



2024:DHC:3274



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

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Date of Decision: 24th April, 2024

+ **BAIL APPLN. 177/2024**

SOUKIN

..... Applicant

Through: Ms. Nagma Bee and Mr.
Rashid Khan, Advs.

versus

THE NCT STATE NEW DELHI

..... Respondent

Through: Mr. Amol Sinha, ASC for
the State with Mr. Kshitiz
Garg and Mr. Ashvini
Kumar, Advs.

+ **BAIL APPLN. 1073/2024 & CRL.M.A. 9451/2024**

TALIM

..... Applicant

Through: Mr. Altaf Hussain and Mr.
Aftab Hussain, Advs.

versus

THE STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Amol Sinha, ASC for
the State with Mr. Kshitiz
Garg and Mr. Ashvini
Kumar, Advs.

+ **BAIL APPLN. 1074/2024 & CRL.M.A. 9452/2024**

TIMMI @ ABBAS

..... Applicant

Through: Mr. Altaf Hussain and Mr.
Aftab Hussain, Advs.

versus

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2024:DHC:3274



THE STATE OF NCT OF DELHI Respondent
Through: Mr. Amol Sinha, ASC for
the State with Mr. Kshitiz
Garg and Mr. Ashvini
Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. (Oral)

1. 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. 368/2022 dated 08.12.2022 registered at Police Station Special Cell, Delhi for offences punishable under Sections 419/420/388/170 of the Indian Penal Code, 1860 ('IPC').

2. The FIR in the present case was registered at the instance of the complainant namely, Dewan Singh Malik who alleged that on 10.10.2022, he received a WhatsApp video call from an unknown lady, who insisted for private video call and later recorded the video call. Thereafter, the complainant received several calls from different mobile numbers who introduced themselves as police officers/Youtube employees and extorted a total amount of ₹16 Lakhs on the pretext of removing the video from Youtube, Facebook, Instagram and by threatening him of false accusation in the murder case of the lady in the video and on the pretext of settling the matter with her family.

3. During investigation, on analysis of CDRs of the alleged numbers, it was found that the mobile numbers of the alleged

BAIL APPLN. 177/2024 & other connected matters

Page 2 of 10



2024:DHC:3274



callers were located at Sikri, Bharatpur, Rajasthan at the time of the alleged incident and the alleged persons are part of organized group operating from there. Further, three accused persons namely, Shabbir, Sahjad and Rafeek were arrested on 22.12.2022.

4. During interrogation, the said accused persons disclosed the names of the present applicants along with other accused persons. They stated that they used to commit such offences along with the present applicants. They further disclosed that SIM cards which were used by them for calling the victims and for opening of the Bank Accounts (used for receiving money) were arranged by their associates/applicants.

5. The investigation in the present case further reveals that the alleged mobile numbers are on fake IDs and were used in one common IMEI number – 8693290555333. During further analysis of the IMEI number, it was found that one of the mobile numbers was found to be in the name of the accused – Soukin. It was also found that the mobile number used by the accused – Soukin was linked with the bank account in which ₹4,00,000/- was transferred by the complainant. The investigation further reveals that the mobile number used by the accused – Talim Khan bearing IMEI No. 86182405909580 was used in contacting the victims and another mobile number with the same IMEI which was used for opening of the bank account in which a part of the cheated amount i.e. ₹2,00,000/- was deposited. And, the two mobile phone numbers issued in the name of the accused – Timmi @Abbas's father were operated in the same handsets in

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12:35:34



which the SIMs used to call the victims were used.

6. The learned counsel for the applicants submits that the applicants have been falsely implicated based on the disclosure statements of the co-accused persons and there is nothing incriminating against the applicants. He submits that the applicants have already joined the investigation and provided necessary information available with them.

7. He submits that the applicants have no connection with the complainant and they are not a beneficiary of the alleged cheated amount. He submits that there is no evidence to establish any nexus whatsoever between the applicants and the offences as alleged in the FIR. He submits that the applicants are law-abiding citizen who has been wrongfully and maliciously dragged into criminal proceedings arising out of the FIR.

8. *Per contra*, the learned Additional Public Prosecutor for the State opposed the grant of any relief to the applicants. He submits that the allegations against the applicants are serious in nature. He submits that the learned Additional Sessions Judge has rightly rejected the bail application of the applicants *vide* a detailed and reasoned order and there is no ground to interfere with the same.

9. He submits that the applicants have joined investigation in terms of the directions of this Court but they have not cooperated in the same. He states that the all the accused persons have been active member of the organized crime syndicate being run for carrying out an organized crime of sextortion.

10. I have heard the learned counsel for the parties and



2024:DHC:3274



perused the record.

11. It is to be kept in mind that the investigation is currently at a nascent stage. The considerations governing the grant of pre-arrest bail are materially different than those to be considered while adjudicating application for grant of regular bail, as in the latter case, the accused is already under arrest and substantial investigation is carried out by the investigating agency.

12. It is trite law that the power to grant a pre-arrest bail under Section 438 of the CrPC is extraordinary in nature and is to be exercised sparingly. Thus, pre-arrest bail cannot be granted in a routine manner. The Hon'ble Apex Court, in the case of ***State of A.P. v. Bimal Krishna Kundu : (1997) 8 SCC 104***, held as under:

“8. A three-Judge Bench of this Court has stated in Pokar Ram v. State of Rajasthan [(1985) 2 SCC 597 : 1985 SCC (Cri) 297 : AIR 1985 SC 969] : (SCC p. 600, para 5)

“5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal.”

9. Similar observations have been made by us in a recent judgment in State v. Anil Sharma [(1997) 7 SCC 187 : 1997 SCC (Cri) 1039 : JT (1997) 7 SC 651] : (SCC pp. 189-90, para 8)

“The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest.”

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12. We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on “the career of millions of students”, learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order.”

13. It is settled law that the custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the CrPC [*State v. Anil Sharma : (1997) 7 SCC 187*]. In the present case, it seems that the applicants have failed to cooperate with the investigation even after they were granted interim protection by this Court. Granting anticipatory bail to the applicant would undoubtedly impede further investigation. An order of bail cannot be granted in a routine manner so as to allow the applicant to use the same as a shield.

14. The accused persons in the present case have alleged to

BAIL APPLN. 177/2024 & other connected matters



2024:DHC:3274



have made a woman contact the victim/complainant through video calls and messaged and got his video clip. They then threatened to make the video viral on social media. Later, the victim was conveyed that the woman who undressed in the video clip has committed suicide. The accused persons posed themselves to be police officials and forged ID Card. During the analysis on National Cyber Reporting Portal, a total number of 10 complaints have been found, in which innocent people have been cheated by the same accused persons through same *modus operandi* thereby indicating that the present case is not a one of instance.

15. The investigation reveals that the SIM cards of the applicants were used in more than 50 different devices/IMEI numbers within a span of two years. It cannot be a mere coincidence that the device which is used by the applicant namely, Talim with his own SIM card gets used with SIM card *via* which the sextortion calls were made.

16. It is the case of the prosecution that accused Sahjab, Rfeek and Shabbir had disclosed about the involvement of the applicants in the alleged offences.

17. Moreover, the investigation has disclosed that the implicated mobile numbers were registered under fictitious identities and were associated with a single IMEI number. Subsequent scrutiny of this IMEI number revealed its connection to a mobile number registered in the name of the accused, Soukin. It was further found that the mobile number, utilized by the accused Soukin, was linked to a bank account into which

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By: HARMINDER KAUR
Signing Date: 30.04.2024
12:35:34



2024:DHC:3274



₹4,00,000 was transferred by the complainant. The investigation also uncovered that another mobile number, used by the accused Talim Khan and associated with IMEI No. 86182405909580, was employed to communicate with the victims. Moreover, this number was also used to open a bank account wherein a portion of the fraudulently obtained funds amounting to ₹2,00,000 was deposited. Additionally, two mobile phone numbers registered in the name of the accused Timmi @Abbas's father were operated on the same handsets that were used for the SIM cards employed in contacting the victims.

18. The investigation has unearthed multiple complaints, revealing habitual engagement of the accused persons in such criminal practices. Given the pattern of conduct and the serious implications of the offences as alleged, there is a justified concern regarding the applicants' potential influence over the evidence and the possibility of committing similar offences if not detained.

19. Sextortion represents a profound violation of privacy and is a significant social menace. It involves the exploitation of obtained intimate images and videos to extort money or favours from victims, often leading to severe psychological trauma. This cyber-enabled crime not only undermines individual dignity but also poses serious challenges to law enforcement due to its clandestine and cross-jurisdictional nature.

20. The scale of operation, at this stage, seems to be humongous. Dismantling such a complex *modus operandi*, which is alleged to have been used by the applicants and the other

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12:35:34



2024:DHC:3274



accused persons, by its very nature, requires thorough investigation and custodial interrogation which ought not to be curtailed by passing an order under Section 438 of the CrPC.

21. Considering the status report filed by the State, it cannot be held, at this stage, that the investigation is being carried out with the intention to injure or humiliate the applicant. The nature and the gravity of the allegations are serious. Specific allegations have also been made that the applicants have been indulging into similar offences on earlier occasions.

22. The investigation conducted thus, so far does not indicate that the applicant is sought to be falsely implicated. The material presented by the prosecution establish a *prima facie* involvement of the applicants. The evidences, including digital records and communication, link the applicants to the alleged offence.

23. It is true that the disclosure statements of the co-accused persons is not admissible unless corroborated by supporting evidence however, no reason has been indicated as to why the co-accused persons arrested in the present case would unnecessarily try to implicate the present accused persons. The same requires investigation.

24. Considering the above, and the nature of the offence, no ground for grant of anticipatory bail to the applicants is made out.

25. The present application is accordingly dismissed.

26. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the Trial and also not be

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12:35:34



2024:DHC:3274



taken as an expression of opinion on the merits of the case.

AMIT MAHAJAN, J

APRIL 24, 2024

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