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

+ **BAIL APPLN. 2823/2023 &CRL.MA 2257/2024**

BABLU MALAKAR

..... Petitioner

Through: Mr. Anshuman Singh and Mr.
Kanhaiya Kumar, Advs.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Raghuinder Verma, APP for State
with Insp. Satish Kumar IFSO / Spl.
Cell ND

Mr. Ranvijay Kumar, Mr. Ashok
Singh, Mr. Sushant Nagar, Ms. Rina
Roy and Mr. Avzoo Basist, Advs. for
complainant

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

06.02.2024

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1. The present petition has been filed seeking bail in connection with FIR No. 107/2022 under sections 419/420/468/471/34 IPC registered at PS Special Cell and also praying for setting aside the impugned order dated 01.08.2023 whereby the regular bail granted to the petitioner *vide* order dated 28.02.2023, was cancelled.

2. The case of the prosecution is that the complainant lodged a complaint with Special Cell alleging that some unknown group of persons has cheated him to the tune of Rs. 2.8 crores for a period of 7-8 years on the



pretext of selling insurance policies and getting back the money stuck in the insurance policies. The allegation against the petitioner is that he received a sum of Rs.3,68,000/- in his bank account and after withdrawal handed over the said amount to another co-accused after retaining 2% commission amount.

3. When the bail application of the petitioner was listed before the Court of Additional Sessions Judge-05, New Delhi District, reliance was placed by the learned counsel for the petitioner on MoU dated 20.02.2023 entered into between the *Parokar* of the petitioner and the complainant whereunder the petitioner agreed to deposit the amount received by him, without prejudice to his rights and contentions.

4. The learned Additional Sessions Judge noted that the petitioner/accused is not the prime beneficiary of the alleged cheated amount to the tune of Rs.2.80 crores and that the petitioner is alleged to have received Rs. 3.68 lacs in his bank account and after withdrawal handed over the same to the co-accused keeping commission of 2% for himself. The Court also noted that investigation *qua* the petitioner/accused is already complete and he is not required for custodial interrogation. The Court further observed that trial is going to take long time and no useful purpose is going to be served by keeping the petitioner/accused further in judicial custody.

5. Thus, keeping in view the aforesaid circumstances and further regard being had to the fact that the petitioner, without prejudice to his rights and contentions, was ready to deposit the cheated amount received by him in terms of MoU dated 20.02.2023, as well as, considering that the no objection was given by the complainant for granting bail to the petitioner,



admitted the petitioner to bail, *inter alia*, subject to the condition that he shall deposit an amount of Rs.3.68 lacs in the account of the complainant, out of which first instalment of Rs. 70,000/- lacs was to be paid in terms of MoU and the bail bonds were to be accepted after payment of first instalment. Accordingly, the first instalment of Rs. 70,000/- was deposited by the petitioner before the furnishing of bail bonds and was thus, he was enlarged on bail.

6. However, subsequently the terms of the aforesaid MoU were not complied with by the petitioner, therefore, on an application filed by the complainant, the learned Additional Sessions Judge–05, New Delhi District, Patiala House Courts *vide* order dated 01.08.2023 cancelled the bail granted to the petitioner and directed the petitioner to surrender before the jail authorities within 07 days.

7. It is the aforesaid order dated 01.08.2023 which has been impugned in the present petition. This Court while issuing notice in the present petition *vide* order dated 29.08.2023 had stayed the operation of the impugned order.

8. The learned counsel appearing on behalf of the petitioner submits that the petitioner belongs to very poor financial background and does not have wherewithal to pay the balance amount as agreed by his *parokar* in the aforesaid MoU. He submits that the *parokar* entered into MoU without instructions from the petitioner, who was lodged in jail at that time, possibly to secure the liberty of the petitioner, although on unreasonable condition.

9. The learned counsel submits that the condition of deposit of Rs. 3,68,000/- is an onerous condition, keeping in view the poor financial status of the petitioner. He submits that the petitioner is ready to face the consequences for not having complied with the terms of the MoU.



10. The learned counsel for the complainant on the other hand submits that in case matter is remanded to the learned Trial Court for considering the bail application of the petitioner afresh on its own merits, the complainant is ready to return the amount of Rs. 70,000/- paid by the petitioner / accused prior to the acceptance of his bail bond.

11. The learned APP for the State submits that in fact the petitioner had volunteered to make the payment of Rs. 3,68,000/- and that is why such condition was imposed by the learned Trial Court.

12. The Hon'ble Supreme Court time and again has deprecated the imposition of onerous condition like deposit of amount as a condition for grant of bail. In ***Bimla Tiwari vs. State of Bihar***, (2023) SCC OnLine SC 51, the Hon'ble Supreme Court observed as under:

"9. We have indicated on more than one occasion that the process of criminal law, particularly in matters of grant of bail, is not akin to money recovery proceedings but what has been noticed in the present case carries the peculiarities of its own.

10. We would reiterate that the process of criminal law cannot be utilised for arm-twisting and money recovery, particularly while opposing the prayer for bail. The question as to whether pre-arrest bail, or for that matter regular bail, in a given case is to be granted or not is required to be examined and the discretion is required to be exercised by the Court with reference to the material on record and the parameters governing bail considerations. Putting it in other words, in a given case, the concession of pre-arrest bail or regular bail could be declined even if the accused has made payment of the money involved or offers to make any payment; conversely, in a given case, the concession of pre-arrest bail or regular bail could be granted irrespective of any payment or any offer of payment.



11. We would further emphasize that, ordinarily, there is no justification in adopting such a course that for the purpose of being given the concession of pre-arrest bail, the person apprehending arrest ought to make payment. Recovery of money is essentially within the realm of civil proceedings."

(Emphasis supplied)

13. Earlier in ***Dilip Singh vs. State of Madhya Pradesh***, (2021) 2 SCC 779, the Supreme Court sounded a note of caution in the context of grant of pre-arrest bails and regular bails with a condition of deposit of cheated amount and reiterated the considerations that are relevant for bail, in the following words:

"3. By imposing the condition of deposit of Rs 41 lakhs, the High Court has, in an application for pre-arrest bail under Section 438 of the Criminal Procedure Code, virtually issued directions in the nature of recovery in a civil suit.

4. It is well settled by a plethora of decisions of this Court that criminal proceedings are not for realisation of disputed dues. It is open to a court to grant or refuse the prayer for anticipatory bail, depending on the facts and circumstances of the particular case. The factors to be taken into consideration, while considering an application for bail are the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; character, behaviour and standing of the accused; and the circumstances which are peculiar or the accused and larger interest of the public or the State and similar other considerations. A criminal court, exercising jurisdiction to grant bail/anticipatory bail, is not expected to



act as a recovery agent to realise the dues of the complainant, and that too, without any trial."

(Emphasis supplied)

14. The above being the legal position, even if the *parokar* of the petitioner had entered into MoU with the complainant and had volunteered to deposit the amount allegedly received by the petitioner, which possibly seems to be an endeavour on part of the *parokar* to secure the liberty of the petitioner, *albeit* on a condition not contemplated by law, such MoU or voluntary offer of the petitioner or his *parokar* ought not to have weighed in the mind of the Trial Court to decide the question of grant of bail. The considerations for grant of bail are well settled which should have been examined by the Trial Court for deciding whether the petitioner is entitled to bail or not, but an offer to deposit the amount was far from being a relevant consideration for that purpose.

15. In view of the above, the impugned order dated 01.08.2023 cancelling the bail, as well as, the order dated 28.02.2023 granting bail on a pre-condition of deposit of an amount of Rs. 3,68,000/-, are set aside and the matter is remitted to the learned Trial Court to consider the bail application afresh on merit having regard to the settled principles for grant of bail.

16. The complainant will also refund the received amount of Rs. 70,000/- to the petitioner, as undertaken by his counsel. The petitioner shall also remain physically present before the learned Trial Court when his bail application is considered afresh.

17. At this stage the learned counsel prays for continuation of protection to the petitioner for some reasonable period of time as he has to come from Bihar. Accordingly, it is directed that the petitioner shall not be arrested for



three weeks from today within which period the petitioner will appear before the learned trial court, or till the time his bail application is decided afresh, whichever is later.

18. The petition stands disposed of in the above terms.

VIKAS MAHAJAN, J

FEBRUARY 6, 2024

N.S. ASWAL