$~81

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

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

\+ **BAIL APPLN. 2139/2024 & CRL.M.A.18427/2024 (stay)**

NEERAJ DENGRE @ NEERAJ 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

J U D G M E N T *(oral)*

BAIL APPLN. 2139/2024 (under Section 438 read with Section 482 of the Cr.PC for grant of bail)

1. The present Bail Application under Section 438 read with Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.PC, 1973'), has been filed on behalf of the petitioner, namely, Mr. Neeraj Dengre @ Neeraj Gupta seeking grant of bail in the Case arising out of the FIR No. 520/2023 dated 02.12.2024, under Sections 406/420 of the Indian Penal Code *(hereinafter referred to as 'IPC')*, registered at District South East Delhi, New Delhi.

2. It is submitted in the Application that the petitioner is a law abiding citizen and has been wrongly implicated in the present FIR, which 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, 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 with a heavy amount of money. The accused portrayed himself 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. It was claimed that a sum of Rs.97,85,475/- was paid by the complainant to the accused persons. On the complaint, the FIR No. 520/2023 under Sections 120B, 406, 420, 504 and 34 IPC, has been registered.

4. The petitioner has explained that he had two decades of experience in the spice trade, operating as a commercial agent based in Mumbai. He introduced Kuru Agro Products, to several proprietors within the spice industry, including Ms. Somya Agrawal, Mr. Rakesh Kumar Gupta and Mr. Ram Kumar Goyal, with the sole objective of enabling direct commercial dealings of the complainant with these trading firms. The Kuru Agro Products and the aforesaid Trading Firms, had direct dealings in which the

accused/applicant had no role to play. Despite this minimal involvement, the applicant had co-operated with the investigations and had given the answers to the questions in writing *vide* Reply to the Notice dated 31.03.2024. He has always been willing to assist in the investigations process. All the Notices under Section 41A and Section 91 of the Cr.PC received by him, have been duly complied with. Despite the co-operation and providing of all the documents sought by the Police, the complainant visited the residence of the applicant and subjected him and his family members to verbal abuse. The petitioner has submitted that he has been subjected to harassment by the police and there is imminent threat of arrest.

5. Hence, the Anticipatory Bail Application No. 466/2024 was filed in the Court of learned ASJ, Saket Courts, wherein, interim protection from arrest, was granted *vide* Order dated 13.03.2024. However, this Anticipatory Application was withdrawn by the applicant.

6. The second Anticipatory Bail Application bearing No. 1419/2024 under Section 438 Cr.PC, was filed in the Court of learned ASJ, Saket, wherein the learned ASJ observed about the demonstrable cooperation that the petitioner had extended to the Investigating Agency despite which they persisted in levelling allegations of Non-Cooperation against the petitioner.

7. It is claimed that the underlying transactions is commercial in nature. The registration of FIR is, therefore, disproportionately severe course of action. The applicant has been falsely implicated in the present Case. Even if the contents of the complaint are admitted, it would only amount to breach of contract. The resorting to the criminal proceedings by filing an FIR, represents potential exploitation of criminal justice system. It has been used to exert undue pressure and gain undue advantage. The relief is essentially

civil in nature. Hence, a prayer is made for grant of Anticipatory Bail Application.

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

9. 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 his wife, Mr. Jyoti and brother-in-law 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 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 Storage and sold them in the market and thereafter, invested the cash so obtained in the name of his wife, Ms. Jyoti in properties at Mumbai/Gwalior. These illegal actions also attract the Section 467/468 of the IPC.

10. 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/his wife, 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.

11. 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 <u>*Arnesh Kumar vs. State of Bihar & Anr.*</u>, 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.

12. In the present Case, the petitioner has duly complied with the Notice under Section 41A Cr.PC and the petitioner has joined the investigations.

13. It is further argued that the assertions of the IO that the petitioner has not co-operated is based on the inability of the petitioner to answer the questions about disclosing the trail where the money allegedly swindled, is presently lodged.

14. The reliance has also been placed on the Case of <u>*Smt. Bhavani Revanna vs. State of Karnataka*</u>, 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.

15. Once, the willingness of the petitioner, to join the ongoing investigation, is evident, the police should not arrest the accused.

16. **Submissions heard.**

17. As per the FIR, the petitioner 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.

18. Admittedly, various Notices for joining the investigation were served upon the accused/petitioner, Mr. Neeraj Gupta, who joined the investigations, when interim protection was granted to him, in the first Anticipatory Bail Application, but sought time to produce the documents. Thereafter, he did not co-operate. This led to the withdrawal of the first Anticipatory Bail Application on 27.04.2024. Thereafter, despite service of Notices, the petitioner has failed to join the investigations.

19. Though the petitioner is insisting that he had been co-operating in joining the investigations but the record shows that the petitioner subsequently failed to join the investigations. Furthermore, there is also allegations of having forged various Invoices, which also require interrogation. 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