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

\+ BAIL APPLN. 1621/2024

PAWAN KUMAR .....Petitioner

Through: Mr. Nishank Tyagi and Mr. Gaurav Jain, Advocates.

versus

STATE NCT OF DELHI .....Respondent

Through: Mr. Utkarsh, APP for the State with SI Manoj Kumar, P.S.: EoW.
Mr. Satykam Saini, Advocate for victims.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

O R D E R

% **14.10.2024**

By way of the present petition filed under section 439 of the Code of Criminal Procedure 1973, the petitioner seeks regular bail in case FIR No.205/2021 dated 30.12.2021 registered under sections 406/409/420/120-B of the Indian Penal Code, 1860 ('IPC') at P.S.: Economic Offences Wing, Delhi.

2. Notice on this petition was issued on 08.05.2024. Status report dated 09.07.2024 has been filed. Nominal Roll dated 14.05.2024 has also been received from the Jail Superintendent.

3. Mr. Nishank Tyagi, learned counsel appearing for the petitioner submits, that the essence of the allegation against the petitioner (and his wife) is that they *induced* some people to invest monies in a

scheme floated by them in the name of their business under the name and style of Kritika Jewellers; and that they have failed to refund that money.

4. Mr. Tyagi however draws attention to the statement of the main complainant/Usha Singh recorded on 04.01.2022 under section 161 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), where she states that she had *invested* Rs.1,50,000/- in a 'committee' in 2019, on which she made a profit of Rs.25,000/-; and that subsequently she again invested Rs.3,00,000/- in the 'committee' in the year 2021, on which also she made a profit of about Rs.30,000/- to Rs.35,000/. Counsel submits that the petitioner has been operating his business in the neighbourhood of the complainants for the last about 20 years; and the complainants have been making investments in the scheme *voluntarily* over the last several years without any complaint; but the problem arose when the petitioner's business went into a loss during the COVID-19 pandemic. Counsel accordingly submits, that the requisite ingredients of the offences alleged are not made-out against the petitioner.

5. Mr. Tyagi further submits, that the chargesheet would show that gold and jewellery of the value of about Rs.27 lacs has been seized in the course of investigation, though the amount in dispute is only about Rs.10 lacs. Counsel submits, that the petitioner undertakes not to seek release of the gold and jewellery that has been seized; which would at least secure the financial claim of the complainants.

6. Counsel further points-out, that *vide* order dated 13.03.2024 made in BAIL APPLN. No. 3635/2023, his wife and co-accused/Neetu @ Ritu

has already been admitted to regular bail by a Co-ordinate Bench of this court; while the petitioner has been in judicial custody as an under-trial for more than 20 months now; and the trial has not even commenced as of date, since no charges have been framed yet.

7. On the other hand, opposing the grant of bail, Mr. Utkarsh, learned APP for the State submits, that since the petitioner has been involved in cheating several persons there are 37 complainants in the case, who had all invested their hard-earned money in the scheme floated by the petitioner and his wife, which money has not been returned, with or without profit, as was promised.

8. Learned APP submits, that after registration of the subject FIR, the petitioner was absconding and was arrested more than a year later from a tenanted premises, after proceedings under section 82 Cr.P.C. had already been initiated against him.

9. Learned APP accordingly submits, that the petitioner may attempt to influence witnesses, tamper with evidence, or may even flee.

10. The court has also heard Mr. Satykam Saini, learned counsel for the complainants/victims, as well as Ms. Usha Singh, the main complainant, who is present in-person.

11. Upon querying Ms. Usha Singh, it transpires that she does confirm that she had *invested* some monies in a scheme floated by the petitioner; but that she does not recall the amounts so invested off-hand, though she has a record of the monies so invested. When queried as to whether, in her statement under section 161 of Cr.P.C., she had narrated to the Investigating Officer that she had also received

certain profits in 2019 and 2021 on the monies invested, she disclaims any knowledge thereof.

12. The record shows that chargesheet dated 27.03.2023 has been filed before the learned trial court but charges are yet to be framed in the matter. The main chargesheet lists some 50 prosecution witnesses and, as per the prosecution, they are likely to file a supplementary chargesheet in the matter.

13. The petitioner's Nominal Roll dated 14.05.2024 shows that he has been in judicial custody as an undertrial since 02.02.2023 and has accordingly spent about 01 year and 03 months in prison as of that date; that his jail conduct has been 'satisfactory'; and that, apart from the subject FIR, he only has a criminal complaint under section 138 of the Negotiable Instruments Act, 1881 pending against him.

14. Upon an overall conspectus of the facts and circumstances of the case, and in particular, the fact that the petitioner's wife, who is a co-accused in the matter, has already been enlarged on regular bail *vide* order dated 13.03.2024; that investigation in the matter is complete and chargesheet dated 27.03.2023 has been filed but trial is yet to commence; while in the meantime, the petitioner has already spent more than 01 year and 03 months in judicial custody as an undertrial, this court is persuaded to admit the petitioner – **Pawan Kumar s/o Ram Kumar** – to regular bail in case FIR No. 205/2021 dated 30.12.2021 registered under sections 406/409/420/120-B IPC at P.S.: Economic Offences Wing, Delhi, subject to the following conditions :

14.1. The petitioner shall furnish a personal bond in the sum of Rs.50,000/- (Rs. Fifty Thousand Only) with 02 sureties in the like amount from family members, to the satisfaction of the learned Trial Court;

14.2. The petitioner shall furnish to the Investigating Officer a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;

14.3. If the petitioner has a passport, he shall surrender the same to the learned Trial Court and shall not travel out of the country without prior permission of the learned Trial Court;

14.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial;

14.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the Investigating Officer in writing; and

14.6. As offered by the petitioner, he shall not seek release of the gold and jewellery seized in the course of investigation until conclusion of the trial.

15. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.

16. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.

17. The petition stands disposed-of in the above terms.

18. Other pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

OCTOBER 14, 2024/ak