IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment delivered on: 01st July, 2024*

\+ **BAIL APPLN. 3226/2023**

RAMESH YADAV ..... Applicant

versus

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

Advocates who appeared in this case:

For the Applicant : Mr. S. Premchandra, Advocate (Through V.C.).

For the Respondent : Mr. Ajay Vikram Singh, APP for the State alongwith Mr. Mohit Rathi, Ms. Ankita & Mr. Anil Khatri, Advocates & SI Nitesh Mahiya (P.S. Samaypur Badli).

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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 pre-arrest bail in FIR No. 722/2021 dated 22.09.2021, under Sections 420/34 of the Indian Penal Code, 1860 (IPC), registered at police station Samaipur Badli.

2. The FIR was registered on a complaint made by one Sanjay Aggarwal alleging that he was cheated by the applicant.

3. It was alleged that the applicant and his wife presented himself as the directors of M/s Tashta Aliments Private Ltd. having its office at Plot No. 1476, Saraswati Kunj, Part-II, Sector 53, Gurugram, Haryana. The applicant and his wife told the complainant that they have been doing business of Solar Water heaters in Rajasthan for quite some time and have good contact with Reliance Corporate IT Park Ltd. and told the complainant that if he invests money in their company, he would get high returns and good profit margins. The Complainant being in business of Solar himself was allured by knowing their profit margins while working with Reliance Corporate IT Park Ltd.

4. It was alleged that the Complainant got induced by the lucrative offers being offered by the applicant and his wife. The Complainant gave a cheque bearing number 000453 dated 04.12.2019, for an amount of ₹10,00,000/- but later on the continuous demands of the applicant and his wife of direct bank transfer, made a cumulative investment of ₹20,00,000/- into the bank accounts of the applicant and his wife in parts on various dates.

5. It is alleged that soon after receiving money the applicant and his wife had assured the complainant that they would get him the installation work allotted. The complainant and the accused had several round of meetings with respect to the contract and thereafter the accused handed over a work order to the complainant to start with the visit. The accused also assured the complainant that in case there is any delay in starting of the work after 31.01.2020, then the accused persons would give him 2% per month on the amount invested by the

complainant in the company.

6. It is alleged that the complainant then also requested the accused persons to return the cheque of ₹10 lakhs initially given by him since he had already transferred the entire ₹20 lakhs directly into the bank accounts. The said cheque was never return and later the complainant was informed that the said cheque was misplaced by the accused persons.

7. The said excuses made by the accused persons made the complainant suspicious and he contacted the Reliance Company to which he was shocked to hear from the officials of the Reliance that they have nothing to do with accused persons or with their company. The complainant had also shown the documents given by the accused persons but the same were denied by the company official stating that the said documents does not bear any stamp of the Company and are not signed by any company official.

8. Thereafter the complainant tried reaching the accused persons but they were not found. The complainant also visited the address as per the GST registration but the same was located in a slum area. The Complainant was finally able to track down the applicant in the month of February 2020 and when he asked for his money back the accused persons extended threats and thereafter had also presented for encashment the cheque for ₹10,00,000/- which was initially given by the complainant.

9. The learned counsel for the applicant submitted that the facts as stated by the complainant in the complaint are not correct. He submitted that the applicant never knew the complainant prior to

November 2019, and was introduced by one Krishna Kumar Pandey.

10. He submitted that Mr.Krishna Pandey had offered a work project to the applicant started by M/s. Reliance Corporate IT Park Ltd.for construction and solar sites in Alwar, Rajasthan.

11. He submitted that the work order in question was received after compliance of various formalities required by M/s. Reliance Corporate IT Park Ltd. through one Mr. Satpal Ghangas and some other persons.

12. He submitted that the complainant came to the office of the applicant alongwith one Mr. Rana in Gurgaon for a meeting with Mr. Krishna Pandey @ Kumar Krishna. He submitted that Mr. Krishna Pandey had introduced the applicant to the complainant as the owner of Tashta Aliments Pvt. Ltd. and also informed about the contract work from reliance.

13. He submitted that Mr. Krishna Pandey @ Kumar Krishna introduced himself as a commission agent having good connections in M/s. Reliance Corporate IT Park Ltd. and after receiving the confirmation documents from Reliance, the applicant believed Mr. Krishna Pandey.

14. He submitted that the applicant was pressurized by Mr. Krishna Pandey to induct the complainant as a partner and executed Vendor Memorandum of Understanding dated 09.12.2019. He submitted that after the complainant's satisfaction and acceptance, the entire amount was transferred in the applicant's company account which was further transferred into the account of Mr. Krishna Pandey and his relatives on various occasions.

15. He submitted that the applicant had no motive to cheat the complainant. In case the applicant had any motive to cheat the applicant, he would not have taken the money into his company account rather applicant himself was trapped by Mr. Krishna Pandey. He submitted that the applicant himself had invested a huge sum of money in the preparation of contract being under the influence and belief that he has a contract from M/s. Reliance Corporate IT Park Ltd.

16. He submitted that the applicant after transferring the money in favour of Mr. Krishna Pandey kept pursuing him for many days for arranging a meeting with officials of M/s. Reliance Corporate IT Park Ltd. After many efforts, Mr. Krishna Pandey had arranged a meeting which was scheduled for 28.01.2020, the same was later rescheduled to be held in the first or second week of February, 2020. The applicant was taken to Jaipur for a meeting with the officials of M/s. Reliance Corporate IT Park Ltd., along with other persons. On 14.02.2020, the present applicant was kidnapped by Mr. Krishna Pandey and his associates and was taken to an unknown place in Rajasthan where he was badly beaten.

17. An FIR bearing no. 74/2020 dated 18.02.2020 was lodged at the behest of the present applicant against Mr. Krishna Pandey and other accused persons.

18. The applicant was granted interim protection by the learned Trial Court, by order dated 31.10.2022, after which he had joined the investigation on multiple occasions. The application was thereafter dismissed by the learned Trial Court on 26.07.2023.

19. This Court, by order dated 25.09.2023, had granted interim protection to the applicant and the applicant has stated to have joined the investigation as and when called for.

20. The learned Additional Public Prosecutor for the State opposed the grant of the present bail application. He submitted that the applicant presented himself as the director of M/s. Tashta Aliments Private Ltd. having its office at Plot No. 1476, Saraswati Kunj, Part-II, Sec-53, Gurugram, Haryana and signed a letter of intent with the complainant and embezzled Rs. 20 lacs of complainant.

21. He submitted that during the course of investigation with the help of technical surveillance, the alleged Kumar Krishna was traced and arrested from Bihar. He in his disclosure statement had disclosed that he used to work for the applicant for a long time. He also disclosed that the complainant came to the applicant's office and it was the applicant who had introduced him to the complainant. It was when the complainant did not agree with the applicant, the applicant asked him for help and told him that if in case he is able to convince the complainant for the entering into the alleged contract, the applicant would give him a share of the earnings.

22. He submitted that when the applicant received the alleged ₹20,00,000/- from the complainant, the applicant had given ₹10,00,000/- to Mr. Krishna Kumar Pandey out of which ₹5,00,000/- were taken back by the present applicant and the remaining ₹5,00,000/- were spent on routine office work.

23. He submitted that the present pre-arrest bail ought not to be granted to the applicant since he had in connivance with the other accused, orchestrated financial fraud with the complainant.

Analysis

24. From the perusal of the record, it is apparent that the applicantand the complainant have entered into an agreement whereby both have agreed to work together.

25. The FIR was registered way back on 22.09.2021. The only reason given by the prosecution seeking custodial interrogation of the applicant is that the alleged cheated amount is yet to be recovered. It is settled law that the proceedings under the CrPC pursuant to the registration of the FIR are not meant for the purpose of recovery of money allegedly cheated from the complainant.

26. The purpose of custodial interrogation is to aid the investigation and not to compel the accused to return the money. It is not disputed that the applicant has since the registration of the FIR joined the investigation on multiple occasions and only because the crime is not admitted; or that the alleged cheated amount has not been returned cannot be a reason for allowing the custodial interrogation. The money was admittedly paid by the complainant through banking channels, pursuant to the alleged dishonest inducement. The evidence in the present case appears to be documentary and is admittedly in the possession of the prosecution.

27. 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. [Ref: ***Bhadresh Bipinbhai Sheth v. State of Gujarat*** **: (2016) 1 SCC 152**].

28. The purpose of custodial interrogation is to aid the investigation and is not punitive.

29. It is not alleged that the applicant has threatened or attempted to influence any of the witnesses. Moreover, any apprehension of applicant not participating in the trial can be taken care by putting appropriate conditions.

30. In view of the above, the present application is allowed and the applicant in the event of their arrest, is directed to be released on bail on furnishing a personal bail bond for a sum of ₹50,000/-, with two sureties of the like amount, subject to the satisfaction of the concerned SHO, on the following conditions:

a. He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
b. He shall under no circumstance leave the Country without the permission of the learned Trial Court;
c. He shall join and cooperate with further investigation.
d. He shall appear before the learned Trial Court as and when directed;
e. He shall, upon his release, provide the address where he would be residing after his release and shall not change the address without informing the Investigating Officer/

SHO concerned; and

f. He shall, upon his release, provide his mobile number to the Investigating Officer/ SHO concerned, and shall keep it switched on at all times.

31. In the event of there being any FIR/ DD entry/ complaint lodged against the applicant, it would be open to the State to seek redressal by way of filing an application seeking cancellation of bail.

32. 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 not be taken as an expression of opinion on the merits of the case.

33. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

JULY 01, 2024

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