



2024:DHC:3577



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 03rd May, 2024*+ **BAIL APPLN. 1548/2024**
DILIP SONI

..... Applicant

Through: Mr. Ashutosh Kumar
Pandey, Mr. Vishal
Chouhan, Mr. Harsh
Gupta & Mr. Rohan
Kundu, Advs.

versus

STATE OF NCT OF DELHI RespondentThrough: Mr. Ajay Vikram Singh,
APP for the State with Mr.
Surya Prateek Singh &
Mr. Ankur, Advs.
SI Neeraj Yadav, PS-
IFSO, Special Cell**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)****CRL.M.A. 13566/2024 (for exemption)**

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

BAIL APPLN. 1548/2024 & CRL.M.(BAIL) 748/2024
(seeking interim bail)

3. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 ('CrPC') seeking pre-arrest bail in FIR No. 289/2023 dated 05.12.2023 registered at Police

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Station Special Cell, Delhi for offences under Sections 419/420/168/471/389/170/120B of the Indian Penal Code, 1860.

4. The FIR was registered on a complaint lodged by Ms. Richa Srivastava alleging that she was contacted telephonically by someone who impersonated himself as a Customs official and told her that he has received a packet containing her name. He informed that the packet contains twenty passports and a laptop which was meant to be sent to Cambodia. On being directed, the complainant contacted the said person through Skype application, who threatened to implicate her in a human trafficking and money laundering case.

5. The complainant in fear, transferred a large sum of money into various bank accounts as directed by the accused persons.

6. On being investigated, it was found that approximately a sum of ₹41,00,000/- was transferred in the bank account which was opened in the name of the applicant.

7. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. He submits that the applicant has been cheated and his account was misused by the accused persons.

8. The learned Additional Public Prosecutor for the State submits that preliminary investigating has found that the account in which approximately a sum of ₹41,00,000/- was transferred, was opened by the applicant himself after submitting all the relevant documents to the bank.

9. He submits that the bank officials have also informed that

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the applicant had visited the branch for the purpose of opening the bank account.

10. He further submits that the call was traced and it was found to have been originated from Cambodia and the matter requires detailed investigation for which the custodial interrogation of the applicant is required.

11. He further submits that another FIR alleging a similar offence has also been registered against the applicant at CEN Crime Police Station, South Div., Banashankari, PS, Bengaluru.

12. At this stage, the applicant seems to be a major beneficiary of the amount that has been cheated from the complainant.

13. As pointed out, it does not appear to be a case, at this stage, where the account was opened by someone else for the purpose of misuse of the same.

14. The learned counsel for the applicant submits that the amount which was deposited in the account of the applicant was transferred immediately and he cannot be called as '*beneficiary*' for the said amount. The amount has been transferred to different bank accounts, the identity of which is yet to be verified.

15. 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 the application for grant of regular bail

16. 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

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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

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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.”

17. 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*]. Granting pre-arrest 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.

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. The investigation is at a nascent stage and the Police needs to be given a fair play in the joints to investigate the matter in the



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manner they feel appropriate.

20. 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 applicant has been indulging into similar offences on earlier occasions and there is sufficient material, at this stage, for the State to seek custodial interrogation of the applicant.

21. 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 applicant. The evidences, including digital records and communication, link the applicant to the alleged offence.

22. The present application is accordingly dismissed.

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

AMIT MAHAJAN, J

MAY 3, 2024
“SS”

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