned ASJ/Roster Judge on the ground that the application was effectively seeking a review of the order dated 06.01.2024 and the Court concerned did not have the power to review its own order.

6. Aggrieved by the aforesaid order, the present petition has been filed.



7. Learned Senior counsel appearing on behalf of the petitioner argues that the learned Sessions Court has imposed a condition requiring deposit of FDR of Rs. 17.60 lakhs along with bail bonds in order dated 06.01.2024, which is bad in law. It is argued that as held by the Hon'ble Apex Court in catena of judgments, the Courts cannot impose conditions, such as pre-deposit of money/FDR/bank guarantee, while granting either anticipatory bail or regular bail, and thus, the learned Sessions Court erred in imposing such condition. However, it is also submitted that the petitioner is willing to deposit some amount, lesser than what has been directed by the learned Sessions Court, since the car of the petitioner has already been seized by the investigating agency, and for this relief itself, the petitioner had moved an application before the learned Sessions Court seeking modification of bail condition and reduction of amount. At the same, it is also stated by the learned Senior counsel that since the petitioner is in judicial custody, it would only be possible for him to deposit the amount, once he is released from jail and is able to arrange funds for the said purpose.

8. On the other hand, learned APP appearing on behalf of the State submits that it was the petitioner's counsel who had submitted before the learned Sessions Court that the petitioner/accused was willing to deposit the amount, allegedly received by him, and considering the submission made on behalf of the petitioner, learned Sessions Court had granted regular bail to the present petitioner.

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



10. In the present case, the FIR was registered on the allegations that the accused persons had cheated the complainant to the tune of Rs.2,93,46,500/- on the pretext of providing consultancy services for obtaining Letter of Credit and bank guarantees from nationalized banks, however, instead of obtaining lawful bank guarantee, the accused persons had provided forged performance bank guarantees, advance bank guarantee, letter of credit, banking instruments, etc. by using counterfeit seal, stamp and signatures of officials of Union Bank of India. As alleged, the complainant had transferred an amount of Rs. 17.60 lakhs in the account of present accused/petitioner and an amount of Rs. 1,11,96,412/- in the bank account of co-accused Bhagwan Prasad Baranwal

11. Having gone through the orders impugned in the present petition, this Court notes that it has been categorically recorded in the order dated 06.01.2024 that as per the allegations, the amount received allegedly by the applicant herein in his account was Rs. 17.60 lakhs and it was submitted on behalf of applicant/accused that the accused was ready to deposit the amount so received by him, as alleged, and therefore, he should be granted bail on grounds of parity with co-accused Rizwan Sheikh. It was only on the basis of such statement made on behalf of the accused i.e. present petitioner that the learned Sessions Court was inclined to grant bail to the petitioner, however, certain observations regarding the period of custody undergone by him and factum of completion of investigation were also considered by the Court.

12. Further, when the application seeking modification of bail



order was moved before the learned Sessions Court and was heard by concerned Roster Judge, the petitioner had not sought deletion of the condition (a) imposed *vide* order dated 06.01.2024, but had sought only its modification to the extent that the amount be reduced and be adjusted against the amount that has already been paid by him or has been recovered by the police in the form of the car of the applicant.

13. Though one of the primary arguments raised on behalf of the petitioner is that such condition for grant of regular bail could not have been imposed by the learned Sessions Court, it is also the case of petitioner herein that he is ready to deposit amount of Rs. 6.10 lakhs before the learned Trial Court, and he may be released on interim bail so as to arrange the funds to meet the bail condition imposed upon him. A specific prayer regarding the same has also been made in the present petition. Further, only the order dated 01.02.2024, refusing to reduce the amount as directed to be paid *vide* bail order, has been challenged before this Court.

14. Thus, without going into the merits of the case, but considering the fact that it was submitted on behalf of petitioner/accused itself that he be granted bail as he was willing to deposit the alleged cheated amount and one of the co-accused had also been granted bail on similar grounds, and also considering the fact that the prayer before this Court in the petition as well as the prayer made before the learned Sessions Court by way of modification application was to the extent that the amount required to be deposited in the form of FDR with the learned Trial Court be reduced from Rs. 17.60 lakhs to Rs. 6.10 lakhs, and further taking note of the fact that car of the petitioner



has already been seized by the investigating agency, this Court while exercising its powers under Section 482 of Cr.P.C. and Article 227 of the Constitution of India, is inclined to direct as under:

- i. The bail order dated 06.01.2024 is modified to the extent that the petitioner shall be released on interim bail for a period of two (02) months, without complying with condition (a) of order dated 06.01.2024, i.e. only on furnishing personal bond in the sum of Rs. 50,000/- with one surety of the like amount. However, other conditions i.e. condition (b), (c) and (d) shall remain the same.
 - ii. The petitioner shall deposit a sum of Rs. 6.10 lakhs before the learned Trial Court in the form of an interest accruing FDR, within a period of two months.
 - iii. Upon depositing the aforesaid amount, the petitioner shall be granted regular bail.
15. With the above directions, the present petition stands disposed of.
16. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 14, 2024/