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

\+ BAIL APPLN. 2314/2023

VINAY .....Petitioner

Through: Mr. Gultash Guron, Advocate

versus

STATE NCT OF DELH .....Respondent

Through: Mr. Amit Ahlawat, APP for the State with SI Sanjay PS – Crime Branch.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

O R D E R

% 03.10.2024

1. This bail petition has been filed seeking anticipatory bail in FIR No.01/2022 under Sections 419/420/468/471/120B/34 IPC. The case of prosecution is based on a complaint received by the Deputy Secretary (Exam), DSSSB, Govt. of NCT of Delhi that other persons had impersonated for various candidates while giving an exam. The details were sought from the examination centre including Invigilator's copy bearing photographs, thumb impression and hand-writing sample and Observer's copy.

2. Petitioner was one of the candidates and was interrogated on 29th April 2023 but he remained evasive in his replies. Thereafter, he moved an application seeking anticipatory bail before the Sessions Court and orders were passed on 16th May 2023. In subsequent interrogations, he claimed photographs attached on the forms were his own photographs. Specimen thumb impression of petitioner was obtained and as per FSL report, it matched with matched with the thumb impression on Assistant Observer's

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copy but mismatched with the thumb impressions on Invigilator's copy. Anticipatory bail application was dismissed by the Sessions Court on 5th July 2023. Thereafter, petitioner approached this Court and on 14th July 2023, upon his undertaking to join and cooperating in the investigation, interim protection was provided, which has continued since.

3. In the meantime, as per investigation, he had disclosed that photograph had been taken by photographer Kuldeep Singh disclosed that his photograph had been morphed with one Manjeet Singh. Manjeet Singh was later identified and approached; his thumb impressions were taken but the FSL report stated that his thumb impressions did not match with thumb impressions given to the Invigilator.

4. Charge-sheet is yet to be filed.

5. Petitioner's counsel states that petitioner cannot be forced to give self-incriminating statement and he has maintained that he was the one who had appeared in the examination and mismatch of thumb impressions could be due to multiple thumb imprints given on invigilator's copy.

6. Other materials have already been recovered by the investigating agency and petitioner is correct in stating that participation in investigation does not entail making self-incriminating statements.

7. Reliance in this regard can be placed on the following decisions:

(i) The Supreme Court on 6th March 2024 in ***Hemant Kumar v. State of Haryana,*** SLP (Crl.) No(s). 232/2024, as regards the bail condition of "*co-operation with investigation*" observed as under:

> "*..But in response to our query about the nature of such non-cooperation, it was submitted on behalf of the State that the appellant as an accused was not helping out for recovery of the*

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sum allegedly paid to him as a bribe. In our opinion, however, participation in the investigation does not entail making self-incriminating statements, which seems to be the reason for which the State wants him in custody."

(ii) In an order dt. 6th March 2024 in ***Bijender v. State of Haryana***, SLP (Crl) No. 1079/2024, the Apex Court held as follows:

"*We cannot treat the behaviour attributed to the appellant to be instances of non-cooperation justifying dismissal of his appeal for pre-arrest bail. An accused, while joining investigation as a condition for remaining enlarged on bail, is not expected to make self-incriminating statements under the threat that the State shall seek withdrawal of such interim protection.*"

8. Accordingly, anticipatory bail application is allowed subject to his joining and cooperating in investigation.

9. Consequently, in the event of arrest the petitioner be released on bail on furnishing a personal bond in the sum of Rs. 50, 000/- with one surety of the like amount subject to the satisfaction of the arresting officer/IO/SHO concerned, further subject to the condition that the petitioner will join investigation as and when directed and not influence any witness/complainant/victim or tamper with evidence of the case.

10. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

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

ANISH DAYAL, J

OCTOBER 3, 2024/sm

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