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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 4418/2024**
VANSH MEHRAPetitioner

Through: Mr. Saurabh Rajpal,
Mr. Deepak Verma and
Mr. Chaitanya Sharma,
Advocates.

versus

STATE GOVT. OF NCT OF DELHIRespondent

Through: Mr. Utkarsh, APP for the
State with SI Manish
Kumar, PS Aman Vihar.
Mr. Anurag Singh,
Advocate for complainant.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

03.12.2024

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1. The present application is filed seeking pre-arrest bail in FIR No. 646/2024 dated 15.10.2024 registered under Section 316(2) of The Bharatiya Nyaya Sanhita, 2023 ('BNSS') at P.S. Aman Vihar.
2. The FIR was registered on a complaint alleging that in the month of August, 2024, the complainant had sold a property and received a sum of Rs. 28,00,000/- in cash which was entrusted to the father of the applicant. The father of the applicant was asked to return the money, however, the same was refused and therefore, the complaint was given by the complainant to the police which led to registration of the present FIR.
3. During the course of investigation, statement of the father of applicant was recorded who admitted that a sum of Rs.28,00,000/- was received by him from the complainant. He stated that he had handed over the said amount to his wife and later when he asked his wife about the money, she found that the



money has been taken away by the applicant. It is further stated that the applicant had thereafter switched off his mobile phone and he is not aware of the whereabouts.

4. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case as the complainant had never entrusted the sum of Rs. 28,00,000/- to the father of the applicant and has not produced any document showing that he received any money pursuant to sale of the property.

5. The fact of handing over the sum of Rs.28,00,000/- has been admitted by the father of the applicant.

6. The learned APP for the State has also pointed out that a CCTV footage was obtained which shows the applicant leaving the house with a bag. It is submitted that the applicant had not co-operated in the investigation and the money is yet to be recovered.

7. I have perused the statement given by the father of the applicant. At this stage, it does not appear that the applicant is sought to be falsely implicated in the present matter.

8. 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.

9. 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

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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 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.”

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 482 of the BNSS [*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.

11. The learned counsel for the applicant submits that the statements made by the father of applicant was not voluntary.

12. The father of applicant has not been arrested till date and no application has been filed by the father of applicant before the concerned Trial Court retracting from the statement given to the police. The same would be tested after further investigation and cannot be commented upon at this stage.

13. The Investigating Agency needs 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.

14. 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 or 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

15. Accordingly, the application is 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

DECEMBER 3, 2024/DU

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