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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ BAIL APPLN. 3138/2022, CRL.M.A. 8652/2023, CRL.M.A. 17752/2023, CRL.M.A. 2423/2024, CRL.M.A. 2424/2024 & CRL.M.A. 9603/2024

SMIT KUMAR

..... Petitioner

Through: Mr. Gautam Khazanchi & Mr. Anuj Aggarwal, Advocates.

versus

STATE GOVT OF NCT DELHI

..... Respondent

Through: Mr. Amit Ahlawat, APP for the State with Insp. Mukesh & SI Opendar Singh, P.S. Vasant Kunj South.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

% **05.04.2024**

1. The present application under Section 439 read with Section 482 of the Cr.P.C. seeks regular bail in case FIR No. 144/2021, under Sections 395/411/419/452/120B/34 of the IPC, registered at P.S. Vasant Kunj, South.
2. The case of the prosecution as per status report dated 19.01.2023, authored by SHO, P.S. Vasant Kunj South, is as under:

“It is humbly submitted that on 16.03.21 a PCR call was received vide DD No. 43A stating that "Some persons has broken the locks and entered in the office of the complainant during the night at about 2 AM, they also made search in his office and he does not know that they were police officials or others." The spot was visited and the matter was enquired whether the raid was conducted by any investigation agency or other persons. During enquiry the statement of the complainant



namely Mr. Mukesh Mahto S/o Mahender Mahto R/o & O/o No. 35, Bhai Market, First Floor, above Canara Bank, Ghitorni Village, New Delhi was recorded wherein he alleged that he was present in the above-mentioned office of IYEO Technologies at Ghitorni, New Delhi and during the night of 16.03.2021 at about 2 AM some persons made shouting in the back door of the office. He got scared and try to escape from front door of the office but he found that two people had already broken the biometric lock and had entered into the office. They threatened and beat him. They informed him that they are police officials and came to check this office. The complainant tried to inform his owner Sushant Raj but so-called police persons have snatched his mobile also. They make searched the premises and one I Pad, Three Laptop, three watches, DSLR Camera with two Lenses, I watch and I Pod Charger, one DVR, one Router, new Cloths and business documents have been taken by the alleged persons. As per complainant, there were five people out of which four had entered into the office and one was standing at the ground floor. The complainant, on the pretext of being thirsty, somehow managed to left the premises and went to the owner/landlord of the premises. He informed him about the incident and hided himself in the nearby plot. After checking the office, various articles were found missing. The spot ie. the office of complainant was got inspected by the Crime team. Accordingly, a Case was got registered Vide FIR No. 144/21, Dt. 27.03.21, U/S 392/419/34 IPC on the statement of Mukesh Mahto and investigation was taken up. Meanwhile the owner of that office Sushant Raj informed the 10 that he had received a whatsapp message from one mobile no. 9827454166 wherein someone had messaged him for returning his articles and demanding money for it. During investigation, the location of the mobile phone was obtained and on the basis of the electronic surveillance, accused/applicant Smit Kumar was arrested. He was interrogated and he disclosed the name of other accused persons. One black colour mobile phone was recovered from his possession and he disclosed that he was doing whatsapp chat with owner Sushant Raj under the false identity of Mohit. On his instance, one laptop, one bag, one I-pad and one 1-pencil was recovered, which were looted in the present case. On the basis of his disclosure, during further investigation other accused persons were also arrested. On the instance of co-accused Manjeet Kumar other looted articles i.e. Canon Camera with three lenses were recovered. Further on the instance of Muddassir @ Maddy two looted wrist watches and one laptop were recovered. At the instance of accused Raghuvinder Kundu looted branded clothes and



one car bearing no. DL 11CC 2952 which was used while committing crime was also recovered. The car used in the commission of the offence was found registered in the name of Vivek Kumar. His statement was recorded who disclosed that the car was in the possession of applicant/accused Smit Kumar. The TIP of the recovered articles was also got conducted and the complainant correctly identified the looted articles. All the accused persons refused to participate in TIP proceedings and during further investigation they were correctly identified by the witness. After completion of investigation, the charge sheet U/S 395/419/411/452/120B/34 IPC was filed against all the accused persons. Now the case is pending trial before the Ld. Trial court. Charges have already been framed U/S 395/458/411/34 IPC in the present case against the accused persons vide order dated 11.01.23 and NDOH is fixed for 17.03.23 for prosecution evidence.

Keeping in the view of all the facts and gravity of offence the present bail application is strongly opposed. However, the undersigned is ready to abide any further direction given by this Hon'ble Court.”

3. Learned counsel for the applicant submits that the latter has been in custody since 27.03.2021. It is submitted that the eye witness has not identified the present applicant during the course of the trial. It is submitted that the case of the prosecution *qua* the present applicant is that he had called the owner of the shop, and the same is based on electronic evidence. It is pointed out that the recovery has already been effected, i.e., one laptop, one Ipad and one Ipad Pencil were recovered from the applicant. The applicant has not been involved in any other previous case. It is pointed out that out of 27 witnesses cited by the prosecution in the chargesheet, only 05 witnesses have been examined so far. It is pointed out that co-accused Manjeet Kumar who was assigned similar role has been already granted bail by the learned Trial Court *vide* order dated 21.03.2024.

4. *Per contra*, learned APP for the State assisted by the Investigating Officer, submits that the present applicant is the main person behind the crime and electronic evidence in terms of Whatsapp chats and voice notes



are incriminating the present applicant in the instant FIR. It is further submitted that during the pendency of the proceedings, voice sample of the present applicant has been taken and the same has been sent to the FSL for necessary investigation.

5. Heard learned counsel for the parties and perused the record.

6. The present FIR was registered at the instance of Mukesh Mahto, who has been examined before the learned Trial Court. It is also a matter of record that the alleged evidence against the present applicant recovered from him is already in possession of the prosecution, which is primarily electronic in nature. The other 3 co-accused persons have already been granted bail. Nominal roll dated 06.03.2024, received from the concerned Jail Superintendent reflects that the present applicant has been in judicial custody for 02 years 11 months and 09 days and the applicant is not involved in any other case. As pointed out herein above, the prosecution has examined only 05 witnesses out of a total of 27 witnesses cited and the trial is not likely to complete in near future.

7. In totality of the facts and circumstances of the case, the present application is allowed. The applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 50,000/- with one surety of like amount, to the satisfaction of the learned Trial Court/Link Court, further subject to following conditions:

- i. The applicant shall not leave India without prior permission of the learned Trial Court.
- ii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.



- iii. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- iv. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times.
- v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
8. The application is allowed and disposed of accordingly.
9. Pending application(s), if any, also stand disposed of.
10. Needless to state that nothing stated hereinabove is an opinion on the merits of the case.
11. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
12. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

APRIL 05, 2024/bsr

Click here to check corrigendum, if any