IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:18.03.2024

\+ **BAIL APPLN. 2831/2022, CRL.M.(BAIL) 1152/2022, CRL.M.A. 11516/2023 & CRL.M.A. 27724/2023**

MANU WADHWA @ MOHIT ..... Applicant

versus

THE STATE, GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI ..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Sunil Dalal, Sr. Adv. with Mr. H. Sharma, Mr. Saurabh Goel, Ms. Manisha Saroha, Mr. Nikhil Beniwal, Mr. Mahabir Singh & Mr. Manish Bhati, Advs.

For the Respondent : Mr. Pradeep Gahlot, APP for the State with SI Deepak Dhanda, PS Amar Colony.
Mr. Deepak Biswas, Ms. Ruchika Rathi, Mr. Harshit Gupta & Mr. Gaurav Kumar Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 ('**CrPC**') seeking grant of pre-arrest bail in FIR No.501/2021 dated 28.11.2021 registered at Police Station Amar Colony for offences under Sections 420/406 of the Indian Penal Code, 1860 ('**IPC**').

Signature Not Verified
Digitally Signed
By:HARMINDER KAUR
Signing Date:20.03.2024
19:42:17

2. Briefly stated, the facts of the present case are that the FIR was registered on the complaint of one Dinesh Verma/complainant, wherein he alleged that on the pretext of lucrative business plans and high income returns, as promised by the applicant, the complainant invested a sum of ₹5 lakhs to start a business with the applicant, and started earning monthly returns of 6% on the said amount in the month of June, 2015.

3. It is alleged that in the month of August 2017, the applicant had approached the complainant and told him that he urgently required a sum of ₹50 lakhs and further suggested the complainant's wife to take personal loans from the Banks being a government employee. It is alleged that the applicant assured that he would repay the Bank EMI's. The complainant along with his wife approached one person, namely, Ashish, who arranged a personal loan of ₹42,21,159/- from five banks in the year 2017. It is also alleged that in the year 2018, on being assured by the applicant that he would pay the instalments regularly, the complainant introduced the applicant to two more persons, who were committee organisers. The said organisers gave monies/committee amount to the applicant.

4. In the month of May, 2019, the applicant along with his wife visited the complainant's house and further induced him to give more funds and told him to invest in the form of gold. It is alleged that the applicant had promised the complainant that the gold would remain in the same form. It is further alleged that on the basis of this promise, the complainant gave 1kg of gold in the

Signature Not Verified
Digitally Signed
By:HARMINDER KAUR
Signing Date:20.03.2024
19:42:17

form of 500 grams pure gold and ornaments weighing 500 grams having market value of ₹45 lakhs.

5. It is alleged that from the month of July 2019, the applicant stopped paying profits from investments and also stopped giving committee instalments to the committee organisers introduced by the complainant. It is averred that the applicant paid the bank loan EMIs only till March, 2020 and after that he stopped paying the same as well.

6. In the month of May, 2020, when the complainant demanded return of the gold, the applicant informed that he had sold 500 grams pure gold and rest of the ornaments were mortgaged with IIFL Bank from which he had taken a loan.

7. The applicant thereafter gave a written statement dated 31.07.2020 stating that he would return the gold and gave a cheque of ₹25 lakhs against the pure gold amount. It is alleged that the applicant did not pay the amount or returned the gold.

8. In the month of February, 2021, the complainant got to know that the mortgaged gold had been auctioned off due to non-payment of dues from August, 2020 to February, 2021.

9. It is alleged that out of the total outstanding amount of ₹1.96 crores, an amount of ₹36 lakhs approximately has been paid by the applicant through RTGS. The complainant further alleged that the applicant threatened him with dire consequences if he demanded the money, which led to the registration of the present FIR.

10. The applicant apprehending arrest, moved the learned Sessions Court for the grant of pre-arrest bail, and by order dated

Signature Not Verified
Digitally Signed
By:HARMINDER KAUR
Signing Date:20.03.2024
19:42:17

15.09.2022, the learned Link Additional Sessions Judge, Saket Courts, Delhi dismissed the said bail application which led to filing of the present application.

11. The learned senior counsel for the applicant submitted that the dispute in the present case is purely civil in nature and ought not to be criminalised. He submitted that the applicant has been appearing and cooperating with the investigating agency throughout after being served various notices under Section 41A of the CrPC and in pursuance of the interim protection granted by this Court by order dated 20.09.2022.

12. He submitted that so far as other FIRs against the present applicant are concerned, the applicant is either on bail or has been acquitted or the FIR has been quashed based on settlement.

13. He submitted that the complainant had voluntarily, without any inducement, invested his money. He submitted that the complainant had separately taken a loan of ₹42 lakhs from the applicant and against the said loan, the wife of the complainant had issued a cheque dated 01.06.2021 which got dishonoured.

14. *Per contra*, learned Additional Public Prosecutor (APP) for the State, assisted by the learned counsel for the complainant, submitted that the present applicant is involved in different FIRs with respect to similar allegations. It is argued that the *modus operandi* of the present applicant is to initially gain confidence of the victims by paying a small amount of loan monies and thereafter, taking huge loan from the victims and then not repaying the same.

Signature Not Verified
Digitally Signed
By:HARMINDER KAUR
Signing Date:20.03.2024
19:42:17

15. The learned APP for the State drew the attention of this Court to the additional status report filed pursuant to the interrogation of the present applicant with regard to monies received from the complainant and his family members. It was found that total amount repaid is ₹69,99,978/- and the applicant is liable to pay the outstanding amount of ₹1,58,20,561/- in lieu of the monies and gold taken.

16. I have heard the learned counsel for the parties and perused the record.

17. A perusal of the record reveals that the applicant was granted interim protection from arrest during the pendency of the present bail application by this Court by order dated 20.09.2022.

18. It is pertinent to consider the factors the Courts must contemplate while dealing with applications seeking pre-arrest bail.

19. In the case of ***Pratibha Manchanda v. State of Haryana* : (2023) 8 SCC 181**, the Hon'ble Supreme Court dealt with the issue of anticipatory bail, and the balance that needs to be maintained while granting the same to an accused and further laid down the factors that must be taken into consideration while granting anticipatory bail and held as under:

> *"**19.** In Siddharam Satlingappa Mhetre v. State of Maharashtra [Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514] , this Court carefully considered the principles established by the Constitution Bench in Gurbaksh Singh Sibbia v. State of Punjab [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] case. After a thorough deliberation, this Court arrived at the following conclusion : (Siddharam*

Signature Not Verified
Digitally Signed By:HARMINDER KAUR
Signing Date:20.03.2024 19:42:17

Satlingappa Mhetre case [Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514] , SCC p. 736, para 112)

"112. The following factors and parameters can be taken into consideration while dealing with anticipatory bail:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail, particularly in cases of large magnitude affecting a very large number of people."

***20.** In Sushila Aggarwal v. State (NCT of Delhi) [Sushila Aggarwal v. State (NCT of Delhi), (2018) 7 SCC 731 : (2018) 3 SCC (Cri) 331] , the Constitution Bench reaffirmed that when considering applications for anticipatory bail, courts should consider factors such as the nature and gravity of the offences, the role attributed to the applicant, and the specific facts of the case.*

***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*

Signature Not Verified
Digitally Signed
By:HARMINDER KAUR
Signing Date:20.03.2024
19:42:17

and circumstances of each individual case becomes crucial to ensure a just outcome."

20. The allegations against the accused person/applicant are of committing the offence of cheating and dishonestly inducing delivery of property and criminal breach of trust, which was initially stated to be about ₹1.96 crores, which by now, as per the investigation and verifying the bank statements of the applicant is approx. ₹1.58 crores. It is stated that since the applicant failed to return the dues to the complainants, the present FIR was registered.

21. The present case relates to the money being paid by the complainant to the applicant since the year 2015. It is alleged that the applicant deceived the complainant for giving him money on a promise of high return of income.

22. It is further alleged that the applicant deceived complainant to take bank loans. It is, however, not denied that the EMI for the said loan was paid by the applicant for some period of time. It is not denied that a substantial sum of money has been repaid by the applicant to the complainant.

23. Admittedly, the complaint was made in the year 2021 whereas the transaction between the parties started way back in the year 2015. At this stage, it appears that the complainant was aggrieved that the investment return, as promised, was not made by the applicant.

24. In such circumstances, whether the transactions were purely commercial in nature and if there was any element of

Signature Not Verified
Digitally Signed
By:HARMINDER KAUR
Signing Date:20.03.2024
19:42:17

cheating, could be decided at the time of trial and cannot be presumed at this stage.

25. It is not disputed that the applicant has joined the investigation. There are no chances of the applicant fleeing from justice or tampering with evidence. The apprehension, even otherwise, can be taken care of by putting appropriate conditions. It is trite law that where the court is of the considered view that the accused has joined the investigation and is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided since, a great ignominy, humiliation and disgrace is attached to arrest. The apprehension, even otherwise, can be taken care of by putting appropriate conditions.

26. 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.

27. The allegations and counter allegations would be tested during the course of trial and, at this stage, cannot be said to be totally true or untrue. The allegation, at this stage, are solely based on the statement made by the complainant. The argument made on behalf of the applicant that he has been falsely implicated, at this stage, cannot be ruled out and would be a matter of trial.

28. In view of the aforementioned facts and circumstances, it is directed that the applicant, in the event of arrest, be released on

Signature Not Verified
Digitally Signed
By:HARMINDER KAUR
Signing Date:20.03.2024
19:42:17

bail on furnishing a bail bond for a sum of ₹50,000/- with one surety of the like amount to the satisfaction of the concerned SHO, subject to the following conditions:

(i) The applicant shall join and cooperate with the investigation as and when directed by the concerned IO;

(ii) The applicant shall not leave the country without the permission of the learned Trial Court;

(iii) The applicant shall not contact the complainant / witnesses or tamper with the evidence in any manner;

(iv) The applicant shall give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

29. The present bail application is allowed in the aforesaid terms.

30. It is clarified that the observations made in the present case are only for the purpose of considering the bail 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 or any other case that may have been registered against the applicant.

AMIT MAHAJAN, J

MARCH 18, 2024

"SK"* / *KDK / VG

Signature Not Verified
Digitally Signed
By:HARMINDER KAUR
Signing Date:20.03.2024
19:42:17