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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **BAIL APPLN. 631/2023**

SMT SEEMA DEVI

..... Applicant

Through: Mr. Akshay Chaudhary,
Mr. A.K. Chaudhary,
Ms. Saloni Madaan &
Mr. Shastri Shanker
Mishra, Advocates

versus

THE STATE GOVT OF NCT OF DELHI Respondent

Through: Mr. Utkarsh, APP for the
State with SI Ravi
Shankar, PS Patel Nagar.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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30.01.2024

1. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973, seeking grant of pre-arrest bail in FIR No. 480/2021, dated 22.09.2021 for offence punishable under Section 406 of the Indian Penal Code, 1860 ('IPC'), registered at Police Station Patel Nagar.
2. The present FIR was lodged at the instance of the complainant, namely, Vivek Kumar, who is the employer and cousin of the applicant's husband. It is alleged that the complainant had given ₹45,000/- to the applicant's husband and asked him to collect a sum of ₹21,00,000/- from a client and deposit the total in the bank account of Swagtam Trading at Patel Nagar.
3. It is further alleged that instead of depositing the total amount of ₹21,45,000/- in the concerned bank account, the applicant's husband switched off his phone and did not answer the repeated calls of the complainant. It is also alleged that the



applicant, her husband and the children also left their residence on the pretext of some urgent work.

4. The learned counsel for the applicant submits that the applicant's husband is the main accused in the present FIR, and initially, the chargesheet had been filed only against him for the offence punishable under Section 406 of the IPC.

5. He further submits that the supplementary chargesheet has been filed against the applicant without the necessity being felt to take her in custody.

6. It is not disputed that the main allegation is against the applicant's husband and that no specific allegation has been levelled against her in the FIR. The maximum punishment for offence punishable under Section 406 of the IPC is three years.

7. This court by order dated 27.02.2023, has granted interim protection to the applicant and it is not disputed that the applicant has joined investigation.

8. The chargesheet in the present case, was admittedly filed against the applicant without the State finding any necessity to take her into custody.

9. The Hon'ble Apex Court in Mohd. Asfak Alam v. State of Jharkhand, (2023) 8 SCC 632 has held as under:

"15. What appears from the record is that the appellant cooperated with the investigation both before 8-8-2022, when no protection was granted to him and after 8-8-2022, when he enjoyed protection till the filing of the charge-sheet and the cognizance thereof on 1-10-2022. Thus, once the charge-sheet was filed and there was no impediment, at least on the part of the accused, the court having regard to the nature of the offences, the allegations and the maximum sentence of the offences they were likely to carry, ought to have granted the bail as a matter of course. However, the court did not do so but mechanically rejected and, virtually, to rub salt in the wound directed the appellant to surrender and seek regular



bail before the trial court. Therefore, in the opinion of this Court, the High Court fell into error in adopting such a casual approach.

16. The impugned order of rejecting the bail and directing the appellant, to surrender and later seek bail, therefore, cannot stand, and is hereby set aside. Before parting, the Court would direct all the courts seized of proceedings to strictly follow the law laid down in Arnesh Kumar [Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449 : (2014) 8 SCR 128] and reiterate the directions contained thereunder, as well as other directions.”

10. In the opinion of this Court, no purpose would be served by allowing the custodial interrogation of the applicant who is stated to have a family to take care of, which includes two minor children.

11. In view of the above, the applicant is admitted on bail, on furnishing a personal bail bond for a sum of ₹25,000/- (Rupees Twenty Thousand Only) with two sureties of the like amount subject to the satisfaction of the concerned SHO, on the following conditions:

- a. The applicant shall join and cooperate with the investigation as and when directed by the Investigating Officer;
- b. The applicant shall not tamper with the evidence in any manner;
- c. The applicant under no circumstance shall contact the complainant or any of the witnesses;
- d. The applicant shall not leave the boundaries of the city without informing the concerned Investigating Officer;
- e. The applicant shall provide her mobile number to the Investigating Officer during the course of the day and keep her mobile phone on switched on mode at all times.



12. It is clarified that the observations made in the present order are for the purpose of deciding the present pre-arrest bail application, and should not influence the outcome of the Trial. The said observations should not be taken as an expression of opinion on the merits of the case.

13. The present application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

JANUARY 30, 2024/'hkaur'