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

\+ BAIL APPLN. 2969/2024 & CRL.M.A. 24917/2024

GURJEET SINGH **.....** Applicant

Through: Mr. Navjit Singh, Mr. Ragbir Singh & Mr. Aditya, Advocates.

versus

THE STATE (NCT OF DELHI) **.....**Respondent

Through: Mr. Ajay Vikram Singh, APP for the State.
SI Madan Lal (P.S. IGI Airport).

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **21.08.2024**

1. The present application is filed seeking pre-arrest bail in FIR No.509/2024, dated 15.07.2024, registered at police station I.G.I. Airport, for offences under Sections 318(4)/336(3)/340(2) of the Bharatiya Nyaya Sanhita (‘**BNS**’), 2023 and Section 12 of the Passports Act, 1967.

2. The FIR was registered on information from an officer on duty at Deportee Cell, at the immigration arrival, IGI airport that one person, namely, Ankush has arrived as a deportee from the Netherland’s. Ankush was denied entry to the flight from the Netherland’s to Suriname. After careful scrutiny of his documents, it was found that he was trying to travel on a forged visa to Guatemala. His passport was impounded by the Netherland Immigration Authority in Amsterdam.

3. It is alleged that the forged visa was obtained in Malaysia

with the intent to cheat, mislead and conceal material facts from the authorities. The relevant deportation papers from Netherland Immigration Authority were also obtained by the police. The accused, Ankush was arrested and disclosed that for the purpose of travelling to USA, he had met the applicant in his village. He disclosed that the applicant told him that if he wants to go to the USA, he would help him in obtaining the visa and told Ankush that sum of ₹40,00,000/- would have to be spent in the process of securing the same. Ankush further disclosed that total sum of ₹10,00,000/- was paid to the applicant, out of which, ₹5,00,000/- was transferred in the account of the applicant and ₹5,00,000/- was paid in cash.

4. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case.

5. He submits that no money was ever transferred in the account of the applicant and he has nothing to do with the accused Ankush obtaining a fake visa in Malaysia.

6. He further submits that the applicant has never visited Malaysia and even if the accused - Ankush had obtained a fake visa, the liability for the same cannot be fastened on the applicant.

7. The Investigating Officer is present in Court with the case dairy and I have perused the disclosure statement from the material collected by the prosecution.

8. It is undisputed that the accused Ankush was caught by the Netherland Authorities while making efforts to travel to Guatemala on a fake visa. On being caught, Ankush was deported and was taken into custody. Categorical statement has been made by Ankush that the applicant had facilitated his travel, initially to Dubai and from there to Malaysia. The travel was

facilitated in order to have a proper travel history before any visa could have been applied for Guatemala. Ankush further disclosed that, in Malaysia, he met another person, at the instance of the applicant, who took his passport and came back with a visa for Guatemala. The said visa, as noted above, turned out to be fake. In further statements, Ankush had disclosed the names of more persons who were also involved and had taken money from him. Some bank statements have also been collected by the prosecution to corroborate the statement made by the accused Ankush.

9. It is trite law that the power to grant a pre-arrest bail under Section 438 of the CrPC is extraordinary in nature and is to be exercised sparingly. Thus, pre-arrest bail cannot be granted in a routine manner. The Hon'ble Apex Court, in the case of ***State of A.P. v. Bimal Krishna Kundu* : (1997) 8 SCC 104**, held as under:

> *"8. A three-Judge Bench of this Court has stated in Pokar Ram v. State of Rajasthan [(1985) 2 SCC 597 : 1985 SCC (Cri) 297 : AIR 1985 SC 969] : (SCC p. 600, para 5)*
> *"5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal."*
> *9. Similar observations have been made by us in a recent judgment in State v. Anil Sharma [(1997) 7 SCC 187 : 1997 SCC (Cri) 1039 : JT (1997) 7 SC 651] : (SCC pp. 189-90, para 8)*
> *"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."*

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12. We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the resspondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on "the career of millions of students", learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order."

10. It is settled law that the 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 [***State v. Anil Sharma* : (1997) 7 SCC 187**]. Granting pre-arrest bail to the applicant would undoubtedly impede further investigation. An order of bail cannot be granted in a routine manner so as to allow the applicant to use the same as a shield.

11. The considerations governing the grant of anticipatory bail are materially different than those to be considered while adjudicating application for grant of regular bail, as in the latter case, the accused is already under arrest and substantial

investigation has been carried out by the investigating agency.

12. Serious allegations have been made and the deportee, namely, Ankush disclosed that the applicant was the person who facilitated the fake visa. No reason has been stated as to why the deportee would falsely name the applicant in the present case. In this court's opinion, the investigation in the present case is currently at a nascent stage and the applicant's involvement in facilitating the fake visa cannot be ruled out at this stage.

13. Considering the above and the nature of the offence and the possibility of multiple victims who have been cheated, this Court does not find the present case to be a fit case for exercising jurisdiction under Section 438 of the CrPC.

14. This Court does not consider it apposite to further disclose the investigation carried out, thus far as the same may obstruct the further course of investigation.

15. The present application is accordingly dismissed.

16. 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 also not be taken as an expression of opinion on the merits of the case.

AMIT MAHAJAN, J

AUGUST 21, 2024
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