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

\+ BAIL APPLN. 3026/2023

HARKESH SINGH NARUKA ..... Petitioner

Through:

versus

THE STATE (GOVT. OF NCT OF DELHI) ..... Respondent

Through: Mr. Utkarsh, APP for the State
SI Harish, PS- Keshav Puram
Mr CM Sangwan, Adv. for complainant

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **14.02.2024**

1. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 ('**CrPC**') seeking pre-arrest bail in FIR No. 575/2023 dated 11.07.2023 registered at Police Station Keshav Puram for offences punishable under Sections 381/34 of the Indian Penal Code, 1860 ('**IPC**').

2. The FIR was registered alleging that, on 10.07.2023, the vehicle of the complainant company was found stationed near Britannia Chowk and some persons were trying to shift the goods from the said vehicle.

3. It is alleged that when the said vehicle was inspected, it was found to be loaded with 170 bags of *besan* whereas as per the bill, it was supposed to be loaded with 100 bags only. The register of the company was found to be manipulated.

4. The FIR was registered against the supervisor, namely, Surjeet Singh, under Sections 381 and 408 of the IPC.

5. The learned counsel for the applicant submits that the applicant has been falsely impleaded in the present case. He submits that he had left the company much earlier in the month of April, 2023 on account of ill-health of his wife.

6. He submits that the company had also issued a notice dated 27.04.2023, asking the applicant to join within 24 hours and in case of not joining, threatening to terminate the services of the applicant.

7. He submits that since the applicant was not in employment of the company, no allegation against the applicant could have been made under Sections 381 and 408 of the IPC.

8. The learned Additional Public Prosecutor for the State submits that during the investigation, it was found that the applicant was indulged in siphoning off of the goods of the company during the period he was employed.

9. He has handed over a chart prepared by the company, in order to show that during the period, the applicant was the Supervisor, the bills were made for a lesser value of goods whereas the gate pass was prepared for a higher value of goods.

10. The learned counsel for the applicant controverts the said submission and submits that various income tax proceedings have been going on against the company. He submits that the company was found by the Income Tax Department, to be not disclosing the correct sales. He submits that the company is trying to fasten the liability on the applicant.

11. The learned Additional Public Prosecutor for the State further submits that the applicant is not cooperating in the investigation and is not providing substantial information.

12. It is not denied that the applicant was not in employment of the company after the month of April 2023. The FIR was registered on 11.07.2023 when the goods of the company were allegedly found to be siphoned off in the manner as alleged. The allegation against the applicant is that he has indulged into the siphoning off of the goods during the period he was in employment of the company. To substantiate the allegation, the chart is prepared by the company.

13. It is seen that the company is a public limited company. The accounts of the company are admittedly subject matter of audit and scrutiny. The chart prepared by the company is a subject matter of investigation which would be carried out by the State.

14. However, at this stage, it cannot be said that the applicant who left the company in the month of April, 2023, would be part of the same transaction which led to registration of the FIR in July, 2023.

15. It is not the allegations that the goods were removed in July, 2023 with the active involvement of the applicant.

16. The learned Trial Court had dismissed the application for grant of bail noting that the applicant is not giving substantial information.

17. Not giving information which would suit the case of the prosecution does not amount to non-cooperation.

18. The investigation in the present case seems to be on the basis of documents and registers maintained by the company for which the chart has been handed over by the learned counsel for the complainant.

19. In view of the above, the present application is allowed.

20. In the event of arrest, the applicant is directed to be

released on bail subject to furnishing personal bond of sum of ₹50,000/- (Rupees Fifty Thousand Only) with one surety of the like amount to the satisfaction of SHO concerned on the following conditions:

a. He shall join and cooperate with any further investigation as and when directed;
b. He shall not leave the country without the permission of the learned Trial Court;
c. He shall appear before the learned Trial Court on every date of hearing;
d. He shall keep his mobile phone switched on at all times;
e. He shall commit no offence whatsoever during the period that he is on bail;
f. He shall not contact the witnesses in any manner.

21. The applicant during the period that he is on bail shall not commit any offence whatsoever and in the event of there being any FIR/ DD Entry/Complaint lodged against the applicant, it would be open to the State to seek cancellation of bail, which application, if any, would be dealt with on its own merits.

22. The application, is accordingly, allowed in the aforementioned terms.

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

AMIT MAHAJAN, J

FEBRUARY 14, 2024
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