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

\+ BAIL APPLN. 1528/2025

MD. AHSAN S/O MOHD. RASHID .....Petitioner

Through: Mr. Karan Verma and Ms. Khushi Mangla, Advocates.

versus

STATE (NCT OF DELHI). .....Respondents

Through: Mr. Mukesh Kumar, APP for State.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

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

% **26.05.2025**

1. The present application under Section 483 read with 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023[1] (corresponding to Section 439 and 482 of the Code of Criminal Procedure, 1973[2]) seeks regular bail in FIR No. 355/2024 dated 20th November, 2024 under Section 316 (2) of Bharatiya Nyaya Sanhita[3], registered at P.S. Preet Vihar.

2. The case of the prosecution, in brief, is as follows:

2.1. Sonu, the Complainant engaged in the scrap copper trade, alleges that he came into contact with one Dinesh, the proprietor of a firm named “Ma Metals”, through India Mart, regarding a proposed transaction for the purchase of five tons of copper wire. A meeting was held at Dinesh’s office in Kale Ram Chamber on 14th November, 2024, where the Complainant, his business partners, Dinesh, and the present Applicant were all present.

[1] “BNSS”
[2] “Cr.P.C.”
[3] “BNS”

During the meeting. The Complainant and his partners agreed to purchase 5 tonnes of copper wire. However, Dinesh informed them that he would be unable to arrange the material on the same day, and undertook to supply it on the next day.

2.2 On 15th November, 2024, Dinesh informed the Complainant that the copper wire would be procured from a company located in Mandoli. When the Complainant visited the stated address to verify the this, the Complainant discovered that no such company existed at the stated address.

2.3 The following day, when the Complainant asked Dinesh to provide the details of the supplier, Dinesh provided the Complainant with the contact number of an individual named Ankit. When the Complainant's attempts to reach Ankit failed, Dinesh shared another contact of one 'Mukesh' and assured the Complainant that Mukesh would arrange for supply of the material. Mukesh informed the Complainant that the supply truck was on its way. Upon the Complainant's insistence that delivery be made directly from the warehouse and not on the road, Mukesh, accompanied by an associate named Paras, arranged the dispatch of the goods from a warehouse owned by one Ayyub. However, they kept delaying the delivery for several hours. Eventually, approximately 90% of the agreed quantity of copper wire scrap was loaded into a truck hired by the Complainant, in his presence and that of his business partners from a warehouse located in Mustafabad.

2.4 Subsequently, a cash payment of ₹40.79 Lakhs was allegedly handed over by the Complainant to Dinesh at the Kale Ram Chamber office after approximately 90% of the agreed quantity of the copper wire stood loaded in the truck. Following receipt of the payment, Mukesh assured that the goods could now be collected. However, the warehouse owner, Ayyub, refused to release the material, asserting that he had not received any payment from Dinesh, Mukesh, or Paras.

2.5 The Complainant claims that subsequent attempts to contact Dinesh proved futile, as his phone had been switched off. It is further alleged that Dinesh, along with the present applicant, absconded with the money in a Scorpio vehicle bearing a temporary number plate ending in 8253F, under the pretext of completing an RTGS transfer. Based on these allegations, the subject FIR came to be registered.

2.6 During investigation, the police obtained the rent agreement for the Kale Ram Chamber office. The tenancy documents identified one Mr. Imamul Haque as the tenant. Upon being shown the Aadhar card and photograph attached with the agreement, the Complainant and his associates identified the tenant as "Dinesh".

2.7 CCTV footage from the vicinity of Kale Ram Chamber corroborated the Complainant's version to the extent that a Scorpio car bearing the stated temporary number plate was seen parked at the location. Subsequent inquiries revealed that the number plate was forged, and the vehicle was being used by Dinesh @ Imamul Haque.

2.8 The Call Details Records[4] of accused persons were analysed, following which a raid was conducted and both Dinesh @ Imamul Haque and the present Applicant were arrested on 27th November, 2024. Further investigation disclosed that the real identity of "Dinesh" is Md. Athar.

2.9 After completion of the investigation, the chargesheet has been filed and the matter is now listed before the Trial Court in July, 2025 for

[4] "CDR"

arguments on charge.

3. Counsel for the Applicant urges the following grounds for seeking bail:

3.1 The Applicant has been falsely implicated in the above FIR. He is not named in the FIR, nor has the Complainant attributed any specific role to him in the initial statement.

3.2 Even as per the prosecution's own case, the Applicant is not alleged to have participated in the transaction between the Complainant and the co-accused, Dinesh. He is neither a recipient of any portion of the disputed sum nor is he alleged to have made any misrepresentation or inducement concerning the delivery of goods.

3.3 The only role attributed to the Applicant, as per the Complainant's supplementary statement recorded during investigation, is that he was present when the agreement for sale of copper wire was finalised and when the cash payment of ₹40.79 Lakhs was made to Dinesh. The Complainant additionally asserts, for the first time in the supplementary statement, that the Applicant counted the cash which was handed over to the co-accused Dinesh at his office. It is contended that this solitary act, without anything more, is insufficient to establish any active involvement or criminal intent on the part of the Applicant

3.4 The disclosure statement of co-accused Dinesh cannot form the sole basis to implicate the Applicant in the present case.

3.5 The Applicant is a daily wage labourer with no prior criminal antecedents and no demonstrable connection with the co-accused beyond the alleged meeting. He is also the sole breadwinner in his family and bears the responsibility for their sustenance.

3.6 The Applicant has been in custody since 27th November, 2024 and has undergone incarceration for nearly six months as an undertrial. The investigation in the matter stands concluded and the charge sheet has already been filed. In such circumstances, it is urged that his continued detention serves no purpose, and amounts to punitive pre-trial imprisonment, in violation of his right to personal liberty under Article 21 of the Constitution.

4. On the other hand, Mr. Mukesh Kumar, APP for State, has strongly opposed the present bail application on the following grounds:

4.1. The Applicant has actively participated in the offence and has also been duly identified by the Complainant. The forged number plate of the Scorpio car, allegedly used by the Applicant and co-accused Dinesh while fleeing with the Complainant's money, was recovered from the Applicant's residence. This very number plate is said to be visible in CCTV footage obtained from outside the office of co-accused Dinesh at Kale Ram Chamber.

4.2. Pertinently, the car itself was recovered from the possession of the Applicant and the co-accused Dinesh @ Imamul Haq @ Md. Athar. At the time of recovery, the vehicle bore no number plate. However, a search of the vehicle led to the seizure of a pair of temporary 'HR' number plates, a cheque book in the name of 'MA Traders', and certain other documents allegedly used by the co-accused in furtherance of the offence.

4.3. At the instance of the Applicant and Dinesh @ Imamul Haq @ Md. Athar, INR 5 Lakhs of the cheated amount was recovered from co-accused Hifajat Ali @ Sonu, whereas INR 4 Lakhs were recovered from co-accused Md. Shahid.

4.4. The Applicant's mobile number was found to be active at the Kale

Ram Chamber premises around the time of the incident. CDR analysis reveals multiple calls exchanged between the Applicant and co-accused Dinesh @ Imamul Haq @ Md. Athar. Particularly of note is the final call, allegedly made on 12th November, 2024, just four days prior to the date of the incident.

4.5. During investigation, it was discovered that the Applicant has also been named as an accused in another case being, FIR No. 004/2022 under Sections 297 and 379 of IPC, registered at P.S. Shahpur, Muzaffarnagar, U.P., Applicant's hometown. If the Applicant is released on bail, there is a possibility that he would perpetuate other similar offences or influence the Complainant's business partners, who also hail from Muzaffarnagar, U.P.

4.6. A significant portion of the cheated amount remains unrecovered. The Applicant has been uncooperative during investigation and is said to have misled the authorities, thereby obstructing complete recovery. Having regard to his prior antecedents and alleged conduct, the prosecution apprehends that the Applicant may abscond or tamper with the ongoing trial if he is granted the bail.

5. The Court has considered the aforenoted. It is a well settled principle of law that while considering a bail application, the Court must take several factors into consideration such as whether any *prima facie* reasonable ground is made out to believe that the accused has committed the offence, the nature and gravity of the accusation, severity of the potential punishment, risk of the accused fleeing or obstructing justice, etc.[5] At the same time, the Court is not expected to delve into a detailed appreciation of

[5] ***Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr.***, (2010) 14 SCC 496.

the evidence, lest the bail proceedings acquire the character of a mini-trial.[6] At this stage, the task before this Court is limited only to forming a *prima facie* view of the evidentiary material available on record.

6. In the facts of the present case, the role of the Applicant emerges primarily from the supplementary statement of the Complainant, wherein it is alleged the Applicant was present when the agreement for sale was finalised and that he had counted the cash subsequently handed over to the co-accused Dinesh. Although there is no bar for the Complainant to provide a detailed account during the course of investigation, yet at this stage of bail, the supplementary account of the Complainant appears to be somewhat inconsistent with his earlier version of events, where the money was unequivocally stated to have been handed over directly to Dinesh. It is also important to note that in the initial compliant, there is no specific role assigned to the Applicant, apart from the fact that he was present at the time when the Complainant first came to co-accused Dinesh's office in Kale Ram Chamber and he left with the co-accused Dinesh in the Scorpio car, after the cash amount was given by the Complainant. Therefore, in the *prima facie* opinion of this Court, at this stage, there is no clear indication that the Applicant committed any specific act or played an independent role in the actual inducement or misappropriation of funds.

7. The recovery of the forged number plate from the Applicant's residence, as well as the alleged recovery of the Scorpio vehicle from the joint possession of the Applicant and the co-accused, are certainly issues that merit scrutiny. However, the evidentiary value of these materials,

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[6] See also: ***Brijmani Devi v. Pappu Kumar& Anr.***, (2022) 4 SCC 497 and ***Mahipal v. Rajesh Kumar @ Polia***, 2020 (2) SCC 118.

including the CDR entries and circumstantial links, must be tested in the course of trial. It is also relevant to note that no portion of the defrauded amount has been recovered from the Applicant. Thus, the extent of his involvement in the financial transaction remains uncertain at this stage.

8. In view of the fact that investigation stands concluded and a chargesheet has already been filed, and having regard to the limited role ascribed to the Applicant, the Court is of the *prima facie* view that his culpability in the alleged offence would require further corroboration and cannot be definitively assessed at this stage. These are matters best left for evaluation during trial, upon the appreciation of oral and documentary evidence led by both sides.

9. As to the allegation of the Applicant's prior involvement in another FIR registered at P.S. Shahpur, Muzaffarnagar, it is not denied that the said case is still pending trial, and no conviction has been recorded. The Supreme Court in ***Prabhakar Tiwari v. State of Uttar Pradesh***[7] has held that while the existence of criminal antecedents may be a relevant consideration, it cannot form the sole basis for denial of bail. Mere pendency of a prior case, absent any compelling material to show propensity or risk, cannot operate as an absolute bar to the grant of bail.

10. It is well settled that the purpose of grant of bail is neither punitive nor preventative. The Supreme Court has consistently held that pre-trial detention is not to be used as a substitute for punishment; that primary aim sought to be achieved by bail is to secure the attendance of the accused person at the trial[8]. With the investigation complete, and there being no

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[7] (2020) 11 SCC 648.

[8] See also: ***Sanjay Chandra v. CBI***, (2012) 1 SCC 40; ***Satender Kumar Antil v. Central Bureau of***

material on record to suggest that the Applicant poses a flight risk or is likely to interfere with the proceedings, the Court is of the view that continued incarceration would serve no meaningful purpose and would run contrary to the principles enshrined under Article 21 of the Constitution. The prosecution's apprehension about the Applicant's risk of absconding can be mitigated by setting suitable conditions that guarantee his presence at trial.

11. Therefore, considering the totality of circumstances, the Applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹25,000/- with one surety of the like amount, subject to the satisfaction of the Trial Court/ Duty Metropolitan Magistrate/ Jail Superintendent, on the following conditions:

a. The Applicant shall cooperate in any further investigation as and when directed by the concerned IO;

b. The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;

c. The Applicant shall under no circumstance leave the country without the permission of the Trial Court;

d. The Applicant shall appear before the Trial Court as and when directed;

e. The Applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;

f. The Applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

Investigation, (2022) 10 SCC 51.

12. In the event of there being any FIR/DD entry/complaint lodged against the Applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

13. 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 should also not be taken as an expression of opinion on the merits of the case.

14. The bail application is allowed and disposed of in the aforenoted terms.

15. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.

SANJEEV NARULA, J

MAY 26, 2025/*nk*