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

\+ **<u>BAIL APPLN. 1144/2025</u>**

OMKAR KUMAR .....Applicant

Through: Mr. Deepka Kumar Singh and Mr. Rakesh Kumar Singh, Advs.

versus

STATE OF GNCT OF DELHI .....Respondent

Through: Mr. Aashneet Singh, APP for the State with Insp. Rajkumar Singh, SHO, PS Cyber SED and SI Mohit.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

<u>O R D E R</u>

% **24.03.2025**

1. The present application is filed seeking pre-arrest bail in FIR No. 74/2024 (hereafter '**the FIR**') dated 14.11.2024, registered at Police Station Cyber Police Station South East, for offence under Section 318(4) of the Bharatiya Nyaya Sanhita, 2023 ('**BNS**').

2. The FIR was registered on a complaint given by the Authorized Representative of company namely M/S Starcon Infra Projects India Pvt Ltd. It is the case of the prosecution that the complainant was defrauded by one person impersonating himself as one of the Directors of the complainant company– being 'Amit Lakhan Pal'. It is alleged that the impersonator introduced himself as one of the Directors of the complainant company through WhatsApp and lured the complainant into transferring a sum of ₹20,00,000/-.

3. During the course of investigation, it was found that the amount was transferred into the bank account operated by the applicant and the amount has further been transferred into three different accounts.

4. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. He submits that the applicant was cheated by one of his known persons, who in the name of returning the loan amount of ₹2,00,000/- borrowed from the applicant's sister-in-law, had obtained the details of the applicant's bank account.

5. He submits that the applicant had provided the bank account details along with the passwords in order to facilitate the deposit of ₹2,00,000/- whereas the said person appears to have got the entire cheated amount deposited into the applicant's bank account.

6. *Per contra,* the learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant. He submits that the applicant is the beneficiary of the cheated amount for a sum of ₹20,00,000/-. He submits that during the course of investigation, it was also found that a sum of ₹5 crores had been deposited in the account of the applicant on a single day. He submits that the investigation is at the nascent stage, and prays that the present application be dismissed.

7. Status Report has been handed over today and is taken on record.

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 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."

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 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.

11. The applicant in the present case is alleged to have been the beneficiary of the cheated amount for a sum of ₹20 lakhs. Further, during the course of investigation, the police found that a further sum of ₹5 Crores was deposited into the bank account operated by the applicant in one day. It has also been pointed out that the amount involved in as many as 12 complaints received on the NCRP portal was deposited into the applicant's bank account.

12. The defense of the applicant is that he had disclosed his banking credentials to one person, namely, Rishi Kumar, who had misused his bank account. The same however does not appear to be probable at this stage. It is pertinent to note that huge amount of money has been transacted into the applicant's bank account.

13. At this stage, it does not appear probable that the applicant, as claimed, has handed over his mobile phone and other details of the bank account to the said Rishi Kumar, which led to fraud being committed using the applicant's bank account.

14. 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.

15. 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.

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.

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

19. The present application is accordingly dismissed.

20. 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

MARCH 24, 2025 / *'KDK'*