



\$~13

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

+ **BAIL APPLN. 910/2024**

ASHUTOSH KUMAR

..... Petitioner

Through: Mr. Amit Nayyar, Mr. Sunil Kumar,
Mr. Harjeet Singh, Advs.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Ms. Meenakshi Dahiya, APP for State
with SI Ankit Singh PS Nangloi

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

01.04.2024

%

1. The present petition has been filed under Section 439 CrPC seeking regular bail in connection with FIR No.304/2023 under Sections 170/419/420/467/468/471/120B/34 IPC registered at Police Station Nangloi, Delhi.
2. The case of the prosecution is that the complainant and co-accused knew each other. The complainant was induced by the co-accused that his son can be provided a job by them and accordingly an amount of Rs. 30 Lakhs was taken from the complainant on different occasions. Later complainant found out that the appointment letters and ID cards provided to his son were fake. This led to the registration of aforesaid FIR. Thereafter, more complaints were received against the co-accused.
3. The learned counsel for the petitioner submits that insofar present



petitioner is concerned the only incriminating material on which the reliance has been placed by the prosecution in the chargesheet are the WhatsApp chats between co-accused Ankit Sharma and the present petitioner, which are of September, 2023 whereas the offence alleged in the present case is of the year 2021.

4. He further submits that it is not the case of the prosecution that any amount has been received by the present petitioner in his account either from the complaint / victims or from the co-accused. According to the learned counsel it is the other accused persons who have received money as per prosecution version.

5. He further submits that the petitioner is in custody since 29.09.2023 and is aged about 22 years.

6. Apart from the present case there is only one case registered against the petitioner, the said case is also premised on the disclosure statement and the petitioner has already been enlarged on bail in the said case.

7. In the backdrop of aforesaid facts and circumstances, it is urged by the learned counsel for the petitioner that the petitioner be enlarged on bail.

8. *Per contra*, learned APP for the State has argued on the lines of the status report.

9. I have heard the learned counsel for the petitioner as well as learned APP for the State and have perused the record.

10. On a query posed by the Court the learned APP on instructions from the IO who is present in Court, fairly states that the WhatsApp chats between co-accused Ankit Sharma and the present petitioner are of September, 2023 whereas the offence relates to the year 2021. It is also not in dispute that the petitioner has not received any money in his bank account



from the complaint / victims or from any co-accused.

11. It is trite law that CDRs and WhatsApp chats are not a substantive piece of evidence and can only be used for corroboration, thus, conviction cannot be based solely on such WhatsApp chats.

12. It is not in dispute that the investigation *qua* the present petitioner is complete and the chargesheet has also been filed. Therefore, in the circumstances discussed above, no useful purpose will be served in keeping the petitioner behind bars for an indefinite period to await the outcome of trial which has not yet commenced.

13. It is also a matter of record that co-accused namely, Surya Bhan Verma who has also been arraigned as an accused in the present case and against whom similar incriminating circumstances in the form of CDRs and WhatsApp chats have been pressed by the prosecution, has already been enlarged on bail by this Court *vide* order dated 31.01.2024 passed in BAIL APPLN. 4124/2023.

14. It is not in dispute that the petitioner is a permanent resident of Noida and therefore, he is not a flight risk. Even otherwise, appropriate conditions could be imposed to ensure the presence of petitioner during the trial.

15. It has fairly been conceded by the learned counsel for the petitioner that apart from the present case, one more case is registered against the petitioner which is premised on the disclosure statement and in the said case the petitioner is already on bail. It is trite that involvement in other case cannot be the sole ground for rejecting bail of an accused.

16. Considering the aforesaid circumstances, the petitioner is admitted to bail subject to his furnishing a Personal Bond in the sum of Rs.25,000/- and one Surety Bond of the like amount to the satisfaction of the Trial



Court/CMM/Duty Magistrate, further subject to the following conditions:-

a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.

Provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.

c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the complainant or any family members of the complainant.

17. The petition stands disposed of.

18. It is made clear that nothing stated above is to be construed as an expression of opinion on the merits of the case.

19. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.

20. Order *dasti* under signatures of the Court Master.

21. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

APRIL 1, 2024

N.S. ASWAL