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

\+ **BAIL APPLN. 3876/2024 & CRL.M.A. 32056/2024**

VIKASH KUMAR AGARWAL .....Applicant

Through: Mr. Nilesh Kumar, Mr. Aniket Gautam, Mr. Aditya Kapoor and Mr. Praveen Kumar, Advs.

versus

STATE OF NCT OF DELHI .....Respondent

Through: Mr. Manoj Pant, APP for the State with SI Ravi Yadav, PS Lajpat Nagar.

Mr. Saurabh Khosla, Mr. Rajinder Pal Singh, Ms. Shruti Jain, Mr. Archit Gupta and Mr. Kunal B., Advs. for the complainant.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **18.12.2024**

1. The present application is filed seeking pre-arrest bail in FIR No. 347/2024 dated 24.09.2024, registered at Police Station Lajpat Nagar for offences under Sections 318(4)/336(3)/340(2)/3(5)/61(2) of the Bharatiya Nyaya Sanhita, 2023 (‘**BNS**’).

2. The FIR was registered on a complaint given by Varun Wig. The complainant is stated to be running a consultancy business in the name of ‘World Wide Emigration Consultant.’ It is alleged that the complainant visited the VFS Office, New Delhi for making an enquiry relating to Poland Visa for his clients where he met accused Sanjeev Sharma who offered to handle the visa related work. It is alleged that thereafter accused Sanjeev Sharma visited the office of the complainant and while

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discussing the terms and conditions of the work, accused Sanjeev Sharma asked for a sum of ₹75,000/- as advance payment towards first installment, and ₹2,75,000/- as full and final payment at the time of handing over the VISA. It is alleged that in July, 2021, the complainant received requests of 6 people in relation to Visa to Poland, and the complainant consequently contacted accused Sanjeev Sharma and asked him to start the VISA process for the received requests. The complainant thereafter also paid a sum of ₹75,000/- per client. The clients were called to the office of V.F.S. Delhi where no work could be done due to COVID restrictions.

3. The clients were thereafter asked to travel to Kolkata where the VISA forms were filed in the VFS office, Kolkata through the applicant. The complainant further received requests from multiple clients in various batches – the second batch comprised 6 clients, the third batch comprised 10 clients, and the VISA procurement forms of these batches of clients were also filed in the VFS Office, Kolkata.

4. Consequently, in September, 2021 four passports affixed with the visa stamp of Poland were sent to the office of the complainant, and accused persons - Uday Thakur and Sanjeev Sharma visited the office of the complainant and collected ₹11,45,000/- against the 4 visas. In a similar vein, in November 2021, the complainant received request of another batch comprising 14 clients, and their VISA procurement form was filed with the VFS Office, Kolkata through the applicant after making payment of the first installment. The complainant also subsequently received request of two more batches comprising 5 and 25 clients whose forms were also filed with the VFS Office Kolkata through the applicant after making payment of the first

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installment.

5. It is alleged that on 29.11.2021, the VFS Office, Kolkata through the applicant gave 3 more passports containing VISA Stamp of Poland, and the accused persons collected ₹6,30,000/- from the complainant against the 3 visas.

6. It is alleged that upon discovering some discrepancies in the VISAs provided the complainant wrote an email dated 30.11.2021 to the embassy. In the reply dated 01.12.2021 from the embassy, the complainant discovered that the VISAs were fake. It is alleged that thereafter the complainant made multiple requests to the accused persons demanding the money paid by him but it was to no avail.

7. It is alleged that the accused persons duped the complainant into paying a sum of ₹65,00,000/-, and after repeated requests the accused persons only returned a sum of ₹12,50,000/- to the complainant. During the course of investigation, the complainant was examined, and it transpired that the complainant had paid a sum of ₹55,00,000/- to the applicant, and a sum of ₹10,00,000/- to accused Sanjeev Sharma. The applicant also sent fake flight tickets to the complainant.

8. The learned counsel for the applicant submits that the applicant was involved in the work of filing of the applications. He submits that the applicant was nowhere involved when the terms of the payments were being negotiated. He submits that certain amounts were admittedly paid to the applicant for carrying out the work in relation to the issuance of VISA, and the balance amount payable to the complainant is only ₹84,763/-.

9. *Per contra,* the learned Additional Public Prosecutor vehemently opposes the grant of any relief to the applicant. He submits that the allegations against the applicant are grave in

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nature.

10. The learned counsel for the complainant submits that the conduct of the applicant does not entitle the applicant to any relief. He submits that the applicant in connivance with other accused persons duped the complainant of ₹66 lakhs on the pretext of providing work Visa for Poland.

11. 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.

12. It is trite law that the power to grant a pre-arrest bail under Section 482 of the BNSS 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)*
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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*

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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 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.*"

13. 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 482 of the Bharatiya Nagarik Suraksha Sanhita (**BNSS**') [***State v. Anil Sharma* : (1997) 7 SCC 187**]. Granting anticipatory 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.

14. This Court has gone through the material on record. From a bare perusal of the status report, it is apparent that specific allegations have been made against the applicant. It is the case of

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the complainant that he had been duped into paying a sum of ₹65,00,000/- to the accused persons, out of which allegedly ₹55 lakhs were paid to the applicant. Admittedly, the visas were fake as evident from the reply of the embassy dated 01.12.2021. It is also undisputed that the work related to the filing of the visas with the VFS Office, Kolkata were carried out by the applicant.

15. 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.

16. 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. The allegation is of forging a visa on the passports of gullible people who waited to travel abroad. Hard earned money has been cheated in a brazen manner. Specific allegations have been made regarding the applicant's alleged involvement in the commission of the offence.

17. 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.

18. The present application is accordingly dismissed. Pending application also stand disposed of.

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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

DECEMBER 18, 2024

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