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

+ **BAIL APPLN. 4600/2024**

SHIKHA @ TANNU

.....Applicant

Through: Ms. Sadhna Bhaskar and
Mr. Santosh Singh, Advs.

versus

THE STATE GOVT. OF NCT OF DELHIRespondent

Through: Mr. Manoj Pant, APP for
the State with SI Nitesh
Kumar, PS K.M. Pur.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **13.12.2024**

CRL.M.A. 37618/2024 (*exemption from filing certified copies
true typed copies of dim annexures*)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present application is filed seeking grant of pre-arrest bail in FIR No. 328/2024 dated 18.09.2024, registered at Police Station K.M. Pur, for offences under Sections 319(2)/61(2) of the Bharatiya Nyaya Sanhita, 2023 ('BNS').
4. The FIR was registered on the complaint given by the complainant alleging that he was chatting with the applicant on Tinder App. It is alleged that the applicant met the complainant and took him to her room, where after some time, three more persons came and extorted ₹60,000/-.
5. Two accused persons have been arrested by the Police.

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6. The applicant has been absconding, which led to issuance of non-bailable warrants.

7. It is pointed out that the proceedings under Section 84 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') have also been initiated against the applicant.

8. 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)

"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.”

9. 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.

10. The present case is regarding honey trap. The allegations raised against the applicant are serious in nature wherein a man has been trapped by inducing him to first chat and then asked to meet, post which money was extorted from him.

11. 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.

12. The material presented by the prosecution establishes a *prima facie* involvement of the applicant. The investigation is at the nascent stage, and at this stage, it cannot be said that the applicant is sought to be falsely implicated or that the investigation is being carried out with the intention to injure or humiliate the applicant. Specific allegations have been made regarding the applicant's alleged involvement in the commission of the offence. Granting pre-arrest bail to the applicant would undoubtedly impede further investigation.

13. The present application is accordingly dismissed.

14. 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 13, 2024

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