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

% ***Date of decision:8th July, 2024***

\+ **BAIL APPLN. 2130/2024 & CRL.M.A. 18396/2024 (stay)**

JYOTI GUPTA .....Petitioner
Through: Mr. Prashant Shukla, Advocate.

versus

STATE NCT OF DELHI .....Respondent
Through: Mr. Amit Ahlawat, APP for the State

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT ***(oral)***

BAIL APPLN. 2130/2024 (under Section 438 read with Section 482 CrPC filed by the petitioner for grant of Anticipatory Bail)

1. The present Bail Application under Section 438 read with Section 482 of the Code of Criminal Procedure *(hereinafter referred to as 'Cr.P.C, 1973'),* has been filed on behalf of the petitioner, namely, Ms. Jyoti, for grant of Anticipatory Bail in the Case arising out of FIR No. 520/2023, dated 02.12.2024, under Sections 406/420 of the Indian Penal Code (*hereinafter referred to as 'IPC'*), registered at Police Station South East, Delhi, New Delhi.

2. It is submitted in the Application that the petitioner is a peace loving and law abiding citizen and has been falsely implicated in the present FIR. She is not named in the complaint and has been dragged unnecessarily into the investigation. The FIR has been registered on completely false and

fabricated facts, narrated in the complaint.

3. It is submitted that according to the complainant, Mr. Umesh Kumar Goel, proprietor of Kuru Agro Products, the applicant and her husband Mr. Neeraj Dengre @ Neeraj Gupta, in conspiracy with other co-accused, namely, Ms. Somya Agrawal, Mr. Rakesh Kumar Gupta and Mr. Ram Kumar Goyal, had approached the complainant to dishonestly induce the complainant and defraud him of large sum of money. The accused portrayed himself as an agent (*dalal*) in the business of masala/spices and similar items, along with the other co-accused persons who were also dealing in the same products. Purportedly, under the garb of business transaction, he took orders for the supply of various items to the complainant and the accused assured that the goods so supplied would be kept in the Sudarshan Cold Storage in Gwalior, Madhya Pradesh. However, a false paper trail was created by the agent and the dealer, which included generation of false invoices and a whole setup was a scam to defraud the complainant. It is claimed that no goods were delivered to the complainant nor were they kept in the Sudarshan cold storage, Gwalior.

4. It is claimed that false paper trail has been created by the agent and the dealer along with the invoices of transaction and this whole setup is a scam intended to defraud the complainant, for collection of money. The complainant has further alleged that a sum of Rs.97,85,475/- had been paid by the complainant to the accused persons. Furthermore, these goods were not found in Sudarshan cold storage, as has been presented by the accused persons. Consequently, the FIR under Section 120B/406/420/504/34 IPC, was registered against the co-accused, Mr. Neeraj.

5. The petitioner has submitted that she is the wife of Mr. Neeraj, a

proprietor of Kanishka Traders. She had no active participation in the alleged incident. Her role was solely administrative, limited to signing of documents at her husband's request, without knowledge of the transactions.

6. It is further submitted that approximately the same amount was to be paid to Ms. Poonam Gupta of Manvi Traders, by the complainant, therefore, it was kept as a condition precedent that when the payment of Manvi Traders is completed, then only the payments of the aforementioned amount shall be cleared by Kanishka Traders, in favour of Kuro Agro. Various reminders were sent to the complainant for payment of the due amount but no action was taken. However, after three years, this present complaint has been made on which the FIR has been registered.

7. It is further explained that Mr. Neeraj Dengre, the husband of the petitioner, has been engaged in the spice business as admitted, for last 20 years, operating from Mumbai. This primarily role is to facilitate in production between clients for spice transactions. He knew various persons in spice trade and had merely introduced them to the complainant. After which, they had direct dealings, without the involvement of her husband, Mr. Neeraj Dengre. The applicant, who is wife of Mr. Neeraj Dengre and proprietor of Kanishka Traders, had minimal involvement in the alleged transactions.

8. The petitioner has further submitted that she has always co-operated in the investigations and has submitted the relevant documents, as requested by the IO. She has always demonstrated her willingness to assist the investigations despite her co-operation, the Police and the complainant, visited her residence and subjected her and her family members to physical abuse. They have been repeatedly asking her to join the investigations

despite her prior co-operation and submissions of the documents.

9. The applicant, apprehending imminent arrest, had moved first Anticipatory Bail Application No. 523/2024, titled as '*State vs. Jyoti*', before the learned ASJ, Saket Courts, whereby interim protection was granted to her *vide* Order dated 13.03.2024. However, first Anticipatory Bail Application was withdrawn. Thereafter, the petitioner has received multiple Notices under Section 41A and 91 of the Cr.PC. Therefore, the second Anticipatory Bail Application No. 1308/2024 under Section 438 CrPC, was filed before the Court of learned ASJ, Kotla Mubarakpur.

10. It is submitted that the petitioner had furnished two written responses to the IO and had actively participated in the investigative proceedings leading to the preparation of an interrogation response despite such demonstrable engagement, the IO has persisted in levelling allegations of non-cooperation.

11. It is further submitted that she has no active involvement in the incidents as alleged. There is a burden of harassment and coercion by the police despite all the co-operation extended by her. Essentially, the nature of the transaction is commercial and is a case of breach of contract at best. The applicant has been made a victim of circumstances. The entire case is based on false and fabricated story and hence, the Anticipatory Bail is sought.

12. Learned APP appearing on behalf of the State, has opposed the Bail Application.

13. Written submissions have been filed on behalf of the complainant, who has submitted that the applicant has swindled Rs.1.65 cores from the complainant by using fake firms, in the name of the applicant and her brother and partly, the amounts have been obtained from the Kuru Agro

Products/the complainant, on the basis of bills made by Jai Mahakal, Aggrawal Enterprises, Jai Durga, Manvi Traders, Rehab Traders, who have disclosed to the IO that the goods covered in the bills, had been supplied to Mr. Neeraj, the husband of the applicant and delivered at Sudarshan Cold Storage. The petitioner had forged the request letter of complainant company to get goods released from Seizure by CGST and thereafter, removed the goods from the Sudarshan cold store and sold them in the market and thereafter, invested the cash so obtained in the name of the applicant, in properties at Mumbai/Gwalior. These illegal actions also attract the Section 467/468 of the IPC.

14. Furthermore, no goods were supplied by Manvi Traders, which were then forwarded to Sudarshan Cold Storage. The story of some amount having been paid by the complainant to Manvi Traders, is fake and untrue and custodial interrogation is required for confronting the applicant, with the owner of Manvi Traders. Thus, the custodial interrogation of the petitioner, is required to trace, identify and attach proceeds of crime of Rs.1.65 cores.

15. Learned counsel on behalf of the petitioner, has argued that the IO had failed to make compliance of Section 41A of Cr.PC. The petitioner has relied upon the Case of *Arnesh Kumar vs. State of Bihar & Anr.*, Criminal Appeal No.1277/2014, decided on 02.07.2014, MANU/SC/0559/2014, wherein it has been observed that Section 41A Cr.PC, is aimed to avoid unnecessary arrest or threat of arrest looming large on accused. This provision makes it clear that in all cases, where the arrest of a person is not required, the Polie is required to issue a Notice directing the accused to appear before him at a specified place and time. Law obliges the accused to appear before the police and further mandates that if such an accused

complies with the terms of notice, he shall not be arrested, unless for reasons to be recorded, the police officers is of the opinion that the arrest is necessary. In the present Case, the petitioner has duly complied with the Notice under Section 41A Cr.PC and has joined the investigations.

16. It is further argued that the assertions of the IO that the petitioner has not co-operated and inability of the petitioner, to answer the questions about the place where the money allegedly swindled, is presently passed.

17. The reliance has also been placed on the Case of *Smt. Bhavani Revanna vs. State of Karnataka*, Crl.P. No. 5125/2024, decided on 18.06.2024, wherein the High Court of Karnataka, had observed that merely because the complainant does not give the answers in a way as the police desires, would not tantamount to non-co-operation by the petitioner. Once, the willingness of the petitioner, to join the ongoing investigation, is evident, the police should not arrest the accused.

18. **Submissions heard.**

19. As per the FIR, the petitioner's husband had approached the complainant representing himself to be the agent in the business of spices. He presented to the complainant various orders for purchase of spices, from various trading agents and assured that the supply of spices to the complainant, is being kept in Sudarshan Cold Storage. The complainant believed the assurances of the petitioner and eventually got swindled of Rs.97,85,475/-, and he subsequently found that there were no goods supplied and stored in the cold storage.

20. Admittedly, various Notices for joining the investigation, were served upon the accused/petitioner who joined the investigations, when interim protection was granted to her, in the first Anticipatory Bail Application but

sought time to produce the documents. Subsequently, the petitioner withdrew the first Anticipatory Bail Application on 27.04.2024. Thereafter, despite service of Notices, the petitioner has failed to join the investigations.

21. Though, the petitioner is insisting that she had been co-operating in joining the investigations but the record shows that the Notices under Section 41A of Cr.P.C. have been issued against the petitioner because she subsequently failed to join the investigations. Furthermore, there is also allegations of having forged various invoices, which also required interrogation.

22. Furthermore, it is not denied by the petitioner that she is the proprietor of the Kanishka Traders and also admits having signed Invoices, though she has tried to deny her culpability by claiming that she had merely signed them without being aware of the contents.

23. At this stage, there are serious allegations of these Invoices being forged and benefit having been reaped by the accused and that the money so received by her Firm, is yet to be traced and recovered. In the totality of circumstances, no case is made out for grant of Anticipatory Bail, which is hereby dismissed. The pending application also stands disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 08, 2024/RS