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

+ **BAIL APPLN. 3397/2023**

SUNIL B BENDAY

..... Applicant

Through: Mr. B. K. Patra and Mr.
Syed Musam Asghar,
Advs.

versus

THE STATE GOVT OF NCT OF DELHI Respondent

Through: Mr. Pradeep Gahalot, APP
for the State with Insp.
Harbir Singh, IFSO, Spl.
Cell.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

21.03.2024

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1. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 ('CrPC') seeking pre-arrest bail in FIR No. 36/2023 dated 13.02.2023, registered at Police Station Special Cell, for offences under Sections 419/420/468/471 of the Indian Penal Code, 1860 ('IPC') and Sections 66/66C/66D/71/74 of the Information Technology Act, 2000 ('IT Act').

2. The present FIR was registered on a complaint made by the complainant, namely, Mr. Raj Kumar Poddar, to the Deputy Commissioner of Police, Cyber Crime Unit, Cyber Cell, Dwarka, Delhi. The complainant is the proprietor of M/s Raj Export, which is in the business of exporting readymade garments to foreign parties in various countries. It is alleged that some unknown person created a fake ID/Digital Signature Certificate

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Key ('DSC key') of the complainant's company on Indian Customs Electronic Data Interchange Gateway ('ICEGATE'). It is stated that the complainant before making the present complaint had previously filed a complaint with Customs Department for de-activation of the ICEGATE ID made fraudulently on the basis of forged documents. It is alleged that after logging into their ICEGATE ID, the complainant found that the unknown accused had generated E-Script scrip of ₹50,65,414/- and further sold the stolen scrip to unknown companies.

3. During enquiry of the complaint, it was found that similar complaints had been received on earlier occasions. It was also found that the accused persons impersonate as the actual owners/ partners of the respective companies/ firms and obtain the scrips with the intention to transfer the same to other companies for wrongful gain.

4. Other complaints of AS Overseas, Select Exports, Patriot International, Incredible International and Luxury Impex were clubbed with the present complaint as the same were of similar nature and E-Scrips were stolen therein by the same *modus operandi*.

5. During investigation, it was found that the stolen scrips of Luxury Impex were transferred to Destinee X, which was then transferred to S R Enterprises, and further to Vaibhavi Tex Fables Pvt. Ltd. It was found that the scrips were utilized by Vaibhavi Tex Fables Pvt. Ltd.

6. It was also found that certain stolen scrips of Incredible International were also transferred to Vaibhavi Tex Fables Pvt. Ltd. and further to Tam India Pvt. Ltd. The Director of Tam India Pvt. Ltd. joined investigation and disclosed during examination

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that he had purchased the scrip from the applicant. He also stated that he was unaware that the same was stolen.

7. The Director of S R Enterprises and Vaibhavi Tex Fables Pvt. Ltd. was also examined. He stated that he was a dummy Director and the said companies were actually run by the applicant and his cousin brother, namely, Yogesh Chalthanwala. On being examined, Yogesh Chalthanwala also stated that the applicant had purchased the scrips from his links and also utilized the stolen scrips in Vaibhavi Tex Fables Pvt. Ltd.

8. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case and has no connection with the concerned offence.

9. He submits that the applicant has been implicated in the present case merely on account of a business rivalry.

10. He submits that the applicant is willing to cooperate with the investigation. He submits that the applicant had not appeared before the concerned Investigating Officer after receiving the notices under Section 41A of the CrPC on 30.08.2023 and 12.09.2023 as he is an ordinary resident of Surat and could not appear at such short intimations.

11. The learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant. He submits that custodial interrogation of the applicant is required for recovery of the cheated amount and to unearth the whole conspiracy.

12. He submits that the applicant has not co-operated with the investigation, even though, notices under Section 41A of the CrPC were issued on him on 30.08.2023 and 12.09.2023.

13. He submits that Non bailable Warrant has been issued against the applicant on 21.09.2023. The applicant has also not

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disclosed the aforesaid fact in the present bail application.

14. He points out that the applicant is involved in another FIR for a similar crime, that is, FIR No. 31/2022 for the offences under Sections 419/420/467/468/471/120B of the IPC and Section 66C of the IT Act.

15. I have heard the learned counsel for the parties.

16. The Hon'ble Supreme Court in the case of ***Pratibha Manchanda v. State of Haryana : (2023) 8 SCC 181*** has observed that:

“The relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome.”

(emphasis supplied)

17. At this stage, *prima facie*, it appears that the stolen scrips were ultimately utilized by Vaibhavi Tex Fables Pvt. Ltd., which is a company that is allegedly run by the applicant. The statement of the Director of Tam India Pvt. Ltd. also seems to *prima facie* suggest that the applicant was involved in further sale of some of the stolen scrips.

18. While it is averred that the applicant has been falsely implicated in the present case on account of a business rivalry, no material has been placed on record to substantiate the said contention or to dissuade the allegation that the applicant runs

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Vaibhavi Tex Fables Pvt. Ltd. and was involved in the sale of the stolen scrips to Tam India Pvt. Ltd. In view of the same, *prima facie*, it does not seem that the accusations have been made with the object of injuring or humiliating the applicant.

19. In such a case, at this stage, *prima facie*, it seems that the applicant is the main beneficiary of the alleged stolen scrips and is actively involved in the commission of the crime.

20. It is relevant to note that the applicant has another FIR lodged against him for a similar crime.

21. It is also pertinent to note that the applicant *vide* notice dated 30.08.2023 was directed to appear before the Investigating Officer on 05.09.2023, however, the applicant submitted a request through his counsel that he had to visit abroad. On being pointedly asked, the learned counsel for the applicant has submitted that the applicant never travelled abroad. It seems that the same was merely an excuse to evade investigation.

22. The fact that the applicant has failed to join investigation in the present case despite dismissal of his pre-arrest bail application by the learned Trial Court makes him a flight risk.

23. While it is correct that a great amount of humiliation is attached with arrest, the Court ought not to grant relief to an accused person who is not cooperating with the Investigating Authority and is deliberately evading investigation.

24. Arrest is a part of procedure of the investigation to secure not only the presence of the accused but also to serve other purposes in the aid of investigation. The grant of pre-arrest bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of pre-arrest bail. The pre-arrest bail is not to be granted as a matter of routine and only when the

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court is convinced that circumstances exist to resort to such extraordinary remedy that an order can be passed.

25. It is settled law that 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. The Hon'ble Apex, in the case of ***State v. Anil Sharma : (1997) 7 SCC 187***, has also underlined the importance of custodial interrogation as under:

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.

x-x-x

8. The above observations are more germane while considering an application for post-arrest bail. The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest. At any rate the learned Single Judge ought not to have side-stepped the apprehension expressed by the CBI (that the respondent would influence the witnesses) as one which can be made against all accused persons in all cases. The apprehension was quite reasonable when considering the high position which the respondent held and in the



nature of accusation relating to a period during which he held such office.”

26. Keeping in mind the nature of allegations, and the fact that the applicant is *prima facie* the beneficiary of the offence, this Court is of the opinion, that custodial interrogation of the applicant ought not to be denied to the investigating Authority and any order of pre-arrest bail would harm the investigation and would impede the prospects of unearthing the truth.

27. It is not a fit case for exercise of discretion under Section 438 of CrPC.

28. The present application is, therefore, dismissed.

29. It is, however, made clear that any observations made in the present order are only for the purpose of deciding the present bail application, and should not be treated as an opinion on the merits of the case and also should not influence the outcome of the trial.

AMIT MAHAJAN, J

MARCH 21, 2024

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