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

\+ BAIL APPLN. 2140/2024

KAPIL KUMAR .....Applicant

Through: Mr. Mohit Kumar Gupta, Adv.

versus

STATE .....Respondent

Through: Mr. Manoj Pant, APP for the State
SI Karamvir, PS- Special Cell
Ms. Prachi Gupta (through VC), Mr. Shalabh Gupta & Ms. Vandita Gupta, Advs. for complainant

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

<u>O R D E R</u>

% **01.10.2024**

1. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 (‘**CrPC**’) seeking pre-arrest bail in FIR No. 51/2024 dated 16.02.2024, registered at Police Station Special Cell, for offences under Sections 420/120B of the Indian Penal Code, 1860 (‘**IPC**’).

2. The present FIR was registered at the instance of the complainant, namely, Sunil Khanna. It is alleged that the complainant was cheated of a sum of ₹4.2 crores on the pretext of investment in stock market.

3. During investigation, it was found that the complainant had deposited the aforesaid sum in 7 different accounts. One of the accounts in which a total sum of ₹86 lakhs had been deposited was found in the name of one Krishna Enterprises and Omveer Singh. It is alleged that Omveer Singh was arrested in a

riad on 18.04.2024 and he disclosed that he had allowed the use of his account for a sum of ₹5,000/-. He further disclosed that he had sent his account articles, including, ATM, cheque book and sim to the applicant on the direction of his associate Ravish.

4. It is alleged that accused Ravish was traced on 20,04,2024 and he also disclosed the name of the applicant. Chats between him and the applicant were found. It was also found that one Gulshan had given WhatsApp access of the number to the applicant and the same was being used by the applicant to chat with accused Ravish.

5. During investigation, accused Rajneesh was arrested when he did not cooperate and he disclosed that he came in contact with one Rolex who needed accounts on commission basis. The accused Rajneesh had posted a post for the same, pursuant to which, he came in contact with the applicant who used to share account details virtually.

6. During investigation, it was found that the cheated amount of ₹86 lakhs was further transferred to 16 accounts. NBWs were issued against one of the account holders who thereafter disclosed that he had also commissioned his account for a sum of ₹10,000/-. It was found that the amount of ₹20 lakhs received in his account had been transferred further to about 320 accounts in small transactions.

7. The chats of the applicant with accused Ravish and Gulshan were analysed and it was found that 40 cyber complaints had been reported against the accounts that surfaced in the same. It is alleged that the said accounts were being operated by the applicant and his associates.

8. The learned counsel for the applicant submits that the applicant has clean antecedents and he has been falsely

implicated in the present case. He submits that the applicant has not been named in the FIR and no specific role has been attributed to him by the complainant.

9. He submits that the applicant had no role in convincing or inducing the complainant to make any investment and the complainant had admittedly entered into the business transactions at the instance of accused Rakesh Jain.

10. He submits that the whole case is based on documentary/ electronic evidence and the same are in the custody of the concerned Investigating Officer, thus, no custodial interrogation is required.

11. He submits that account holder Omveer and accused Rajneesh have already been granted bail in the present case as well.

12. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant. He submits that the applicant was instrumental in commissioning the bank account in which ₹86 lakhs out of the cheated amount were received.

13. He submits that while the applicant joined investigation on a number of occasions, however, he gave evasive replies and did not produce the Bank Kit, etc.

14. I have heard the learned counsel and perused the record.

15. It is trite law that the power to grant a pre-arrest bail under Section 438 of the CrPC is extraordinary in nature and is to be exercised sparingly. The relief of pre-arrest bail is a legal safeguard intended to protect individuals from potential misuse of power of arrest. Thus, pre-arrest bail cannot be granted in a routine manner. The Hon'ble Apex Court, in the case of ***Siddharam Satlingappa Mhetre v. State of Maharashtra*** **:**

(2011) 1 SCC 694, elucidated some parameters to be considered before granting pre-arrest bail:

> *"112. ....*
> *(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****;*
> *(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;*
> *(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*
> *(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
> *(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."*
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> (emphasis supplied)

16. It is the case of the prosecution that the complainant was allegedly cheated of a huge sum of money on the pretext of investment. It is alleged that the applicant had commissioned the account of co-accused Omveer in which the complainant had

deposited ₹86 lakhs out of the total cheated amount of ₹4.2 crores.

17. While this Court by order dated 21.06.2024 had granted interim protection to the applicant subject to his cooperation, however, the updated Status Report mentions that it has been subsequently found that the applicant has allegedly cheated many more persons. It is alleged that about 40 cyber complaints were found to be registered in relation to the accounts that surfaced in the chats between the applicant and other accused persons– Ravish and Gulshan.

18. It is also mentioned in the Status Report that while the applicant joined the investigation, he did not cooperate and did not provide Bank Kit, phone Samsung galaxy phone and sim of the number linked with the concerned account (the applicant had earlier claimed that he had received the said sim along with the virtual details of the said bank account). It is also stated that when the applicant was questioned about the WhatsApp chats and alleged accounts, he stated that he had shared the details of the same with the co-accused Rajneesh for online gaming. It is also stated that the applicant was specifically asked about the details of a specific bank account, however, he stated that he did not know.

19. Whether the applicant was aware of the usage of the accounts in allegedly cheating gullible investors would be seen during the course of the trial.

20. Considering the Status Report, in the opinion of this Court, it cannot be held at this stage that the investigation is being carried out with the intention to injure or humiliate the applicant. The nature and the gravity of the allegations are serious as it has been contended that the applicant had actively participated in

cheating a significant number of people. The material presented by the prosecution establishes a *prima facie* link between the applicant and the alleged offence.

21. It is also argued that the co-accused Omveer and Rajneesh have already been enlarged on bail. It is pertinent to note that the said accused persons were granted bail after arrest. It is settled law that the considerations governing the grant of pre- arrest bail are materially different than those to be considered while adjudicating the application for grant of regular bail, as in the latter case, the accused is already under arrest and substantial investigation is carried out by the investigating agency [Ref. ***Pokar Ram v. State of Rajasthan*** **: (1985) 2 SCC 597**].

22. It is settled law that the custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the CrPC [***State v. Anil Sharma*** **: (1997) 7 SCC 187**]. Granting pre-arrest bail to the applicant would undoubtedly impede further investigation. An order of pre-arrest bail cannot be granted in a routine manner so as to allow the applicant to use the same as a shield.

23. The allegations in the present case relate to an online investment fraud. It is alleged that a significant number of people have been cheated in a similar manner and the applicant has been found associated to the said offences by way of his WhatsApp chats. It is alleged that the applicant was responsible for commissioning the accounts where the investment amount was received. The scale of operation, at this stage, seems to be humongous. Cyber crimes are on the rise and the same tend to be significantly harder to crack due to the boon of technology that is effectively misused by crooks to wreak havoc and evade the law

enforcement. Looking at the scale and manner employed by the accused persons to allegedly cheat the victims, the task of the Investigating Agency seems arduous and they need to be given fair play in the joints to investigate the matter in the manner they deem appropriate. The matter requires thorough investigation which ought not to be curtailed by passing an order under Section 438 of the CrPC.

24. In view of the above, in the present circumstances, this Court is of the opinion that custodial interrogation of the applicants ought not to be denied to the investigating authority.

25. Considering the aforesaid discussion, this Court is of the opinion that the applicant has not made out a *prima facie* case for grant of pre-arrest bail.

26. The present application is accordingly dismissed.

27. It is clarified that any observations made in the present order are for the purpose of deciding the present 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.

AMIT MAHAJAN, J

OCTOBER 1, 2024/*"SS"*