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

+ **BAIL APPLN. 810/2025 & CRL.M.A. 5863/2025**

SHIV SHANKAR MISHRA

.....Petitioner

Through: Mr. Akash Karan Sinsinwar,
Advocate.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Ms. Shubhi Gupta, APP for the State.
IO/SI Sunil Kumar, DIU/Rohini
Mr. Keshav Kumar Verma, Mr.
Ashwani Kumar, Mr. Kunal Verma
and Mr. Ashish Kumar, Advocates for
R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

10.03.2025

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1. This hearing has been done through hybrid mode.
2. The present application under Section 482 of the BNSS (Section 438 of the Cr.P.C.) seeks anticipatory bail in case FIR No. 773/2024, under Sections 318/316/61(2)/3(5) of the BNS, registered at P.S. North Rohini.
3. The case of the prosecution as per status report dated 06.03.2025, authored by Sh. Ishwar Singh, ACP/DIU Rohini is as under:

“(2) That the brief facts of the case are that the present case was registered at PS North Rohini on the complaint of Shri Abhishek Jindal S/o Shri Rajinder Parshad R/o H.No.B-5/2, Sector-8, Rohini, Delhi wherein he stated that petitioner Shiv Shankar Mishra and Umesh Mishra are real brothers and Mr. Umesh Mishra is looking after all the sell & purchase order for the firm M/s Shri Ram



Polymers situated in J-166, sector-1, DSIIDC Industrial area, Bawana, Delhi. Petitioner Shiv Shankar Mishra is the proprietor of this firm. Petitioner Shiv Shankar Mishra and his brother Umesh Mishra usually visited his office in connection with PVC Resin (raw material) and placed order and got the material as per their order. In the first week of July on 1-2/7/24, petitioner's brother Mr. Umesh Mishra approached to his firm office situated at C-7/85, 3rd Floor Sector-8, Rohini, Delhi. Umesh Mishra told the complainant about urgent need of 25-30 Tons of PVC Resin (China Resin) as his firm Shri Ram Polymers received a huge order. The complainant stated that the goods (China Resin) he demanded is not in his stock. Umesh Mishra further asked the complainant to get it managed from anywhere of his known firms. The complainant Abhishek Jindal asked from his known traders Shri Arun Singhal M/s Om Sai Plastic situated at D-118, Second floor, Sector-4, DSIIDC, Bawana, Delhi and the same goods PVC Resin (China Resin) was available with him. The complainant got agreed to supply the goods PVC Resin on commission basis to M/s Shri Ram Polymers on a credit period of 7 Days. Mr. Umesh Mishra confirmed with his brother Shiv Shankar Mishra about it. On the assurance and guarantee of Complainant Abhishek Jindal, on 04/07/24 at the instruction of his brother/petitioner Shiv Shankar Mishra, Umesh Mishra of Shri Ram Polymers J-166, Sector-1, DSIIDC Bawana, Delhi placed the order on Whatsapp of the complainant and received the goods PVC Resin 17 Tons directly from godown of Shri Arun Singhal at his firm M/s Om Sai Plastic, Bawana in two vehicles No. DL1L-AG-7533 and No. DL1L-AL-9810 which Umesh Mishra brought with him. Again on the assurance and guarantee of complainant Abhishek Jindal, on 05/07/24 Umesh Mishra (brother of petitioner) again received the goods PVC Resin 12 Tons directly from godown of Shri Arun Singhal at the firm M/s Om Sai Plastic, Bawana in two vehicles No.DL1M-A-4637 and No.DL1L-A-9120 which Umesh Mishra brought with him. The goods were shifted to the firm Shri Ram Polymers J-166, Sector-1, DSIIDC Bawana, Delhi. The total worth of goods 29 Tons PVC Resin is Rs. 29,80,090/-. At the request of Umesh Mishra, the invoices of goods were made on the name of his firm M/s Shri Ram Polymers. After receiving the huge delivery of PVC Resin, after one week, neither Umesh Mishra nor petitioner Shiv Shankar Mishra made the payment of the goods PVC Resin. The complainant made the phone calls to petitioner Shiv Shankar



Mishra and his brother Umesh Mishra for making the payment of goods, but petitioner Shiv Shankar Mishra began to make lame excuses each and every time. After sometime, they deliberately did not pick the phone calls of the complainant also. In criminal conspiracy with his brother Shiv Shankar Mishra, Umesh Mishra dishonestly and fraudulently received the goods worth Rs.29,80,090/- from the godown of Shri Arun Singhal M/s Om Sai Plastic, Bawana by taking the advantage of the faith/trust and guarantee of complainant Abhishek Jindal and committed cheating with the complainant Abhishek Jindal with criminal breach of trust and caused him wrongful loss.

(3) That the Proprietor Shri Arun Singhal of M/s Om Sai Plastic was demanding the payment/amount of Rs.29,80,090/- from the complainant Abhishek Jindal as he had given the delivery of goods PVC Resin worth Rs.29,80,090/- to Umesh Mishra of M/s Shri Ram Polymers on the assurance and guarantee of complainant Abhishek Jindal. Now-a-days, the complainant is living in immense tension, pressure of loan payment and agony due to the criminal conspiracy of petitioner Shiv Shankar Mishra and his brother Umesh Mishra.

(4) That, now petitioner Shiv Shankar Mishra proprietor of M/s Shri Ram Polymers is flatly refusing to make payment of the goods and saying that he and his brother Umesh Mishra have not taken any goods and they will not make any payment. Petitioner Shiv Shankar Mishra threatened the complainant to face the dire consequences, if any demand for payment is made by him. Petitioner Shiv Shankar Mishra is deliberately hiding his brother Umesh Mishra, so that the criminal conspiracy which he hatched alongwith his brother may not be disclosed and they may cheat the complainant Abhishek Jindal easily and intentionally caused him wrongful loss of Rs. 29,80,090/-.

(5) That till date, proprietor of M/s Shri Ram Polymers petitioner Shiv Shankar Mishra deliberately did not produce his brother Umesh Mishra before the complainant and enquiry/investigating police officer after receiving the goods PVC Resin worth Rs.29,80,090/-. Petitioner Shiv Shankar Mishra is deliberately not disclosing about the shipment of Goods and present residential place or hideouts of his real brother Umesh Mishra.

(6) That on the other hand, proprietor of M/s Om Sai Plastic, Bawana was creating the pressure upon the complainant Abhishek Jindal and compelling him for paying the cost of the Goods which



he had given to Umesh Mishra of M/s Shri Ram Polymers due to the assurance and guarantee of complainant Abhishek Jindal. The result of the pressure is that the complainant has to pay Rs.5 Lakh to the firm M/s Om Sai Plastic, Bawana and now the complainant had to pay the whole payment to firm M/s Om Sai Plastic and faced wrongful loss. After enquiry and approval of worthy DCP/RD, Subsequently, the present case was registered and investigation was taken up.

(7) That during investigation, notices to ICICI bank and GST offices were sent and reply from bank has been received. During investigation, Notices U/s 35(3) BNSS to join investigation was sent to petitioner Shiv Shankar Mishra and his brother Umesh Mishra. But both the accused persons did not join investigation. Petitioner Shiv Shankar Mishra moved to Hon'ble Session Court for anticipatory bail.

(8) That as per order of the Hon'ble Session Court on 11/02/25 notice for joining investigation was sent to petitioner Shiv Shankar Mishra. Another notice U/s 35(3) BNSS to accused Umesh Mishra was also sent. Both the notices have been received by the father Shri Raj Kumar. On 12/02/25 petitioner Shiv Shankar Mishra S/o Shri Raj Kumar R/o H.No. H-2/19, Khasra No.80/20, Budh Vihar Phase-I, Delhi Age-29 Years joined the investigation of the case. He was asked about why his brother Umesh Mishra did not come to join investigation. He said that he does not know anything about his elder brother Umesh Mishra. He is living somewhere in Bharuch Gujrat but he does not know his address and recent mobile number. He was asked to give in writing whatever he wants to tell regarding the case. He gave his handwritten version regarding the case but not mentioned anything which is helpful in the investigation of the case.

(9) That petitioner Shiv Shankar Mishra was interrogated in question answer form regarding the case. He accepted that he is the proprietor of the firm M/s Shri Ram Polymers situated in J-166, Sector-1, DSIIDC, Bawana Industrial Area, Delhi and runs this firm. Petitioner alongwith his brother Umesh Mishra works together for two-three years. His brother Umesh Mishra looks after the work of sale and purchase in his firm. His brother Umesh Mishra put order of purchase after telling about it to petitioner Shiv Shankar Mishra. Umesh Mishra or petitioner sent transport vehicle for receiving goods. Only petitioner made payment of all kinds of transaction related to his firm M/s Shri Ram Polymers.



(10) That petitioner Shiv Shankar Mishra flatly refused for receiving any goods from Om Sai Plastic Bawana and he told that he does not know anything about it. He is deliberately concealing the truth and did not co-operate in the investigation of the case. Petitioner was shown Whatsapp Chat of his brother Umesh Mishra regarding the order placed and received the goods. But he did not say anything about it. (Copy of Whatsapp Chat is attached herewith) **Annexure- "A"**

(11) That after interrogation, he was asked to take the police staff to his firm and his godown, so that the goods PVC Resin can be searched and recovered. Upon it, he said that he came here only to join investigation as per direction of the Hon'ble Court and whatever asked here, he will reply here. Recently he can not take the police staff to his firm and his godown as he has to go somewhere in urgent work. So he was relieved from the investigation.

(12) That petitioner Shiv Shankar Mishra did not co-operate in the investigation of the case. It is possible that he has shifted/vacated the goods from his firm and godown and deliberately did not want to get the Goods PVC Resin recovered. He is deliberately concealing his brother Umesh Mishra also so that his conspiracy could not be disclosed.

(13) That on 14/08/24 a conversation on mobile phone was happened between father of complainant Abhishek Jindal and petitioner Shiv Shankar Mishra, Wherein, Shiv Shankar Mishra is accepting the deal of PVC Resin and offering part payment of Rs.10 Lakh and remaining payment later on. The Call recording of mobile phone reveals the intension of petitioner Shiv Shankar Mishra to usurp the hard earned money of the complainant.

(14) That during investigation, on 13/02/25, statement of Transporter Krishan Kumar Thakur was also recorded regarding the case. He also confirmed in his statement that he had loaded goods PVC Resin 12 tons in two truck No.DL1M-A-4637 and No.DL1L-A-9120 on 05/07/24 from M/s Om Sai Plastic firm with Umesh Mishra and unloaded the goods at the firm M/s Shri Ram Polymers J-166 Sector-1 Bawana, Rohini, Delhi in presence of Umesh Mishra and petitioner Shiv Shankar Mishra. The Statement of transporter also confirmed that the goods PVC Resin was delivered to petitioner at his firm. The statement of Arun Kumar Singhal M/s Om Sai Plastic also proved and confirmed that the goods PVC Resin was delivered to firm M/s Shri Ram Polymers J-



166 Sector-1 Bawana, Rohini, Delhi in presence of Umesh Mishra and petitioner Shiv Shankar Mishra.

(15) That it is pertinent to mentioned herein that petitioner Shiv Shankar Mishra is the main mastermind of this criminal conspiracy which he hatched alongwith his elder brother Umesh Mishra. Petitioner Shiv Shankar Mishra is deliberately not producing his brother Umesh Mishra before the investigating agency.

(16) That During investigation, it came to know that both the brothers have committed similar offence with same modus operandi with another person namely Raghav Gupta who runs his firm M/s LR Polymers, Netaji Subhash Place, Delhi and caused him wrongful loss of approx. Rs.15,50,000 /-.

(18) That on 15/02/25 and 19/02/25 raids were conducted at the residence of petitioner for arresting him and his brother Umesh Mishra, but petitioner and his brother Umesh Mishra were not found at his residential address. On 04/03/25, Notice U/s 35(3) BNSS to petitioner Shiv Shankar Mishra and his brother Umesh Mishra and notice U/s 94 BNSS (91 CrPC) were also sent to join investigation and provide the relevant information regarding accused Umesh Mishra. All the notices have been received by the wife of petitioner. But none joined investigation and did not give any reply of the notice U/s 94 BNSS deliberately and hampering the investigation of the case.

(19) That in view of above facts and circumstances, anticipatory bail application of accused/applicant is vehemently opposed on the following grounds:-

I. Custodial interrogation is required for recovery of delivered Goods PVC Resin 29 Tons worth Rs.29,80,090/-.

II. To find out the present whereabouts of his elder brother / co-accused Umesh Mishra.

III. Accused/petitioner likely to win over witnesses or threaten the complainant regarding the case.

IV. To prevent the accused/petitioner for committing further offences with same modus operandi to the other businessmen.

V. The investigation of the case is in initial stage.”

4. Learned counsel appearing on behalf of the applicant submits that the present FIR is in the nature of a civil dispute. It is the case of the applicant



that the goods in question were actually supplied by the complainant's firm and not M/s Om Sai Plastics (the firm of Sh. Arun Singhal) as alleged in the present complaint. It is submitted that the applicant's firm, i.e., M/s Shri Ram Polymers and the complainant's firm, i.e., M/s Rama Polychem LLP were doing businesses and there were constant transactions between the parties. It is the case of the applicant that the goods were actually supplied by the complainant's firm, i.e., M/s Rama Polychem LLP and there was a part payment of Rs. 4 lakhs which was credited to the account of the said firm on behalf of the applicant.

5. On a pointed query to the applicant, it is stated that the goods were received by his brother-Sh. Umesh Mishra and not by him and therefore he is not aware of the present transaction. It is further submitted that Arun Singhal is not the proprietor of M/s Om Sai Plastics and therefore, the case of the prosecution is factually incorrect to that extent as well.

6. *Per contra*, learned APP for the State, on instructions from the Investigating Officer and assisted by learned counsel for the complainant, submits that the stand of the applicant is contradictory at various stages during the course of investigation. Initially during the course of the investigation, he had completely denied receiving any goods as has been recorded in the order declining anticipatory bail to the applicant passed by the learned ASJ on 14.02.2025. It is further pointed out that the statement of the transporter- Sh. Krishan Kumar Thakur has been recorded, wherein, he has clearly stated that he had delivered the subject goods in his truck at the address of the present applicant's firm, i.e., M/s Shri Ram Polymers situated in J-166, Sector-1, DSIIDC Industrial Area, Bawana, Delhi. It is also stated that there was a conversation between the present applicant and the father of the complainant



where the applicant stated that he would give Rs. 10 lakhs and thereafter, the remaining payment. It is pointed out that in his statement under Section 161 of the Cr.P.C. Sh. Arun Singhal has clearly stated that the proprietor of M/s Om Sai Plastics is his brother, Saurav Singhal and that he was working along with his brother.

7. Heard learned counsel for the parties and perused the records.

8. The Court has perused the statement made by the transporter, Krishan Kumar Thakur before the Investigating Officer on 13.02.2025, wherein he has clearly stated that he had loaded the subject goods in two trucks bearing nos. DL1-M-A-4637 and DL1 LAL-9120 on 05.07.2024 from M/s Om Sai Plastics alongwith the applicant's brother Umesh Sharma and unloaded the said goods at the address of the present applicant's firm, i.e., M/s Shri Ram Polymers situated in J-166, Sector-1, Bawana, Rohini. In his statement he further stated that the present applicant was also present at the time when the goods were unloaded at the above location. He further stated in his statement that even his payment for transportation has not been given by the present applicant as well as his brother. It has been observed that the stand of the applicant is contradictory. The applicant, while seeking anticipatory bail before the learned ASJ, had stated that he did not receive any goods. Today, it has been stated by learned counsel for the applicant that the goods were received by his brother. Clearly, the subject goods, i.e., 29 tons of PVC Resin (China Resin) worth Rs. 29,80,090/- is yet to be recovered and for this purpose the custodial interrogation of the present applicant is required.

9. Accordingly, the application is dismissed and disposed of.

10. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the



present bail application.

11. Pending application(s), if any, also stands disposed of.
12. Order be sent to the concerned Jail Superintendent for necessary information and compliance.
13. Order be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J

MARCH 10, 2025/bsr/Pc

Click here to check corrigendum, if any