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

\+ **BAIL APPLN. 3531/2024 & CRL.M.A. 29544/2024**

VISHAL BABURAO CHADOKAR .....Petitioner

Through: Mr. Vaibhav Dubey, Mr. Dhruv Tank, Mr. Nishant Bardiya & Mr. Abhijeet Jangam, Advs.

versus

STATE OF NCT OF DELHI .....Respondent

Through: Mr. Ajay Vikram Singh, APP for the State
SI Vishal Baburao & SI Manish, PS- Special Cell

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **30.09.2024**

1. The present application is filed seeking grant of pre-arrest bail in FIR No. 39/2024 dated 08.02.2024 registered at Police Station Special Cell, Delhi for offences punishable under Sections 419/420/384/170/120-B of the Indian Penal Code, 1860 ('IPC').

2. The FIR in the present case was registered at the instance of the complainant namely, Suruchi Gautam who alleged that on 02.01.2024 at around 3pm, she received a call from a person allegedly claiming to be from the Cyber Police, Lucknow. It is alleged that the said person informed the complainant that he had received a parcel allegedly booked using the complainant's Aadhar Card which contained some illegal documents and drugs. It is the case of the prosecution that the complainant was digitally arrested on 02.01.2024 on the premise that her documents had been used in booking parcel allegedly containing narcotic substances, and a sum of ₹50.10 lakhs was extorted from the complainant from three different bank accounts. It is alleged that

out of the said amount, a sum of ₹5 lakh was transferred in the account of one Salim Saifi, who, during the course of interrogation, disclosed that he had given his account credentials and SIM Card to the applicant.

3. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. He submits that no role has been attributed to the applicant in the FIR. He submits that pursuant to the notice under Section 41A of the Code of Criminal Procedure, 1973 ('**CrPC**'), the applicant has already joined the investigation. He submits that the bank account in which the alleged cheated amount was transferred was not operated by the applicant. He submits that the applicant is not the beneficiary of the cheated amount, and prays that the applicant be granted the relief of pre-arrest bail.

4. *Per contra,* the learned Additional Public Prosecutor for the State opposes the grant of any relief to the applicants. He submits that the allegations against the applicant are serious in nature. He submits that the learned Additional Sessions Judge rightly rejected the bail of the applicant, and that there is no ground to interfere with the same.

5. He submits that the cheated amount of ₹5 lakh was transferred in the account of Salim Saifi, who during interrogation, disclosed that he gave the account detail and SIM card to the applicant. He submits that the applicant was operating the bank accounts in which the money was received through the SIM card linked with the beneficiary account in his device. He submits that the applicant was using different SIM cards in his handset, and the CDR analysis of the SIM Card linked to the beneficiary account revealed that the same was used in the handset of the applicant. He submits that the applicant is not

cooperating with the investigation. He submits that the mobile phone of the applicant, which the applicant was also directed to produce, is involved in the money transaction.

6. It is to be kept in mind that the investigation is currently at a nascent stage. The considerations governing the grant of pre-arrest 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 is carried out by the investigating agency.

7. 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 inPokar Ramv.State of Rajasthan[(1985) 2 SCC 597 : 1985 SCC (Cri) 297 : AIR 1985 SC 969] : (SCC p. 600, para 5)*
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> > *"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."*
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> ***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)*
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> > *"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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> > *xxx xxx xxx*
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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 respondents, 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."

8. 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**]. An order of bail cannot be granted in a routine manner so as to allow the applicant to use the same as a shield.

9. The applicant in the present case is alleged to have used a SIM card in his mobile phone which was linked to the beneficiary account in which the cheated sum of ₹5 lakh was received. It is the case of the prosecution that the accused Saleem Saifi, on interrogation, had revealed that he had given his account credentials (to which the cheated sum of ₹5 lakh was received) and SIM card linked to the bank account to the applicant through co-accused Manoj Mahale.

10. It has been averred that during the course of investigation, the applicant had initially stated that he had not used the beneficiary bank account or the sim card linked to the beneficiary bank account number. As per the CDR analysis, however, it was found that the said SIM number was being used in the same handset that was being used by the applicant. The investigation

conducted thus far has also unearthed that the applicant was in constant touch with co-accused Manoj Mahale who was arrested on 17.09.2024 on account of non-cooperation in the investigation. The investigation further revealed that as many as 393 calls were made between the applicant, and co-accused Manoj Mahale.

11. It is also the case of the prosecution that despite notice under Section 41A of the CrPC, the applicant failed to join investigation on 25.09.2024.

12. The learned ASJ *vide* order dated 26.09.2024 dismissed the application filed by the application seeking grant of pre-arrest bail. It was noted that the applicant was given opportunity to join the investigation, and was directed to bring his bank account details alongwith the details of virtual accounts, however, the applicant failed to produce the said documents. It was also noted that contrary to what was stated by the applicant to the IO, the applicant had used the account of Salim Saifi, and the phone number linked to the beneficiary bank account of Salim Saifi was used in the phone of the applicant.

13. The relief of pre-arrest bail is a legal safeguard intended to protect individuals from potential misuse of power of arrest. It plays a crucial tool in preventing harassment and unjust detention of innocent persons. However, the court must carefully balance the individual's right to liberty with the interests of justice. While the presumption of innocence and the right to liberty are fundamental principles of law, they must be considered in conjunction with the gravity of the offence, its societal impact, and the need for a comprehensive and unobstructed investigation.

14. Cyber crimes are on the rise and the same tend to be significantly harder to crack due to the boon of technology that is

effectively misused by crooks to wreak havoc and evade the law enforcement. The task of the Investigating Agency seems arduous and they need to be given a fair play in the joints to investigate the matter in the manner they deem appropriate. The matter requires thorough investigation which ought not to be curtailed by passing an order granting pre-arrest bail.

15. Considering the material on record, it cannot be held at this stage that the investigation is being carried out with the intention to injure or humiliate the applicant. The nature and gravity of allegations are serious. Specific allegations have been made regarding the applicant's alleged involvement in the commission of the offence.

16. The investigation conducted thus, so far does not indicate that the applicant is sought to be falsely implicated. The material presented by the prosecution establishes a *prima facie* involvement of the applicant. Granting pre-arrest bail to the applicant would undoubtedly impede further investigation.

17. Considering the above, and the nature of the offence, no ground for grant of pre-arrest bail to the applicant is made out.

18. The present application is accordingly dismissed.

19. 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

SEPTEMBER 30, 2024
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