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

\+ BAIL APPLN. 49/2024

BHAWANI SHANKAR SONI ..... Petitioner

Through: Mr. Yash Chaturvedi and Mr. Praveen Kr. Yadav, Advocates.

versus

STATE OF NCT DELHI ….. Respondent

Through: Ms. Shubhi Gupta, APP for the State with SI Deepak, PS: Cyber Central, Delhi.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

O R D E R

% **02.02.2024**

1. This application has been preferred on behalf of the Applicant under Section 438 Cr.P.C. seeking grant of anticipatory bail in case FIR No.14/2023 dated 07.03.2023 registered under Sections 420/120B IPC at Cyber Police Station, Central District, Delhi.

2. The case of the prosecution is that on 02.03.2023, Complainant Shweta Gambhir filed an online complaint on National Cyber Crime Reporting Portal alleging that she was searching for online job and on 28.02.2023, she received a WhatsApp message from an unknown number. The message was an offer to pay Rs. 50/- per like for liking the link sent to her through WhatsApp. She opened the various links sent and liked them. Screenshot was sent to the sender named Xarina. Xarina then asked her to open a telegram link to receive the credited amount. Complainant joined the Telegram Channel Mohini8 and received Rs. 150/- in her bank account for liking 03 videos. Xarina also instructed her to join another Telegram

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Channel to like the 04 YouTube videos. Complainant followed the instructions and received Rs. 200/-. Third time, Xarina tasked her to invest in Crypto Currency with allurement of huge profits and later on introduced the Complainant to one Divya Telegram Channel and created a digital wallet. She was asked to deposit money starting from Rs 1,000/-, Rs. 5,000/-, Rs. 7,000/- and so on. The money was shown in digital wallet with huge profit, however, when she tried to withdraw the money, she was instructed to fulfil the next task and this time trapped, Applicant deposited Rs. 21.57 lacs in various bank accounts provided by the alleged persons. There was however no return of money and complainant realised that she was cheated and filed a complaint.

3. It is stated in the status report that on receipt of complaint, an enquiry was conducted and bank accounts details, used by the accused to transfer the cheated money were obtained, which confirmed the Complainant's version. Thereupon, the present FIR was registered. During investigation, it was revealed that accused persons had used 5 banks accounts opened in different names in different banks at different cities. The details of the money transferred by the Complainant in bank accounts of accused persons are as follows:-

(a). A/C No. 039363300006884, IFSC-YES0000393, YES Bank. Account holder is DR Enterprises, Dev Sarkil Road, Govt. Dispensary, Kota, Rajasthan and the Proprietor of the Firm is Hansraj Meena S/o Jamna Lal Meena R/o Rava Chipboard Baran, Rajasthan. Amount transferred by the Complainant was Rs.11,08,000/-. Total credited amount was Rs.1,88,58,327/- with hold amount Rs. 5,21,773/-;

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(b) A/C No. 50101198663, IFSC-IDFB0040158, IDFC Bank was opened in the name of Kismat Trading, Shop No. S 154, Plot No. 47, Fantasia Business Park, Sector 30A, Vashi, Thane, Maharashtra, India. Proprietor is Mahajan Parasnath Prajapti R/o Shop No 09, Mahalaxmi Heights, Virar Road, Nalasopara, Maharashtra. Amount transferred by the Complainant was Rs.10,00,000/-. Total Credit was Rs. 1,32,29,053/- with hold amount Rs. 2,00,442/-;

(c) A/C No. 923010006551976, IFSC- UTIB0000674, Axis Bank, was opened in the name of Nikita Kumari D/o Nawal Kishor Prasad Sah R/o Mandal Tola Kasba, Ward No.8, Purnia, Bihar. Amount transferred by Complainant was Rs.35,000/-. Total credit was Rs.16,19,627/- with hold amount Rs. 2,53,847/-;

(d) A/C No. 922020062391761, IFSC- UTIB0003674, Axis Bank, was opened in the name of Anwar R/o 1/197, Muslim 1st Street, Puliyankulam, Madurai, Tamil Nadu. Amount transferred by Complainant was Rs. 5,000/-. Total credit of Rs.21,135/- with hold amount of Rs.1.00/-.

(e). A/C No. 010663300004711 with YES bank in the name of M/s. Allied Professional Services with Office Address: 604, PP Trade Center, Netaji Subhash Place, Pitampura, Delhi. Proprietor is Monu S/o Ramesh Chand R/o D-72, 1-B, G/F, Kh. No. 308, Harijan Basti, Masoodpur, South West, Delhi. Total amount credited in the bank account was Rs. 32,45,051/- and Rs.1,03,804/- was put on hold.

4. Investigation further revealed that another Complainant Ms. Anita Sethi had also filed a similar compliant on NCR Portal. She had transferred Rs.60,000/- in YES bank account of Monu opened in the name of M/s.

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Allied Professional Services and suffered a loss of Rs.95,000/-. CDR details were obtained and analyzed. Ms. Renu Ghagakhar W/o Raj Ghagakhar, the property owner of the place where accused Monu had opened the bank accounts was examined which led to the search of Sanjay Dabas R/o Sultanpur Dabas, who was apprehended on 16.04.2023 from his village. During interrogation, he confessed to the crime and was arrested. He disclosed that he was a driver by profession and was driving the car of Shakil. In May, 2021, he came in contact with Farhan who told him that he knew people who were involved in online cheating. Sanjay Dabas fell in the trap and took an office on rent in a fake name and also arranged the meeting with Pankaj Wadhwa @ Sunny. Initially, he opened current bank accounts in the name of S.K. Services with Sunil Kumar as a Proprietor. Bank account details were furnished to Pankaj Wadhwa @ Sunny and Bhupesh Arora and 0.50% was fixed as their commission on total transactions which according to him were over Rs.12 crores and thus, they had received Rs. 6 lacs as commission. Various other bank accounts were opened from social media platform Telegram and the transactions continued with Pankaj Wadhwa @ Sunny who would send Bhawani, present Applicant, driver of Bhupesh Arora to collect the kit from metro station.

5. It is further stated that at the instance of Sanjay Dabas, accused Farhan Ansari was apprehended on 16.04.2023 and he corroborated the version of Sanjay Dabas. Various details of current bank accounts were found in the mobile phone chat of accused Farhan Ansari. One of the accused visited Dubai thrice in the last six months and the IP logs of Telegram IDs used in commission of crime were found operational abroad. Accused Farhan and Sanjay Dabas disclosed that they used to handover

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details of current bank accounts to Pankaj Wadhwa @ Sunny and Bhupesh Arora. On 20.04.2023, Pankaj Wadhwa @ Sunny was arrested at their instance and one laptop and 07 mobile phones were recovered from his possession along with Rs.5.50 lacs of the cheated amount. Pankaj Wadhwa @ Sunny, on interrogation, disclosed the *modus operandi* of the crime along with Farhan Ansari and Sanjay Dabas and also disclosed that he would send the Applicant to collect the kit of the bank accounts from Farhan Ansari and Sanjay Dabas. He disclosed that his partner in crime was Bhupesh Arora. Investigation revealed that cheated money was being transferred to more than 100 other bank accounts and further investigation is in process. On 27.04.2023, raids were conducted at the house of Bhupesh Arora but the property was found locked and it was later revealed that he had shifted to Dubai on 22.03.2022. His driver, the Applicant was also not found at his home and notice was given to his sister for joining investigation but none joined. Even his house at the native place at Alwar, Rajasthan was found locked and notice under Section 41A Cr.P.C. was affixed at his house. Applicant evaded his arrest and after his anticipatory bail application was dismissed by the Sessions Court on 02.06.2023, proceedings were initiated under Section 82 Cr.P.C. Applicant is a part of an international gang of cheating and Applicant is an active member and involved in the crime.

6. Learned counsel for the Applicant argues that the Applicant is innocent and has been falsely implicated in the present case. Applicant is not named in the FIR and he has no connection with the alleged offences. Perusal of the reply filed by the Investigating Agency to the present application reveals that Applicant is sought to be apprehended only on the basis of confessional statement of one of the co-accused, Pankaj Wadhwa @

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Sunny, which is inadmissible in evidence and merely on this basis, Applicant cannot be arrested as held by this Court in ***Md Irshad v. State (NCT of Delhi), 2022 SCC OnLine Del 1317.*** Even assuming the confessional statement is taken as gospel truth, Applicant is only a driver who was sent by the accused Bhupesh Arora to collect the kit of bank accounts from Farhan Ansari and was totally ignorant of the alleged conspiracy between the accused persons.

7. It is further argued that there is nothing on record to suggest that the Applicant has cheated anyone or is a member of the syndicate. In ***Siddharam Satlingappa Mhetre v. State of Maharashtra (2011) 1 SCC 694,*** the Supreme Court while laying down the parameters for grant of anticipatory bail observed that great humiliation and disgrace is attached to arrest which leads to many serious consequences not only to the accused but the entire family and the Court must consider the frivolity in prosecution case and only when an element of genuineness is found, the accused should be denied bail. Arrest should be the last option to be exercised in exceptional cases. Learned counsel strenuously urges that the Applicant was only a driver and had no idea of the contents of the kits, which he was asked to deliver to various persons.

8. *Per contra,* learned APP appearing for the State contends that the Applicant is a part of an international syndicate and has been cheating hundreds of people. The cheated money has been transferred to over hundred bank accounts and the investigation is underway to unearth more details. The actions of the accused have large scale ramifications not only on the Complainants but the society at large. The amount credited in these accounts runs into crores of rupees and the Applicant is an active member of

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the syndicate who helped and facilitated in the crime and was involved in delivery of bank accounts' kits on the instructions of and in connivance with Bhupesh Arora. Case property and documents related to other current bank accounts are yet to be recovered as the data pertaining to bank accounts is voluminous.

9. Learned APP also submits that this Court had granted interim protection to the Applicant subject to his joining and co-operating in the investigation. During interrogation, Applicant has disclosed that he worked as a driver of Bhupesh Arora who has left for Dubai with his family and is residing there. He denied having any knowledge of the work of Bhupesh Arora. While the Applicant admitted that he had been collecting and delivering cash money from different people on directions of Bhupesh Arora and using a mobile phone but refused to give the same for investigation and analysis, on the pretext that the same had been taken back by the mother of Bhupesh Arora. Applicant is not co-operating in the investigation. His custodial interrogation is necessary to ascertain the details of persons to whom he was delivering the bank accounts' kits from time to time as he is the one who is aware of their locations so as to unravel the larger conspiracy.

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

11. In a nutshell, the allegations against the Applicant are that he was working as a driver of Bhupesh Arora and was actively involved in the alleged crime by collecting and delivering the bank accounts' kits. In fact, the Applicant admitted having collected cash money/documents from Rithala metro station *albeit* the stand of the Applicant was that as a driver he

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was totally unaware and oblivious of the fact that the documents were bank accounts' kits or that any crime was being committed by his employer, Bhupesh Arora. Even today, the stand of the learned counsel is that, save and except, that the Applicant was performing his duty as a driver on the instructions of his employer, he has no role to play in the crime. At this stage, it would be relevant and useful to refer to the observations of the Supreme Court in ***Pratibha Manchanda and Another v. State of Haryana and Another, (2023) 8 SCC 181,*** in the context of anticipatory bail in cases involving offences under Sections 420/120B IPC. Relevant passages from the judgment are as follows:-

> ***"18.*** *It goes without saying that the alleged offences of forging documents for transferring ownership of land worth crores of rupees are grave in nature. Hence, while it is extremely important to protect the personal liberty of a person, it is equally incumbent upon us to analyse the seriousness of the offence and determine if there is a need for custodial interrogation.*
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> ***19.*** *In Siddharam Satlingappa Mhetre v. State of Maharashtra [Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514] , this Court carefully considered the principles established by the Constitution Bench in Gurbaksh Singh Sibbia v. State of Punjab [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] case. After a thorough deliberation, this Court arrived at the following conclusion : (Siddharam Satlingappa Mhetre case [Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514] , SCC p. 736, para 112)*
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> *"112. The following factors and parameters can be taken into consideration while dealing with anticipatory bail:*
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> *(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
>
> *(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;*
>
> *(iii) The possibility of the applicant to flee from justice;*

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(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail, particularly in cases of large magnitude affecting a very large number of people."

20. *In Sushila Aggarwal v. State (NCT of Delhi) [Sushila Aggarwal v. State (NCT of Delhi), (2018) 7 SCC 731 : (2018) 3 SCC (Cri) 331] , the Constitution Bench reaffirmed that when considering applications for anticipatory bail, courts should consider factors such as the nature and gravity of the offences, the role attributed to the applicant, and the specific facts of the case.*

21*.* *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.*

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32. …. *The facts of the case speak for themselves and an element of criminality cannot be ruled out at this stage. Whether or not the alleged offences were committed by Respondent 2 and his co-accused in active collusion with each other can be effectively determined by a free, fair, unhampered and dispassionate investigation. In the peculiar facts and circumstances of this case, custodial interrogation of not only Respondent 2 but all other suspects is, therefore, imperative to unearth the truth. Joining the investigation with a protective umbrella provided by pre-arrest bail will render the exercise of eliciting the truth ineffective in such like case. ..."*

12. The allegations against the Applicant are serious and he is stated to be a part of an international syndicate whereby innocent people are being cheated and the financial ramifications run into several crores. It has been held by this Court in ***Sulav Adhikari v. State of Govt of NCT Delhi and***

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Another, 2023 SCC OnLine Del 6040, that perpetration of scams as the present one impacts the society on a much broader scale as it not only affects the trust and confidence of individuals but also undermines the integrity of online payment systems and digital transactions as a whole. In an era where digital transactions have become fundamental component of our economic infrastructure, any threat to the security and trustworthiness of online financial interactions poses a direct challenge to the economic stability and progress of the society and therefore, it is imperative that such offences are viewed with a seriousness. The investigation in the present case is at a very nascent stage and learned APP, on instructions, has strenuously urged that custodial interrogation of the Applicant is required to unearth and unravel the larger conspiracy. Applicant needs to be confronted with various documents etc. and his role as a driver to Bhupesh Arora, who has since fled away to Dubai, is crucial.

13. The allegations against the Applicant are serious as he is stated to be a part of an international syndicate involved in cases of cheating with financial ramifications on several individual complainants as well as society at large. It is stated in the status report that despite interim protection granted to the Applicant by this Court, subject to his joining and co-operating in investigation, he is not co-operating in the investigation and is resisting in handing over the mobile phone, which he was using at the time of commission of the alleged offence. Custodial interrogation of the Applicant is sought to unearth the complete scam as also for the reason that the Applicant is an important link to the main accused Bhupesh Arora, being his driver and the person, who was delivering the Bank accounts' kits to various people. In ***State Rep. By The C.B.I. v. Anil Sharma, (1997) 7 SCC 187***, the

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Supreme Court has observed that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 Cr.P.C. Further, it is also the stand of the State that the Applicant is a flight risk and there are chances that he would abscond to Dubai since other members of the syndicate including Bhupesh Arora, who is the kingpin and mastermind of the transactions is residing there. Possibility of tampering with evidence is also asserted. In ***Haresh Kumar Choudhary v. State (NCT of Delhi), 2023 SCC OnLine Del 1877,*** this Court held that while considering the prayer for grant of anticipatory bail, the Court has to ensure that investigation in the subject FIR is not prejudiced, if such relief is granted. In these facts, this Court is not inclined to grant anticipatory bail to the Applicant and the application is dismissed.

14. Application stands disposed of making it clear that nothing expressed herein shall tantamount to an expression of opinion on the merits of the case.

JYOTI SINGH, J

FEBRUARY 02, 2024/shivam

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