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

+ **BAIL APPLN. 2689/2022 & CRL.M.A. 18002/2022**

SANJEEV GOSWAMI

..... Petitioner

Through: Mr. Durgesh Kumar
Pandey & Mr. Arvind
Kumar, Advs.

versus

STATE OF DELHI

..... Respondent

Through: Mr. Ajay Vikram Singh,
APP for the State with Mr.
Varun Bhadana, Mr.
Durgesh Chaudhary & Mr.
Vikas Sharma, Advs.
SI Kavish Rana, PS-
Laxmi Nagar
Mr. Jitendra Kumar Tiwari
& Mr. Gurender Rana,
Advs. for complainant.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **21.05.2024**

1. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 ('CrPC') seeking pre-arrest bail in FIR No. 412/2022 dated 31.07.2022 registered at Police Station Laxmi Nagar for offences punishable under Sections 420/468/471/34 of the Indian Penal Code, 1860 ('IPC').
2. The FIR in this case has been registered in pursuance of an order dated 29.07.2022 passed by the Court of the learned MM-04, East/KKD Delhi on an application filed under Section 156(3) of the CrPC by the complainant.

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3. It is alleged that the company of the complainant was engaged in the business of exporting rice and other food grains. It is alleged that the complainant was looking for a supplier for 5000 MT of special quality rice and contacted M/s Indo Global Trade, which suggested the company M/s Zinc Pixel India Private Ltd., in which the applicant is a director. It was represented to be a large supplier of rice.

4. It is alleged that a tripartite Memorandum of Understanding (MOU) was executed on 07.01.2021 between the complainant, the applicant's company, and Indo Global Trade for the supply of rice to the complainant, under which both companies agreed to supply 5000 MT of rice at the rate of ₹24,000/- per MT with delivery to be made at Vishakhapatnam Port.

5. Thereafter, M/s Outpay Technologies Pvt. Ltd. was appointed as the vendor *apropos* supply of 2600 MT of rice.

6. It is alleged that on 15.01.2021, information was received that the applicant's company was sending 295 MT of rice in 5,900 bags in ten trucks from Raipur to Vishakhapatnam Port and shared the invoices, LR, and E-way Bills, which all turned out to be fake as they never sent the said rice. It is alleged that the complainant, after seeing these documents, paid ₹50,00,000/- on 15.01.2021 and ₹30,00,000/- on 18.01.2021 to the applicant's company in terms of the said MOU. It is alleged that later, the complainant came to know that these documents were fake.

7. It is alleged that the applicant's company informed the complainant that the said rice was stuck in transportation and they were unable to send it, and that they would send it to Vishakhapatnam by rail. It is alleged that, as the complainant did not have time and any alternative, the complainant, through its



agent M/s SPL Logistics, booked a railway container for which payment of ₹3,12,000/- was made.

8. It is alleged that despite making these arrangements, the accused persons did not transport the rice, and when enquiries were made at ICD Raipur, it came to light that the rice supplied by local rice millers had been taken back as they had not been paid. It is alleged that in this manner, the accused persons had cheated the complainant of ₹80,00,000/-.

9. The learned counsel submits that the applicant has been falsely implicated in the present case. He submits that the applicant was granted interim protection by this Court by order dated 16.01.2024 and since then the applicant has joined the investigation.

10. He submits that the applicant's pre-arrest bail application was dismissed by the learned Additional Sessions Judge on 24.08.2022 in a mechanical manner, without appreciating the material on record.

11. He submits that the money was paid by the applicant to the vendor – M/s Outpay Technologies Pvt. Ltd. However, the same was not paid by it to the supplier company/complainant.

12. He submits that a sum of ₹5,00,000/- has already been repaid to complainant – Kiya Agro Industries Pvt. Ltd. and the applicant has been assured that rest of the money will also be refunded.

13. He submits that the applicant has no criminal antecedents, the entire case is based on documentary evidence, and there cannot be any apprehension of the applicant tampering with the evidence. He submits that the applicant also undertakes to join investigation as and when directed by the Investigating Officer.

14. From the very nature of the offence and the allegations

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made, the entire incriminating material seems to be documentary in nature and is already available with the investigating agency. Therefore, it cannot be alleged that the applicant will influence the witnesses and tamper with the evidence if released on bail or is required for custodial interrogation.

15. While granting pre-arrest bail to an accused, no doubt the Court must consider nature and gravity of the alleged offence, the likelihood of the applicant influencing the witnesses or tampering with the evidence however, the Court is also to consider the role of the accused.

16. It is not in dispute that the FIR was registered way back on 31.07.2022, and the applicant was granted interim protection by this Court *vide* order dated 16.01.2024. The applicant is stated to have joined the investigation and cooperated with the same.

17. It is pertinent to note that the applicant, in order to show his *bona fide*, has deposited a sum of ₹5,00,000/- in the account of the company – Kiya Agro Industries Private Limited, though it is alleged that the money was paid to one of the directors of the complainant company with whom the other director is in dispute.

18. It is not disputed that the rice was infact supplied by the applicant and that all the necessary payments were made to M/s Outpay. It is contended that M/s Outpay did not make further payment to the supplier and hence, the material was not supplied to the complainant. It is further argued that, since the complainant came to know of rates of purchase of rice made by M/s Outpay, it then directly started dealing with M/s Outpay for procuring rice as it was getting a better price than that mentioned in the MOU and thus the complainant bypassed the applicant's company. The allegations and defences in this regard are disputed question of fact and would be dealt with during the trial.



19. It is not in doubt that order for grant of pre- arrest bail cannot be passed in a routine manner so as to allow the accused to use the same as a shield. At the same time, it cannot be denied that great amount of humiliation and disgrace is attached with the arrest. In cases where the accused has joined investigation, cooperating with the Investigating Agency and is not likely to abscond, the custodial interrogation should be avoided.

20. The apprehension, of applicant fleeing from justice and tampering with the evidence, can be taken care of by putting appropriate conditions.

21. The purpose of custodial interrogation is to aid the investigation and is not punitive. From the perusal of the Status Report, it appears that the investigation is complete to a large extent and does not require the applicant to be in custodial interrogation for the purpose of Investigating Agency to complete the remaining investigation, if any.

22. In view of the above, this Court is of the opinion that the custodial interrogation of the applicant is not required. It is directed that in the event of arrest, the applicant be admitted on bail on furnishing a personal bond of ₹50,000/- with two sureties of the like amount subject to the satisfaction of the concerned SHO, on the following conditions:

- a. The applicant shall join and cooperate with the investigation as and when directed by the IO;
- b. The applicant shall not contact the complainant / witnesses or tamper with the evidence in any manner;
- c. The applicant shall not leave the Country without the permission of the learned Trial Court;
- d. He shall provide the address where he would be residing after his release and shall not change the address without



informing the concerned IO/SHO;

- e. The applicant shall give his mobile numbers to the concerned IO/SHO and shall keep their mobile phones switched on at all times.

23. It is clarified that the observations made in the present order are for the purpose of deciding the present pre-arrest bail application, and should not influence the outcome of the Trial and should not be taken, as an expression of opinion, on the merits of the case.

24. The bail application is allowed in the aforesaid terms.

AMIT MAHAJAN, J

MAY 21, 2024