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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3284/2023**

GAJRAJ SINGH

..... Applicant

Through: Mr. Aditya Pratap Singh,
Adv.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Pradeep Gahalot, APP
for the State with SI Vivek
Kr., PS Neb Sarai.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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13.03.2024

1. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 for grant of pre-arrest bail in FIR No. 721/2022 dated 28.11.2022, registered at Police Station Neb Sarai, for the offence under Section 420 of the Indian Penal Code, 1860.

2. It is alleged that the applicant sent a friend request to the complainant in the latter half of 2016, which was accepted by the complainant. It is alleged that the applicant falsely posed as a member of the Board of Directors of the FCI. It is further alleged that the applicant also told the complainant that he was closely associated with a Cabinet Minister of the Government of India, who treated the applicant like a son.

3. It is alleged that the complainant thus approached the applicant for the appointment of his younger brother and brother-in-law as a Food Inspector in Food Corporation of India ('FCI'). It is alleged that the applicant demanded a sum of ₹8 lakhs from the complainant for the appointment of one candidate.

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4. It is alleged that since the complainant was outstation, his younger brother and brother-in-law gave the applicant a sum of ₹5 lakhs at his residence. It is alleged that the applicant acknowledged the receipt of the money telephonically and the complainant told him that the rest of the amount would be paid after the appointment.

5. It is alleged that when the applicant could not get the younger brother and brother-in-law of the complainant appointed, the complainant pressurized him to return the money.

6. It is alleged that even though the applicant gave a cheque to the complainant for ₹1.5 lakhs, he asked the complainant on the next day to not encash the same. It is alleged that the cheque was returned but the applicant did not pay back the money to the complainant. It is further alleged that the applicant threatened the complainant with dire consequences if he demanded back the money.

7. During the course of investigation, the complainant produced WhatsApp chats and audio recordings regarding the alleged conversation regarding the money transactions. The complainant also provided transcripts of the voice recordings of the conversation with the applicant.

8. The learned counsel for the applicant submits that the applicant has been falsely impleaded in the present case. He submits that the present FIR is vague in regard to the alleged transaction by way of which the younger brother and brother-in-law of the complainant had paid the sum of ₹5 lakhs to the applicant.

9. He further submits that the complainant has alleged that the applicant had given him a cheque of ₹1.5 lakhs to the complainant, however, the FIR does not mention the number of

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the same.

10. He submits that the incident is alleged to have taken place in the year 2016 and the complainant only lodged the FIR in the year 2022. He further submits that no reason has been given by the complainant for the inordinate delay of six years.

11. He submits that the FIR is plagued with significant discrepancies. He points out that while it is mentioned in the FIR that the complainant got acquainted with the applicant in the year 2016 and demanded back the money from the applicant after a lapse of two years, it is also stated that when the complainant pressurized the applicant to return the money, the applicant gave him a cheque on 12.12.2016, and thereafter asked the complainant to not encash the same on 13.12.2016.

12. He submits that nothing has been recovered from the applicant and the case is based on documentary evidence, which is already in possession of the prosecution.

13. He submits that the applicant is a social worker and he had protested against the unethical activities going on in his area and moved a complaint against a police official, due to which, he has been falsely implicated in the present FIR.

14. He submits that the applicant has duly joined and co-operated with the investigation. He further submits that the applicant cooperated and even furnished proofs of his innocence to the Investigating Officer on 26.01.2023 when he visited the residence of the applicant along with another police official. He submits that the CCTV footage clearly shows the same as well.

15. The learned Additional Public Prosecutor for the State strongly opposes the grant of any relief to the applicant. He submits that the applicant deliberately evaded the investigation despite issuance of multiple notices to him.

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16. He further submits that the applicant is a habitual offender and is involved in a number of cases. He submits that the applicant has been convicted in FIR Nos. 4/2013 and 707/2016.

17. He submits that the custodial interrogation of the applicant is required to recover the original source of WhatsApp chats and voice recordings and to take the voice samples of the applicant.

18. I have heard learned counsel for the parties.

19. It is relevant to note that the FIR in the present case was filed in 2022 for a transaction that allegedly took place in 2016. While it is trite law that mere delay in lodging an FIR is not always fatal to the case of the prosecution, however, it is incumbent on the Court to see whether the delay has been satisfactorily explained and if the explanation provided for such delay is sufficient to believe the case of the prosecution (***Sekaran v. The State of Tamil Nadu : 2023 INSC 1062***).

20. It is not disputed that there is a delay of about six years in lodging of the present FIR. It is mentioned in the FIR that the complainant was threatened by the applicant and did not report the matter out of fear. It is also mentioned that the complainant lodged the present case after he found out that the applicant had been apprehended by Haryana Police in a similar case of cheating. The cogency and sufficiency of this explanation would be tested during the course of trial. However, at this stage, the explanation *prima facie* seems improbable given the extent to the delay and casts a doubt as to the credibility of the allegations.

21. Even so, whether the alleged transaction ever took place and whether any element of cheating was involved, would be tested during the course of the trial and, at this stage, cannot be said to be totally true or untrue.

22. At this stage, the allegations are solely based on the
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statement of the complainant, alleged audio recordings of conversations and certain alleged WhatsApp chats which were admittedly exchanged about six years prior to the complaint. The WhatsApp chats and the audio recordings are admittedly in possession of the prosecution.

23. The Status Report also mentions that all the documents adduced by the complainant regarding the conversations regarding the money transactions were taken into possession by the police and a seizure memo was also prepared for the same.

24. In the present case, the prosecution has contended that the applicant has not cooperated with the investigation. It is relevant to note that the reply filed by the Investigating Officer before the learned Trial Court clearly mentions that the applicant had shown some complaints filed by him on 26.01.2023. It is always open to the investigating agency to move this Court for a direction under Section 439(2) of the CrPC for cancellation of the bail, in the event of violation of any conditions, such as non-cooperation during investigation.

25. The purpose of custodial interrogation is to aid the investigation and is not punitive. The learned APP has contended that the custodial interrogation of the applicant is required for getting his voice sample. It is settled law that a Judicial Magistrate is empowered to order a person to give a sample of their voice for the purpose of investigation. It is not denied that no such application was ever filed by the prosecution. Custody of the applicant is thus not necessary for getting his voice sample.

26. It is also settled law that criminal antecedents of an accused cannot be a basis for refusal of bail [*Prabhakar Tewari v. State of U.P.* : (2020) 11 SCC 648].

27. It is not disputed that the applicant is a resident of Delhi
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and has roots in the society. Any apprehension regarding the applicant fleeing from justice, tampering with evidence or not cooperating with the investigation can be taken care of by putting appropriate conditions.

28. In view of the above, this Court is of the opinion that the custodial interrogation of the applicant is not required. It is directed that in the event of arrest, the applicant be released on bail on furnishing a personal bond of ₹20,000/- with two sureties of the like amount subject to the satisfaction of the concerned SHO, on the following conditions:

- a. The applicant shall join and cooperate with the investigation as and when directed by the IO;
- b. The applicant will not leave the boundaries of Delhi without informing the IO/ SHO concerned;
- c. The applicant shall not contact the complainant / witnesses or tamper with the evidence in any manner;
- d. The applicant shall give his mobile number to the concerned IO/SHO and shall keep their mobile phones switched on at all times;
- e. The applicant shall provide the address of his residence to the IO/SHO and shall not change the same without informing the concerned IO/SHO.

29. In the event of there being any violation of the stipulated conditions, it would be open to the State to seek redressal by filing an application seeking cancellation of the bail.

30. It is clarified that the observations made in the present order are for the purpose of deciding the present pre-arrest bail application, and should not influence the outcome of the Trial and should not be taken, as an expression of opinion, on the

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merits of the case.

31. The bail application is allowed in the aforesaid terms.

AMIT MAHAJAN, J

MARCH 13, 2024/ ssh