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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2887/2023**

SHYAMVEER

..... Applicant

Through: Mr. T.K. Mishra, Mr.
Keshav Kr. Jha & Mr.
Saurabh Mishra, Advs.

versus

STATE THROUGH SHO PS
DWARKA NORTH

..... Respondent

Through: Mr. Utkarsh, APP for the
State with SI Durgesh,
PS- Dwarka North.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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21.02.2024

1. The present application is filed by the applicant under Section 438 of the Code of Criminal Procedure, 1973 (CrPC) praying inter alia for grant of pre-arrest bail in FIR No. 290/2023 dated 26.04.2023, registered at Police Station Dwarka North, New Delhi, under Section 419/120B/34 of the Indian Penal Code, 1860 (IPC).
2. On 24.04.2023 a PCR call *vide* DD No. 123A was received, alleging cheating in entrance examination for Multi-Tasking Staff (MTS) through impersonation by two persons at MRS Global Institute Hari Vihar (hereafter '**the institute**'). The FIR was lodged pursuant to a written complaint made by one Ravi, who is stated to be the in-charge of the institute.
3. It is alleged that an entrance exam was being conducted at the institute and during the third shift, the exam observer informed that biometrics of two candidates were not matching. It was found that the co-accused Bhupender Singh was giving the

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exam in place of the present applicant and co-accused Sourav @ Nishant Kumar was giving the exam in place of another candidate namely Mahesh Chand.

4. During the course of investigation, the co-accused Bhupender Singh was arrested on 27.04.2023 and disclosed that the present applicant, had provided him a forged Aadhar Card in which the applicant had replaced his photograph with that of co-accused Bhupender, for using the same as Identity Proof to appear in the examination on his behalf.

5. The learned Counsel for the applicant submits that the applicant is an innocent person and has been falsely implicated in the alleged offence. He submits that the applicant in fact is the victim of the crime committed by the other accused persons.

6. He submits that applicant had no intention to commit any crime, but was enticed by the co-accused Bhupender Singh who promised him to get a grade - 4 employment and in exchange the applicant only had to provide him his Aadhar Card, admit Card and had to pay Rs.5,00,000/- after applicant gets the Job. He submits that Rs.1,00,000/- was already paid to the co-accused Bhupender Singh.

7. He submits that the applicant did not forge any document and it was co-accused Bhupender Singh who took the photographs of the applicant's Aadhar Card and admit Card and also appeared in the exam on behalf of the applicant.

8. Lastly, he submits that the applicant is unknown to the other co-accused namely Sourav @ Nishant Kumar who was also found impersonating one Mahesh Chand, at the same institute on the same date. He also submits that co-accused Bhupender Singh has already been admitted of regular Bail by the learned Trial Court.



9. The learned Additional Public Prosecutor for the State opposes the grant of present bail application and submits that the custodial interrogation of the present applicant is very much necessary. He submits that it is the case of identity fraud where the applicant is accused of forging a Aadhar Card and also hired co-accused Bhupender Singh to appear in the examination on his behalf for a government job.

10. He submits that the applicant was granted interim protection by the learned Trial Court and thereafter the accused joined investigation and disclosed that he knew that co-accused Bhupender had already appeared in many exams and helped others to get jobs through fraudulent method.

11. He submits the applicant was in touch with the co-accused Bhupender for the last six months and the deal for getting applicant the job was finalized at Rs.5,00,000/-.

12. He submits that the custodial interrogation of the applicant is required since the investigation is still pending and various aspects with respect to alleged offence are yet to be examined. He submits that the bio metric data and signature(s) of the applicant are to be obtained; the person who is alleged to have made the forged Aadhar Card is to be identified.

13. He submits that the device / computer system on which the forged Aadhar card was made, is still to be recovered.

14. I have heard learned counsel for the parties.

15. The Hon'ble Supreme Court ***in Pratibha Manchanda v. State of Haryana: (2023) 8 SCC 181*** has observed that:

“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." (emphasis supplied)

16. In the present case it is not denied that the applicant had provided his Aadhar Card and admit card to co-accused Bhupender for the purpose of getting a job. The co-accused Bhupender was caught red handed at the examination centre while appearing on behalf of the applicant.

17. The learned Trial Court while dismissing the anticipatory bail application had also compared the original Aadhar Card of the applicant with the Aadhar card used by co-accused Bhupender and it was found that only the photograph had been changed, the same was also the case with the admit card, where the image of the present applicant was replaced with that of the co-accused Bhupender.

18. The two documents which have been allegedly forged for the purpose of appearing in the examination, at this stage, shows the connivance between the present applicant with the co-accused Bhupender.

19. The applicant in the present case is facing a serious charge of offence forgery pursuant to which the applicant created forged documents and hired someone to appear on his behalf in the MTS competitive examination by adopting illegal means on behalf of some other person.

20. In so far as, the competitive examination is concerned, misconduct, misbehaviour, malpractices and cheating is required



to be dealt with strictly. The purity of the examination is of paramount consideration especially in the competitive examination where many incumbent candidates burn their midnight oil to secure the government job and are eagerly waiting for the government jobs. The deserving candidates are deprived of their rightful dues by such unscrupulous elements and their dishonest activity and malpractices. The reference is placed on **Director (Studies), Dr. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology Chandigarh and Ors. v. Vaibhav Singh Chauhan: (2009) 1 SC 59** wherein the Hon'ble Supreme Court has held as under:

“12. We are of the firm opinion that in academic matter there should be strict discipline and malpractices should be severely punished. If our country is to progress we must maintain high educational standards, and this is only possible if malpractices in examinations in educational institutions are curbed with an iron hand.”

21. Arrest is a part of procedure of the investigation to secure not only the presence of the accused but also to serve other purposes. The grant of pre-arrest bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of pre-arrest bail. The pre-arrest bail not to be granted as a matter of routine and it has to be granted only when the court is convinced that circumstances exist to resort to that extraordinary remedy. Custodial interrogation is a recognized mode of investigation which is not only permitted but is held to be more effective.

22. Interrogation of an accused, while in custody, is qualitatively different from that undertaken while the accused is enjoying protection under an order of a Court against his arrest.



This is a well-recognized position in law. It is the right of the investigating agency to conduct a proper and fair investigation. Hon'ble Supreme Court in the case of **CBI vs Anil Sharma: 1997 7 SCC 187**, held that investigating a person appearing before the Investigating Officer under the protection of the Court order under 438 of the Cr.P.C. is qualitatively different from the custodial interrogation which would lead to better collection of evidence, thereby ensuring a proper investigation. Custodial interrogation is more elicitation – oriented than questioning an individual/suspect ensconced with a protection of Court Order.

23. At this stage, the accusation does not seem to have been made with the object of injuring or humiliating the applicant.

24. Keeping in mind the nature of allegations, and the fact that the applicant is *prima facie* the beneficiary of the offence, this Court is of the opinion, that any order of pre-arrest bail would harm the investigation and would impede the prospects of unearthing the truth.

25. In view of the above, this Court feels that it is not a fit case for exercise of discretion under Section 438 of Cr.P.C.

26. The application is, therefore, dismissed.

27. It is, however, made clear that any observations made in the present order are only for the purpose of deciding the present bail application, and should not be treated as an opinion on the merits of the case and also should not influence the outcome of the trial.

AMIT MAHAJAN, J

FEBRUARY 21, 2024/“SS”