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

\+ BAIL APPLN. 3923/2023

SANJEEV SAM FRANCIS ..... Applicant

Through: Adv. Rajni Kant & Adv. Parul Agarwal.

versus

THE STATE GNCT OF DELHI ..... Respondent

Through: Mr. Yasir Rauf Ansari, ASC (Criminal) with Mr. Alok Sharma & Mr. Vasu Agarwal, Advs.
SI Murari Krishan, PS HN Din.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

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

% **11.03.2024**

1. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 ('**CrPC**') seeking pre-arrest bail in FIR No. 298/2023 dated 11.10.2023 registered at Police Station Hazrat Nizamuddin for offences punishable under Sections 419/420/120B of the Indian Penal Code, 1860.

2. The FIR was registered on a complaint made by Pramod Aggarwal, who alleged that he has paid a sum of ₹46,00,000/- to the accused persons who misrepresented that they would get him appointed as a C&F Agent in relation four beer/liquor brands namely, Four Friends (Beer), Booz Berg (Beer), Kangaroo (Beer), Red Knight Malt Whiskey and Democrat Whiskey. It is alleged that in order to convince the complainant the applicant and co-accused namely Umesh Kumar Sharma, presented an

authority letter issued by M/s Khoday India Ltd. and M/s Lilasons Industries Ltd.

3. The learned counsel for the applicant submits that the applicant was only a salaried Director receiving a sum of 25,000/- per month in the company, namely, Alliednidhi Spiritz & Beverages Pvt. Ltd., which had received the alleged amount from the complainant.

4. He submits that the prosecution admits that only a sum of ₹25,000/- was received in the month of November, 2022 and another sum of ₹50,000/- was received in the month of December, 2022. He, however, submits that the said amount of 50,000/- was returned back to the company. He submits that the applicant is not the beneficiary of any of the amount that has allegedly been cheated by the company.

5. He has drawn the attention of this Court towards the data recovered from the Ministry of Corporate Affairs which reflects that Mr. Navneet Kumar Sharma, Mr. Manoj Kumar Singh and Ms. Nidhi Sharma who held the entire equity of the company to the extent of 6,000 equity shares, 2,000 equity shares and 2,000 equity shares respectively.

6. He submits that it is an admitted case that the applicant had given the alleged money through banking transaction.

7. The learned Additional Public Prosecutor for the State submits that the applicant has also received a sum of ₹2,00,000/- in cash.

8. He submits that the applicant is one of the directors of the Alliednidhi Spiritz & Beverages Pvt. Ltd and during the course of investigation is was found from M/s Khoday (one of the companies whose C&F license was promised to the complainant), that on request of the Accused Navneet Sharma an

offer letter, for applying for Depot License and other Logistic Purposes, was issued in favour of the applicant and Umesh Sharma, being the directors. The reply from M/s Khoday clearly stated that they had not authorised Alliednidhi Spiritz & Beverages Pvt. Ltd to appoint any C&F Agents.

9. He submits that the applicant is one of the alleged signatories on the rent agreement dated 24.11.2022 which is alleged to be forged. He submits that the alleged forged rent agreement is yet to be recovered.

10. I have heard learned counsel for the parties.

11. It is not denied that the applicant is not the shareholder for the Alliednidhi Spiritz & Beverages Pvt. Ltd and did not have any authority letter in his name, giving the applicant any authority to act on behalf of the Company.

12. It is not denied that the applicant became a director only on 14.11.2022 and the alleged incident is dated 01.11.2022. It is also not alleged that, while the applicant was on interim bail, he had tried to tamper with the evidence or influence the witnesses.

13. The payments were allegedly made by the complainant, for commercial purposes, to obtain a C&F agent for liquor brands. The Complainant was also promised that the money would be refunded and consequent to that cheques were also issued, which are stated to have dishonoured.

14. Whether the transactions were purely commercial or was there any element of cheating, would be tested at the time of trial and cannot be presumed at this stage.

15. The status report filed by the State indicates that the allegations in regard to the inducement and allurement have been essentially made against the co-accused Navneet Kumar Sharma. It is alleged that the co-accused Navneet Kumar Sharma stated

that he has the authority to designate the complainant as C & F Agent. It is further alleged that a sum of ₹46,50,000/- is stated to have been received by the company in which the applicant does not hold any equity shares. He is also not alleged to be the beneficiary of any amount that is received from the complainant except a sum of ₹75,000/- which the applicant states to be his salary.

16. The applicant was granted interim relief by this Court by an order dated 21.11.2023. It is not the case of the prosecution that the applicant has not cooperated with the investigation or has tried to influence the witnesses.

17. As per the statutory provisions, the maximum sentence for the offence punishable under Section 420/419 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.

18. It is not disputed that the applicant has joined the investigation. There are no chances of the applicant fleeing from justice or tampering with evidence. The apprehension, even otherwise, can be taken care of by putting appropriate conditions. It is trite law that where the court is of the considered view that the accused has joined the investigation and is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided since, a great ignominy, humiliation and disgrace is attached to arrest. [**Ref:** ***Bhadresh Bipinbhai Sheth v. State of Gujarat*** **: (2016) 1 SCC 152**].

19. The purpose of custodial interrogation is to aid the investigation and is not punitive.

20. In view of the above, it is directed that the applicant, in the

event of arrest, be released on bail on furnishing a bail bond for a sum of ₹50,000/- with one surety of the like amount to the satisfaction of the concerned SHO, subject to the following conditions:

(i) The applicant shall join and cooperate with the investigation as and when directed by the IO;

(ii) The applicant shall not leave the country without the permission of the learned Trial Court;

(iii) The applicant shall not contact the complainant/witnesses or tamper with the evidence in any manner;

(iv) The applicant shall give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

21. In the event of there being any FIR/ DD entry/ complaint lodged against the applicant, it would be open to the State to seek redressal by way of filing an application seeking cancellation of bail.

22. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the Trial and not be taken as an expression of opinion on the merits of the case.

23. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

MARCH 11, 2024
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