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

\+ BAIL APPLN. 3895/2023

ROHIT DUA ..... Petitioner

Through: Mr. Sunil Dalal, Senior Advocate with Mr. Aditya Sharma, Ms. Shivangi Shokeen and Ms. Pratiksha, Advocates

versus

THE STATE ..... Respondent

Through: Ms. Shubhi Gupta, APP for the State with Insp. Parteek, PS Shahdara.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

O R D E R

% **13.02.2024**

1. This application has been filed on behalf of the Applicant Rohit Dua S/o Late Sh. Om Prakash, under Section 439 Cr.P.C. seeking regular bail in case FIR No. 372/2021 dated 10.11.2021 registered under Sections 420/34 IPC at PS: Shahdara.

2. It is the case of the prosecution that the present FIR was registered on the complaint of Tarun Jain, wherein he alleged that he runs a wholesale cloth shop in the name of Bhavi Stores. Proprietor of the shop is his wife, Preeti Jain. In the month of February, 2019, one Madanjeet Singh Walia, who is also engaged in cloth business, introduced Rohit Dua (the Applicant) and Sahil Dua to him, stating that both of them were known to him and they run an export firm in the name of Krishna Textiles. Rohit Dua and Sahil Dua started purchasing clothes from him and while in the beginning, they made

payments at regular intervals, but later, they stopped making the payments and on demanding the outstanding dues, several excuses were made. The outstanding amount due to the Complainant was to the tune of Rs.1,37,42,745/- till November, 2019. After persistent demands, finally, Rohit Dua and Sahil Dua gave two cheques in the month of January 2020, for a sum of Rs.68,71,372.50/- each, dated 27.04.2020 and 14.05.2020, respectively and assured that the cheques will be honoured, when presented. However, when the cheques were presented by the Complainant, they were dishonoured with the remarks "Account Block". The cheques were issued in the name of Krishna Textiles and Rohit Dua is its proprietor.

3. It is further stated that during investigation, copies of the bills with respect to the material supplied to the accused, were obtained from the Complainant and the witnesses, in whose presence the cheques were handed over to the Complainant, were examined. The account statement for the period 01.04.2019 to 31.03.2020 along with account opening form was obtained and on perusal of the said documents, it was revealed that the maximum balance in the account was Rs.60,000/- and the account was blocked on 16.04.2020, due to non-updating of KYC details and frequent dishonouring of cheques. As per the Bank, it had intimated the account holder Rohit Dua on 04.12.2019 that the account will be blocked but he never bothered to update his KYC details. Cheques were issued to the Complainant after the account was blocked, indicating that the accused had no intent to clear the alleged dues of the Complainant. After registration of the case, investigation was carried out and notice was issued to Madanjeet Singh Walia for joining investigation and in response he stated that Applicant used to supply garments to him and later started selling clothes on footpath in front of his shop and at that time,

Applicant was introduced to the Complainant. The two co-accused Sahil Dua and Madanjeet Singh Walia joined investigation and were not arrested. Sahil Dua is not charge sheeted and is kept in Column No.12 while Madanjeet Singh Walia was charge sheeted without arrest. Applicant did not join investigation and was not found at his last known address. Proceedings under Section 82 Cr.P.C. were initiated against him and he was declared proclaimed offender on 28.11.2022 but was subsequently arrested and Section 174-A IPC was added. Charge Sheet has been filed and the case is pending trial.

4. Learned Senior counsel for the Applicant submits that the Applicant is innocent and has been falsely implicated in the present case. The cheques of the Applicant were with the Complainant and have been misused. It is yet to be ascertained if the Applicant owes any money to the Complainant and/or that any goods were supplied by him to the Applicant. The transactions between the Applicant and Complainant are purely in the nature of civil disputes and an effort has been made by the Complainant to give it a colour of criminality to arm twist the Applicant for paying money. Even going by the allegations in the complaint, Applicant was earning his livelihood by selling clothes on a footpath in front of Complainant's shop and no prudent person would believe that a person of that stature would enter into transactions worth lacs of rupees.

5. It is further contended that same set of allegations were levelled against the co-accused and both were never arrested. Charge Sheet has been filed against Madanjeet Singh Walia without arrest while Sahil Dua has not been charge sheeted and even on parity, Applicant deserves to be released on bail. Charge Sheet has been filed and investigation is complete. Applicant has been in judicial custody since 08.12.2022 after police remand. Applicant is not involved in any other case and has clean antecedents with deep roots in

the society. Nothing has been recovered or is required to be recovered from the Applicant and no useful purpose will be served by keeping him behind the bars as the trial is likely to take long time since charges have not been framed till date by the learned Trial Court. The offence under Section 420 IPC alleged to be committed by the Applicant is punishable upto 07 years and therefore, in view of the judgment of the Supreme Court in ***Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273,*** wherein it has been held that in cases where punishment is less than 07 years, arrest should be an exception, the Applicant should not suffer any further incarceration. In ***Vishnu Sharma v. NCT of Delhi, 2003 (3) JCC 1524***, this Court has held that bail applications should not be opposed with the purpose of converting them into suits for recovery.

6. Learned APP, *per contra,* states that the allegations against the Applicant are serious as he is the one who had issued the cheques being the Proprietor of Krishna Textiles and on this score, the role ascribed to him is different from the other two co-accused. Applicant did not join investigation and was declared as a proclaimed offender, which conduct itself disentitles the Applicant from seeking bail. No doubt, investigation is complete and Charge Sheet has been filed but charges are yet to be framed. The intent of the Applicant to cheat the Complainant is evident from the fact that despite knowing that his bank account had been blocked by the Bank on account of non-updating of KYC, he issued two cheques in favour of the Complainant, which were naturally dishonoured.

7. In rejoinder, learned Senior counsel appearing on behalf of the Applicant submits that the distinction drawn out by the learned APP between the roles of Sahil Dua and the Applicant is absolutely misconceived and is

not borne out from the FIR or the Charge Sheet. Drawing the attention of the Court to relevant paragraphs of the FIR, it is urged that the Complainant has himself alleged that Rohit Dua and Sahil Dua started buying clothes from him and initially, they paid the money on time but later failed to make payments and stated that the money was stuck and they will repay soon. Even the allegations that despite requests the outstanding was not paid and some excuse or the other was given, are *qua* both Rohit Dua and Sahil Dua. Insofar as the State's argument that the conduct of the Applicant disentitles him to the concession of bail as he was declared a proclaimed offender is concerned, this cannot come in the way of grant of regular bail and is a factor for consideration for anticipatory bail. Be that as it may, the notice was never served on the Applicant at the current address and the earlier residence on which the notice was served was lying vacant since 2017 and admittedly, no notice was served on the Applicant before declaring him as a proclaimed offender.

8. I have heard the learned Senior counsel for the Applicant and the learned APP for the State.

9. Before proceeding to examine the rival contentions of the Applicant and the State, it is imperative to look at the parameters that the Court is required to take into account at the time of considering a bail application. From the judgments of the Supreme Court on the subject, this Court in ***State (NCT) of Delhi v. Sanjeev Kumar Chawla, 2020 SCC OnLine Del 1970***, has culled out certain principles and the bare reading of the same shows that apart from the gravity/severity of offence and complicity of the Applicant, there are other factors which ought to be taken into account while taking a decision on an application for bail. Relevant paragraph from the judgment is

as follows:-

> *"**33.** The principles governing grant of bail which the courts have to consider can be enumerated, though not exhaustively, as under:—*
>
> *a) The gravity and severity of the offence and the nature of accusation;*
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> *b) Severity of punishment;*
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> *c) The position and status of the accused vis-à-vis the victim and the opportunity to approach the victims/witnesses;*
>
> *d) The likelihood of the accused fleeing from justice;*
>
> *e) The possibility of tampering with the evidence and/or the witnesses;*
>
> *f) Obstructing the course of justice or attempting to do so;*
>
> *g) The possibility of repetition of the offence;*
>
> *h) The prima facie satisfaction of the court in support of the charge including frivolity of the charge;*
>
> *i) The peculiar facts of each case and nature of supporting evidence."*

10. Coming the present case, even as per the case of the prosecution, investigation is complete and Charge Sheet has been filed. All documentary evidence has been recovered and it is not the case of the State that any recovery is to be made from the Applicant and/or that his custodial interrogation is required. Charges are yet to be framed and trial is not likely to conclude anytime soon. The allegation of the Complainant that the Applicant owes money to him and/or that he had supplied goods is a civil dispute and in any event the allegations of cheating can only be tested during trial, as both sides have their respected and contra stands on the issuance of cheques in question. It is also true that till date Complainant has not filed any case under Section 138 of the Negotiable Instruments Act, 1881. The contents of the FIR show that the Complainant has levelled the same

allegations against Sahil Dua, however, he has not been charge sheeted and is kept in column 12. Madanjeet Singh Walia, against whom also there are allegations in the FIR, has been charge sheeted without arrest. Nominal roll indicates that the Applicant is not involved in any other case and his antecedents are clean and his overall jail conduct is 'satisfactory'. Applicant has been in judicial custody since 08.12.2022 and the offence alleged to be committed by the Applicant under Section 420 IPC is punishable with a maximum sentence of 07 years.

11. In view of the totality of aforesaid facts and circumstances and considering that the co-accused have not been arrested, it is directed that the Applicant be released on regular bail during the pendency of the trial, subject to his furnishing a personal bond in the sum of Rs.1,00,000/- with one surety of the like amount to the satisfaction of the Trial Court and further subject to the following conditions:-

i. Applicant shall not leave the country without prior permission of the Trial Court;

ii. He shall provide his mobile number to the IO concerned and keep the same active at all times and shall not change the number without prior intimation to the IO and the Trial Court;

iii. He shall furnish his permanent residential address to the concerned IO and shall intimate the IO as well as the Trial Court by filing an affidavit regarding any change in his residential address;

iv. He shall not indulge in any criminal activity or communicate with or come in contact with the witnesses and/or any other person associated with the present case and/or intimidate them;

v. He shall report to concerned IO once a month; and

vi. He shall appear on every date of hearing before the Trial Court unless exemption is sought and granted by the Court on any given date.

12. Nothing stated in this order shall tantamount to expression of an opinion on merits of the case.

13. Application is allowed and disposed of.

14. Copy of the order be forwarded to the concerned Jail Superintendent for information and necessary compliance.

JYOTI SINGH, J

FEBRUARY 13, 2024/KA/shivam