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

\+ BAIL APPLN. 2445/2022 and CRL.M.A. 16607/2022 & 977/2023

SANJIV DUTTA ..... Petitioner

Through: Mr. Ram Kumar and Ms. Mamta, Advocates.

versus

SATE OF NCT OF DELHI ..... Respondent

Through: Ms. Shubhi Gupta, APP for State with SI Rajat Khaiwal, PS: Paschim Vihar (East).

Mr. D.M. Bhalla and Ms. Raj Rani Bhalla, Advocates for Complainant with Ms. Reema Malik (Complainant's wife) in person.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

O R D E R

% **29.02.2024**

1. By this application filed under Section 438 Cr.P.C. read with Section 482 Cr.P.C., Applicant seeks anticipatory bail in FIR No.596/2022 registered under Section 420/34 IPC at PS: Paschim Vihar (East). By order dated 18.08.2022, this Court had granted protection to the Applicant against arrest subject to his joining investigation and co-operating therein as well as other conditions mentioned in the order.

2. Status report has been filed on behalf of the State.

3. As per the case of the prosecution, present FIR was registered on a complaint made by Ravi Malik (now deceased), wherein he alleged that he was having a dispute regarding his ancestral property at Naraina with his sister Sudesh Grover. In this context, he met the Applicant, who introduced himself as an advocate and the Complainant hired him for his case.

Applicant had taken more than Rs.1.12 Crore from the Complainant for the services rendered as an advocate, which as later learnt by the Complainant were never filed. Money was also paid to the Applicant, as he had organized some shows to promote the career of Complainant's son Hardik Malik. False promises and misrepresentations were made to the Complainant that his son had been selected as a Brand Ambassador of UP Tourism and for which he would receive monthly remuneration of Rs.3 Lakh after every three months. Applicant also furnished a certificate from UP Government for cheating and duping the Complainant, which was allegedly issued by Dr. O.P. Chauhan, Chief Secretary of UP Tourism and was signed. As per the certificate, Complainant's son stood appointed as a Brand Ambassador.

4. It is further stated in the status report that preliminary inquiry was conducted into the matter and it was found that disputes between the Complainant and his sister were pending in Court cases in Patiala House Courts and Applicant had extorted money from the Complainant on the pretext of representing him as his advocate. Complainant provided copies of various Court documents *albeit* no original was produced at that time, save and except, the certificate by the Government of UP. Complainant also provided copies of his bank account statements reflecting hefty amounts transferred to the Applicant. Applicant was not found at his address for investigation and when contacted on his mobile phone number, he informed that his mother was seriously ill and admitted in Lucknow hospital. He submitted a written reply through his advocate responding to the complaint but the response was evasive regarding the allegations made and/or the money paid to him by the Complainant.

5. Investigation further revealed that Complainant had paid Rs. 20 Lakh

through bank transfers to the Applicant and the remaining amount out of total of Rs.1.12 crores in cash. In the meantime, Complainant's health deteriorated and he expired on 10.06.2022. FIR for an offence committed under Sections 420/34 IPC was registered. A video and an audio clip related to the case had been provided by the Complainant during his life time in a pen drive, which showed that the Applicant was appearing as an advocate and was bragging that he would fight the case for the Complainant. Subsequently, Sections 419/465/468/471 IPC were added.

6. It is stated that after interim protection was granted to the Applicant by this Court, Applicant joined investigation on 23.08.2022 but refused to provide the handwriting sample on the pretext that on account of an accident in April, 2023, he was unable to respond to the questions in writing. Applicant stated that he knew the Complainant for the past 18 years, contrary to Complainant's claim that he was introduced by Rajiv Malik as an advocate only in 2019, in which year he represented that he was appearing in the cases of the Complainant. During interrogation, Applicant confirmed his presence at the shows apparently conducted to launch the son of the Complainant, after being confronted with a video showing his presence.

7. As per the prosecution, in January 2020, Complainant was contacted by one Ashok Kumar, who introduced himself as an Assistant Sub Inspector of Jabalpur Police Station, where one Anita Arora had lodged a complaint of rape against the Complainant. Complainant contacted the Applicant for handling his matter. Applicant contacted Ashok and introduced himself as ex-Chief PP, Delhi High Court, after which he informed the Complainant that he had managed the situation after paying Rs.70,000/- to ASI Ashok for

not arresting the Complainant. Applicant misrepresented that he was travelling to different cities and appearing before the Bombay High Court etc. as an advocate on his behalf. Later, Complainant learnt from the sister of the Applicant that he was only 8th pass and realized that he had been cheated. As there were audio and video clips which had to be investigated, application was made by the prosecution for taking voice sample of the Applicant on 07.10.2022. Objections were raised by the Applicant on the ground that original source was not available with the IO and secondary evidence in pen drive is inadmissible in evidence. The Trial Court dismissed the objections and Applicant was directed to give his voice sample. Thereafter, the Applicant turned up at FSL Rohini, but refused to give the sample on the ground that he was having difficulty in breathing and speaking. With great difficulty and armed with Court orders, voice sample could be taken at the FSL. One of the co-accused, who had gone to the house of the Complainant posing as an ASI of Jabalpur Police, in connivance with the Applicant in order to dupe the Complainant, joined investigation on 27.01.2024 and disclosed his involvement in the case. He also identified the Applicant and also stated that the Applicant always met him in the appearance of an advocate. Applicant was the person who had told him to call the Complainant and threatened him of arrest and he followed the directions, for which he was paid Rs.20,000/-. It is stated that Applicant has been avoiding investigation and giving evasive answers. Custodial interrogation of the Applicant is required to unearth the whole conspiracy and recover documents such as *vakalatnamas*, bail bonds, mobile phone of the victim and the details of the money transactions.

8. Learned counsel for the Applicant submits that Applicant is innocent

and is being falsely implicated. Applicant has joined investigation and is fully co-operating. He has given his handwriting specimen as well as the voice sample. He never misrepresented that he was an advocate and therefore, no question of any money exchanging hands arises. No custodial interrogation is required as the Applicant has never filed *vakalatnamas* and/or bail bonds in any Court or received any money from the Complainant. In any case, looking at the nature of the alleged offences, evidence will be entirely based on documentary evidence and therefore, no custodial interrogation of the Applicant is required.

9. *Per contra*, learned APP appearing for the State submits that Applicant is not cooperating in the investigation. Investigating Officer had to labour hard to take the handwriting specimen and the voice sample of the Applicant and at every step had to resort to filing applications before the Court. At the time of giving the handwriting samples, Applicant pretended that he was unable to write on account of an accident and when the voice sample was asked for, he first took a plea that he had difficulty in breathing and subsequently spoke by changing his voice so as to dupe the Investigating Officer. Several documents have been allegedly filed by the Applicant on behalf of the Complainant in different Courts, which include bail bonds, *vakalatnamas*, petitions etc. and have to be recovered. There are audio and video clippings and bank transactions of hefty amounts having passed from the Complainant to the Applicant, details whereof have to be unearthed. Applicant has been consistently impersonating as an advocate, representing the Complainant in several Court cases in different Courts in different States and even the profile picture of the Applicant on the Facebook suggests that he has been portraying himself as an advocate,

despite his educational qualification being only 8th pass. Some of the photographs reveal his presence in events and shows, wearing an advocate's band. Custodial interrogation is required to unearth the conspiracy and recover documents as well as identify the other persons involved in the larger conspiracy.

10. I have heard learned counsels for the Applicant, Complainant and the learned APP for the State and have perused the documents.

11. As per the allegations forthcoming from the status report based on the investigation conducted so far by the prosecution, Applicant was representing the Complainant as his advocate not only in the dispute relating to ancestral property between the Complainant and his sister but also in other cases in different Courts. It is also alleged that he created a story of a false rape case against the Complainant and extracted money to the tune of Rs.70,000/- by presenting one Ashok as a Policeman, who would settle the entire issue with the alleged rape victim. Allegations are also made that on the pretext of professional fee as well as promoting the son of the Complainant, Applicant extracted huge amount of money from the Complainant for which there are bank transactions. Applicant allegedly went to the extent of forging a certificate signed by the Competent Authority of the UP Tourism Department appointing the son of the Complainant as a Brand Ambassador. Prosecution also states that no stone was left unturned by the Applicant to evade the process of investigation by not providing handwriting specimen and voice sample, till orders were passed by the Trial Court directing him to do so. The *modus operandi* adopted by the Applicant is *prima facie* evident from the photographs which show him in an attire of an advocate and lends support to the allegations levelled against him. Status

report reveals how the Applicant is not co-operating in the investigation. Custodial interrogation is sought for unearthing the conspiracy as well as recovering documents such as bank statements as well as pleadings, *vakalatnamas*, bail bonds etc. filed by the Applicant before different Courts.

12. Factors required to be considered by the Court while considering an application for anticipatory bail have been elucidated by the Supreme Court in the case of ***Sumitha Pradeep v. Arun Kumar CK, 2022 SCC OnLine SC 1529***, being: *prima facie* case against the accused; nature of the offence and severity of the punishment. Present case involves serious allegations against the Applicant of cheating, duping and misrepresenting to the Complainant that he was an advocate and/or forging documents purporting to be certificates issued by Government functionaries. The case also involves an offence under Section 468 IPC, for which the maximum sentence is 7 years and fine. Proceeds of crime are yet to be recovered and the prosecution has to unravel the larger conspiracy.

13. As regards the custodial interrogation, it has been held by this Court in ***Haresh Kumar Choudhary v. State (NCT of Delhi), 2023 SCC OnLine Del 1877***, that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 Cr.P.C. Relevant paragraphs are as under:-

> *"6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial*

interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.

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21. This Court is of the opinion that grant of anticipatory bail to the present applicant would prejudice the ongoing investigation in the present FIR. In the present case, custodial interrogation of the applicant is required for the aforesaid purposes."

14. Ms. Shubhi Gupta, learned APP has rightly placed reliance on the judgment of the Supreme Court in ***Pratibha Manchanda and Another v. State of Haryana and Another, (2023) 8 SCC 181,*** more particularly paragraph 21, wherein the Supreme Court observed as under:-

> ***"21.*** *The relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome."*

15. In the present case, for the reasons brought forth on behalf of the State, custodial interrogation of the Applicant is required. Applicant needs to be confronted with various documents and statements of co-accused as well as other persons associated with the various transactions involved. Allegations are serious being in the nature of impersonation as an advocate, cheating and forgery. In these facts and circumstances, no ground for anticipatory bail to the Applicant is made out.

16. Present bail application is accordingly dismissed and the interim order granting protection against arrest is hereby vacated.

17. All pending applications stand disposed of.

18. Needless to state that the observations made herein are purely for the purpose of deciding this application and shall not be construed as an expression on the merits of the case.

JYOTI SINGH, J

FEBRUARY 29, 2024

B.S. Rohella