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

+ **BAIL APPLN. 112/2020, CRL.M.A. 900/2020,**
CRL.M.A. 19286/2021 & CRL.M.A. 6183/2024

PRITHVI RAJ KASANA & ORS. Applicants

Through: Mr. Yogesh Sharma & Mr.
Yogeshwar Singh, Adv.

versus

STATE Respondent

Through: Mr. Utkarsh, APP for the
State.

Insp. Harish Chandra.
Adv. Yash Anand & Adv.
Jatin Katyal for
complainant.

Mr. Ajai Kumar, Adv.
along with complainants
Ashish Jaiswal, Raj Kumar
& Sandeep Gupta.

+ **BAIL APPLN. 113/2020, CRL.M.A. 902/2020,**
CRL.M.A. 3326/2022, CRL.M.A. 6179/2024, CRL.M.A.
22254/2023

PRITHVI RAJ KASANA & ORS. Applicants

Through: Mr. Yogesh Sharma & Mr.
Yogeshwar Singh, Adv.

versus

STATE Respondent

Through: Mr. Utkarsh, APP for the
State.

Insp. Harish Chandra.
Adv. Yash Anand & Adv.
Jatin Katyal for
complainant.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

05.03.2024

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CRL.M.A. 19287/2021 (exemption) in BAIL APPLN. 112/2020 & CRL.M.A. 3327/2022 (exemption) in BAIL APPLN. 113/2020

1. Exemptions allowed, subject to all just exceptions.
2. The applications stand disposed of.

BAIL APPLN. 112/2020 & BAIL APPLN. 113/2020

3. The present applications are filed under Section 438 of the Code of Criminal Procedure, 1973 (CrPC) seeking grant of pre-arrest bail in FIR No. 181/2018 and FIR No. 182/2018 respectively, both dated 17.09.2018, registered at Police Station Economic Offences Wing, for offences under Sections 406/420/120B of the Indian Penal Code, 1860 (IPC).

4. It is pointed out that the applicants were granted interim protection by this Court by order dated 05.02.2020.

5. It is not disputed that the applicants have since joined the investigation, investigation is already complete and the charge sheet has already been filed. The maximum sentence prescribed in regard to the offences under Section 406/420 of the IPC is 07 years.

6. The Hon'ble Apex Court in the case of ***Mohd. Asfak Alam v. State of Jharkhand : (2023) 8 SCC 632*** has observed 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.”

7. The learned counsel for the complainants submits that the applicants after entering into a settlement, pursuant to the mediation, have failed to honour the commitment in respect of the same. It is not disputed that the complainant has already initiated steps in regard to the enforcement of the obligation in regard to the settlement arrived at between the parties.

8. The learned Additional Public Prosecutor for the State, on instructions, from the Investigating Officer, submits that custodial interrogation of the applicants, at this stage, is not required.

9. It is not in doubt that order for grant of pre-arrest bail cannot be passed in a routine manner so as to allow the accused to use the same as a shield. At the same time, it cannot be denied that great amount of humiliation and disgrace is attached with the arrest. In cases where the accused has joined investigation, cooperating with the Investigating Agency and is not likely to abscond, the custodial interrogation should be avoided. The purpose of custodial interrogation is to aid the investigation and is not punitive.

10. The proceedings in relation to enforcement of the settlement are pending before this Court. Appropriate orders



would be passed in those proceedings after hearing the parties.

11. It is trite law that bail proceedings should not be utilized as means for recovery in monetary disputes, since recovery of money essentially falls within the realm of civil proceedings

12. Chargesheet has been filed by the State without feeling the necessity to arrest the accused persons. The custodial interrogation of the applicants is admittedly not required at this stage.

13. In view of the above, the applicants, in the event of arrest, are directed to be released on bail on furnishing a personal bond of ₹50,000/- each with two sureties of the like amount subject to the satisfaction of the learned Trial Court/Duty MM/Link MM, on the following conditions:

- a. The applicants shall join and cooperate with the further investigation as and when directed by the Investigating Officer;
- b. The applicants shall appear before the learned Trial Court on every date of hearing;
- c. The applicants shall keep the Investigating Officer informed of their current address and mobile contact number, and/or change of residence or mobile details, if any, from time to time;
- d. The applicants shall not tamper with evidence or contact any of witnesses in any manner whatsoever;
- e. The applicants shall not leave the Country without the permission of the learned Trial Court.

14. It is made clear that the complainants are at liberty to initiate appropriate proceedings for recovery of their money or for compliance of the settlement arrived at between the complainants and the applicants. The said proceedings are



directed not to be influenced in any manner whatsoever by the order passed in the present bail application.

15. 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 cases.

16. The present bail applications are allowed in the aforesaid terms.

17. Pending applications also stand disposed of.

AMIT MAHAJAN, J

MARCH 5, 2024

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