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

\+ **BAIL APPLN. 3639/2022 & CRL.M.(BAIL) 1484/2022**

NEERAJ KUMAR ..... Applicant

Through: Mr. Puneet Khurana, Adv.

versus

STATE OF NCT OF DELHI ..... Respondent

Through: Mr. Pradeep Gahalot, APP for the State along with Mr. Ramandeep Singh.
SI Vinod Nain, PS Subzi Mandi.
Adv. Jaideep Malik, Adv. Nitesh Dhankha, Adv. Poonam Malik & Adv. Reena Soni for R-2 along with R-2.

\+ **BAIL APPLN. 3640/2022 & CRL.M.(BAIL) 1485/2022**

MITESH KUMAR ..... Applicant

Through: Mr. Puneet Khurana, Adv.

versus

STATE OF NCT OF DELHI ..... Respondent

Through: Mr. Pradeep Gahalot, APP for the State along with Mr. Ramandeep Singh.
SI Vinod Nain, PS Subzi Mandi.
Adv. Jaideep Malik, Adv. Nitesh Dhankha, Adv. Poonam Malik & Adv. Reena Soni for R-2 along with R-2.

\+ **BAIL APPLN. 3646/2022**

AVINASH SINGH ..... Applicant

Through: Mr. Prem Ranjan Kr. Adv.

versus

STATE OF NCT OF DELHI ..... Respondent

Through: Mr. Pradeep Gahalot, APP for the State along with Mr. Ramandeep Singh.
SI Vinod Nain, PS Subzi Mandi.
Adv. Jaideep Malik, Adv. Nitesh Dhankha, Adv. Poonam Malik & Adv. Reena Soni for R-2 along with R-2.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

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

% **09.04.2024**

1. The present applications are filed under Section 438 of the Code of Criminal Procedure, 1973 in FIR No. 514/2022 dated 12.10.2022, registered at Police Station Subzi Mandi, for the offences under Sections 420/34 of the Indian Penal Code, 1860.

2. The present FIR was registered on a complaint made by the complainant, namely, Pariksht Joon. It is alleged that the complainant was getting some construction work done and required some TMT bars for the same. It is alleged that the complainant was approached by the applicants who assured him of quality material as well as timely supply of the material. It is alleged that applicant Mitesh Kumar represented himself to be the CMD of M/s Construmart Online Pvt. Ltd. (hereafter '**the Company**'), and the other applicants claimed that they were the Directors of the Company. It is alleged that they also gave a brochure to the complainant which mentioned the address of the

registered office of the company as Spaze IT Park, A-1 Tower, Sector 49, Sohna Road, Gurgaon.

3. It is alleged that on the basis of the assurance of the applicant Mitesh Kumar, the complainant made an online transfer of the sum of ₹36,00,000/- in the bank account of the Company. It is alleged that the ordered material was not provided to the complainant. It is alleged that the complainant had also given ₹20,00,000/- to the applicant Mitesh in cash in his chamber in Tis Hazari on the surety from the applicants that the material would be delivered within a week.

4. It is alleged that the applicants still did not supply the goods to the complainant, whereafter, the complainant went to the address mentioned in the brochure. It is alleged that the complainant found no office of the company at the said address.

5. It is alleged that applicants cheated the complainant by giving him a forged brochure. It is alleged that the applicant Mitesh Kumar threatened the complainant with dire consequences when he inquired about the goods or money.

6. The learned counsel for the applicants state that the applicants have been falsely implicated in the present case.

7. They submit that the present FIR was lodged by the complainant to give a criminal camouflage to a mere commercial dispute.

8. They submit that there is a huge delay in registration of the FIR as the concerned payments happened over a period of time from July, 2021 to November, 2021, but the FIR was only registered in October, 2022.

9. They submit that the complainant had approached the applicant Mitesh to make investments in the Company whereafter

the parties decided to open a new shop for supplying construction material in partnership with each other.

10. They submit that the complainant had concealed the fact that he was actually doing business with the applicant Mitesh and one person, namely, Ashish (complainant's friend), in the name of the Company, from February, 2021 till the April, 2022.

11. They submit that the complainant had transferred the sum of ₹36,00,000/- to the account of the company as an investment.

12. They submit that the rent agreement of the shops that were taken on rent for the purpose of running the business of supplying construction material in partnership makes it clear that the whole story of non-supply of the construction material is concocted.

13. They submit that it is clear from the ledger accounts of the Company that a total amount of ₹12,00,000/- was also received by the complainant from the Company.

14. They submit that the present case is only a counter blast to the complaint dated 13.05.2022, made by the applicant Mitesh, where he alleged that the complainant had come to the office of the Company in Gurugram, manhandled the applicant Mitesh and broken his laptop.

15. They further submit that no specific allegations have been made in regard to the applicants Neeraj Kumar and Avinash Sing to show their complicity in the alleged offences.

16. They submit that the case was lodged in Delhi only on the basis of some alleged cash transactions in Tis Hazari. They submit that the allegations regarding any cash transactions are absolutely false and were levelled merely to invoke the jurisdiction of Police Station Subzi Mandi.

17. I have heard learned counsel for the parties.

18. It is relevant to note that the FIR in the present case was lodged in the year 2022 for transactions that allegedly took place in the year 2021. 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**).

19. It is not disputed that the present FIR was lodged almost an year after the complainant transferred the sum of ₹36,00,000/- to the Company and allegedly gave the amount of ₹20,00,000/- in cash to the applicant Mitesh. It is alleged that the complainant further paid ₹20,00,000/- to the Company on the assurance that the work would be completed within a week, however, the FIR was lodged after an year even though the goods were not delivered in the stipulated time.

20. It is argued by the applicants that the complainant had invested the amount of ₹36,00,000/- in the Company as a Director and the entire story about the construction material not getting delivered is concocted. They have also pointed out that ₹12,00,000/- were transferred from the Company to the complainant as well.

21. Whether the money was given by the complainant in the form of an investment or for delivery of construction material and whether the transactions were purely commercial or there was any element of cheating, would be tested during the course of the trial and, at this stage, cannot be presumed.

22. As per the statutory provisions, the maximum sentence for the offence punishable under Section 420 of the IPC is seven years. The evidence, at this stage, seems to be documentary in

nature, which is already in possession of the Investigating Agency.

23. It is not in doubt that order for grant of bail cannot be passed in a routine manner so as to allow the accused to use the same as a shield. At the same time, it cannot be denied that great amount of humiliation and disgrace is attached with the arrest. In cases where the accused has joined investigation, cooperating with the Investigating Agency and is not likely to abscond, the custodial interrogation should be avoided.

24. The purpose of custodial interrogation is to aid the investigation and is not punitive. From the perusal of the Status Report, it appears that the investigation is complete to a large extent and does not require the applicant to be in custodial interrogation for the purpose of Investigating Agency to complete the remaining investigation, if any.

25. The applicants Mitesh and Neeraj were granted interim protection by this Court by separate orders dated 06.12.2022. It is not the case of the prosecution that the applicants have not cooperated with the investigation or have tried to influence the witnesses.

26. Any apprehension regarding the applicants fleeing from justice or tampering with the evidence can be taken care of by imposing appropriate conditions.

27. In view of the above, this Court is of the opinion that the custodial interrogation of the applicants is not required. It is directed that in the event of arrest, the applicants be released on bail on furnishing a personal bond of ₹25,000/- with two sureties of the like amount respectively, subject to the satisfaction of the concerned SHO, on the following conditions:

a. The applicants shall join and cooperate with the investigation as and when directed by the IO;
b. The applicants shall appear before the learned Trial Court as and when directed;
c. The applicants shall not leave the boundaries of Delhi without informing the IO/ SHO concerned;
d. The applicants shall not contact the complainant/ witnesses or tamper with the evidence in any manner;
e. The applicants shall give their mobile numbers to the concerned IO/SHO and shall keep their mobile phones switched on at all times.

28. 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 merits of the case.

29. The bail applications are allowed in the aforesaid terms.

AMIT MAHAJAN, J

APRIL 9, 2024
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