$~31

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

\+ CRL.M.C. 1270/2024

SH. SANJEEV GARG .....Petitioner

Through: Mr.Satish Kumar Tomar, Advocate

versus

STATE AND ANR. .....Respondents

Through: Mr. Nawal Kishore Jha, APP for State with SI Kunal Kumar
Mr.Gaurav Singh and Mr.Anuj Singh, Advocates for respondent No.2

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% **23.10.2024**

1. By way of present petition, the petitioner, who is the complainant in FIR No.656/2022 registered under Sections 420/468/34 IPC at P.S. Bindapur, Delhi, seeks cancellation of anticipatory bail granted to the accused/respondent No.2 vide order dated 14.06.2023 passed by Vacation Judge, South West District, Dwarka Courts, Delhi in Bail Application No.3175/2023.

2. The present FIR came to be registered by the complainant/petitioner against the respondent No.2 and co-accused persons, alleging that he was forced to part with Rs.76,50,000/- by the accused persons on the pretext of investing in the Import-Export business of the respondent No.2 and the co-accused, *Narender Kumar*, against the assurance of high returns as well as making the petitioner a partner/shareholder in their company.

3. Learned counsel for the petitioner submits that the petitioner and respondent No.2 were college friends and upon being approached by respondent No.2 alongwith his associate/co-accused *Narender Kumar*, the petitioner was lured into parting with his hard-earned money to the tune of Rs.76,50,000/- between 10.06.2019 and 18.11.2019, paid through different modes, i.e., through cash and bank transfers. He further submits that the accused persons had misrepresented to the petitioner and given false assurances of high returns on investing money in *Assorted Leather Shoe/Boot Upper Import-Export Business*, as well as surety of becoming a partner/shareholder in their company. He contends that no authorization was issued in favour of the petitioner, however, the accused persons claimed that the petitioner had signing power/authority in his favour to issue cheques. It is also submitted that upon repeated failures to repay the said amount, respondent No.2 agreed to give profit share alongwith invested principal amount to the petitioner, in pursuance of which, the petitioner was given undated cheques of Rs.1,00,00,000/- signed by respondent No.2 himself on behalf of *M/s Prabhat Enterprises*. It is contended that respondent No.2 claimed himself to be the sole proprietor and signatory of the aforesaid firm. However, upon making due inquiries, the petitioner came to know that the said firm was registered in the name of the co-accused, *Narender Kumar*. Moreover, it is contended that respondent No.2 forged the said cheques with the intention to defraud the petitioner.

Learned counsel further submits that the accused persons have earlier cheated other persons and departments/institutions, as well, with a similar *modus operandi*, including the use of fake PAN Cards and Aadhar Cards and created various accounts on the names of fake companies. Lastly, it is submitted that respondent No.2 failed to join investigation when served with a notice under Section 41A Cr.P.C. in the first week of January 2023, and the concerned I.O. accordingly initiated proceedings under Section 82 Cr.P.C. against the accused persons, however, respondent No.2 approached the Trial Court for the grant of anticipatory bail instead of joining the investigation.

4. Learned APP for the State opposes the present petition, duly assisted by learned counsel for respondent No.2. It is submitted that the petitioner alongwith his wife, namely *Priya Gupta*, had approached the accused persons with a lucrative business proposition for exporting leather goods to Dubai with the promise of high profits, however, on the condition that the access and control of all banking transactions shall be with the petitioner/his CA, alongwith blank unsigned cheques for security purposes. It is contented that the petitioner, in conspiracy with his wife, fraudulently misused the said cheques by forging the signatures of respondent No.2, to falsely implicate him in the present FIR. In regard to this, it is also submitted that respondent No.2 had filed a written complaint against the petitioner and his wife and an application under Section 156(3) Cr.P.C. is currently pending before Tis Hazari Courts, Delhi.

Learned APP further submits that the present dispute is purely civil in nature and that the petitioner has concealed the fact that a similar complaint bearing Complaint no. 00081620422200115 had been filed at P.S. Patel Nagar, wherein after conducting the inquiry, the concerned I.O. had concluded on the same lines, that the dispute was purely civil in nature and had accordingly, closed the investigation. With respect to the petitioner's contention that respondent No.2 failed to join investigation, it is submitted that upon being served a notice, respondent No.2 had duly contacted the concerned I.O. requesting for four days' time to join investigation as he was out of Delhi at the time, and thereafter, received no further notices to join investigation. Moreover, respondent No.2 had joined inquiry in the above-mentioned Complaint no. 00081620422200115. It is also submitted that the present complaint has been filed at a belated stage as the relevant period of transactions is June 2019 to November 2019, however, the present complaint came to be filed in September 2022, i.e., after delay of almost 3 years.

5. I have heard learned counsels for the parties and perused the material on record.

6. A perusal of the FIR would show that the petitioner, on representation of the accused persons, invested in the aforesaid Import-Export business on the assurance of high returns and being made a partner/shareholder in the companies of the accused persons. In pursuance of this, the petitioner had transferred an amount of Rs.76,50,000/- in the account of three different companies/firms belonging to the accused persons, indicating knowledge on the part of the petitioner as to the multiple companies/firms run by the accused persons. The learned Trial Court has noted that the petitioner was aware of the existence of *M/s Prabhat Enterprises* and that he could have easily verified its directors/partners from a perusal of their website. It is also observed that *prima facie* there seemed to be no intention of cheating the petitioner at the time of entering into the said business dealing and that he failed to get the expected profits from his investment in the said business due to the advent of the Covid-19 pandemic. Learned Trial Court also noted that upon perusing the Complaint no. 00081620422200115 dated 07.02.2022

filed at P.S. Patel Nagar, the gist of the said complaint was exactly the same as the subject complaint on the basis of which the present FIR came to be registered, except a few additional facts, and it was also pointed out that the said complaint predated the present one by about seven months. Further, upon inquiry, it had been concluded therein that the said dispute was civil in nature.

7. It is a settled proposition in law that Courts, while granting anticipatory bail, are required to consider relevant factors such as nature and gravity of the offence, accusation and role ascribed to the applicant/accused person, etc. Reliance may be placed on the Supreme Court's decision in Sushila Aggarwal v. State (NCT of Delhi) reported as **(2020) 5 SCC 1**, wherein it was held, as stated hereinunder:

> *92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.*

8. In Prasanta Kumar Sarkar v. Ashis Chatterjee, reported as **(2010) 14 SCC 496**, the Supreme Court observed:

> *'9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:*

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
(ii) nature and gravity of the accusation;
(iii) severity of the punishment in the event of conviction;
(iv) danger of the accused absconding or fleeing, if released on bail;
(v) character, behaviour, means, position and standing of the accused;
(vi) likelihood of the offence being repeated;
(vii) reasonable apprehension of the witnesses being influenced; and
(viii) danger, of course, of justice being thwarted by grant of bail.'

9. At this stage, it is deemed apposite to refer to the case of Puran v. Rambilas, reported as **(2001) 6 SCC 338**, wherein with regard to the principles governing cancellation of bail, the Supreme Court observed, as follows:

> *"10.It has been held that generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. It is, however, to be noted that this Court has clarified that these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected."*

10. Further, in regard to the Court's power in assessing the correctness of an order granting bail and the Court's power while considering an application for cancellation of bail, the Supreme Court has observed in Mahipal v. Rajesh Kumar alias Polia, reported as **(2020) 2 SCC 118**, as under:

> *'16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted…'*

11. The principles governing challenge to grant of bail were reiterated by the Supreme Court in Ajwar v. Waseem, reported as **2024 SCC OnLine SC 974**, and the same are reproduced hereinunder:

> *'27. It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior Court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a superior Court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order…'*

12. While considering the question of cancelation of anticipatory bail

granted to the accused, the Apex Court, in State of Haryana v. Dharamraj, reported as **2023 SCC OnLine SC 1085**, held as under:

> *"9. In Bhagwan Singh v. Dilip Kumar @ Deepu @ Depak, 2023 SCC OnLine SC 10593, this Court, in view of Dolat Ram v. State of Haryana, (1995) 1 SCC 349; Kashmira Singh v. Duman Singh, (1996) 4 SCC 693 and X v. State of Telangana, (2018) 16 SCC 511, held as follows:*
>
> > *'13. It is also required to be borne in mind that when a prayer is made for the cancellation of grant of bail cogent and overwhelming circumstances must be present and bail once granted cannot be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it in conducing to allow fair trial. This proposition draws support from the Judgment of this Court in Daulat Ram v. State of Haryana, (1995) 1 SCC 349, Kashmira Singh v. Duman Singh (1996) 4 SCC 693 and xxx v. State of Telangana (2018) 16 SCC 511.'*
>
> *10. In XXX v. Union Territory of Andaman & Nicobar Islands, 2023 SCC OnLine SC 10624, this Court noted that the principles in Prasanta Kumar Sarkar (supra) stood reiterated in Jagjeet Singh v. Ashish Mishra, (2022) 9 SCC 321.*
>
> *11. The contours of anticipatory bail have been elaborately dealt with by 5-Judge Benches in Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 and Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1. Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 is worthy of mention in this context, despite its partial overruling in Sushila Aggarwal (supra). We are cognizant that liberty is not to be interfered with easily. More so, when an order of pre-arrest bail already stands granted by the High Court.*
>
> *12. Yet, much like bail, the grant of anticipatory bail is to be exercised with judicial discretion. The factors illustrated by this Court through its pronouncements are illustrative, and not exhaustive. Undoubtedly, the fate of each case turns on its own facts and merits…."*

13. From the facts of the case noted hereinabove, the dispute *prima facie*

is civil in nature wherein the petitioner invested money in the Import-Export business of the accused persons, however, did not get the expected returns. The contention as to the failure to honour the terms of their business dealing to the extent of making the petitioner a partner/shareholder in the firm/company of the accused persons, is neither substantiated by any material on record nor is a question to be dealt with, at this stage and the same can be taken up at the stage of trial.

14. Considering the totality of the facts and circumstances as well as the abovenoted legal position, this Court finds no infirmity with the order passed by the learned Trial Court and hence, no grounds are made out to entertain the present petition. Consequently, the same is dismissed.

15. Needless to state that nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case as the same has been expressed only for the purpose of the disposal of the present petition.

MANOJ KUMAR OHRI, J

OCTOBER 23, 2024

na