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

\+ **BAIL APPLN. 2906/2024**

PRAVEEN GUPTA .....Applicant

Through: Mr. Shivesh Kaushik & Mr. Abhiraj Ray, Advs.

versus

STATE THROUGH SHO MEHRAULI PS .....Respondent

Through: Mr. Aashneet Singh, APP for the State.
SI Manoj Kumar, PS Mehrauli.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **28.04.2025**

1. The present application is filed seeking pre-arrest bail in FIR No. 515/2022 dated 17.08.2022, registered at Police Station Mehrauli, for the offence under Sections 420/34 of the Indian Penal Code, 1860 (‘**IPC**’).

2. Briefly, it is the case of the prosecution that on the inducement of the applicant, his wife and his son, the complainant transferred a sum of about ₹1,72,00,000/- between 03.12.2016 to 30.12.2019 in the account of M/s. GMG Engineers and Contractor Pvt. Ltd. (name later changed to M/s. S.R. Foils and Hygiene Pvt. Ltd. in April, 2017) for purchasing assets of one insolvent company–M/s. S.R. Foils and Tissues Pvt. Ltd., that is, one industrial plot measuring 2000 sq. meters in Bhiwadi, Rajasthan and two flats in Gurugram, and to further mortgage the above assets with some NBFC for running the business and getting huge profits. It is alleged that the complainant was made a Director in M/s. GMG Engineers and Contractor Pvt. Ltd. (now

M/s. S.R. Foils and Hygiene Pvt. Ltd. in April, 2017) in December, 2016 and procured 25% shares while her friends and associates procured another 50% share in the said Company. It is also alleged that the applicant had promised to pay a sum of ₹5 lakhs per month to the complainant and share the profits, however, the amount was only paid for 6-7 months and then asked to be returned for the operations of the company.

3. It is alleged that the applicant and his wife mortgaged the two flats in Gurugram to M/s. Indiabulls Housing Finance Limited and M/s. Fullerton India Credit Company Limited for a sum of ₹3,21,00,000/- and ₹2,00,00,000/- respectively, however, the loan amount was taken in their own company–M/s. Lucky Generators Pvt. Ltd. instead. The applicant also allegedly refused to pay the EMI for the loans. It is further alleged that the applicant gave a false shareholding certificate to M/s. Indiabulls Housing Finance Limited wherein he showed his share to be 29% instead of 25% to become eligible to avail the loan.

4. It is alleged that the complainant's access to the factory was obstructed, whereafter, the accused settled the matter with the complainant for a sum of ₹1,69,91,000/-, however, the cheque issued towards part liability was dishonoured.

5. It is alleged that the accused persons siphoned huge sums from the account of M/s. S.R. Foils and Hygiene Pvt. Ltd. due to which the complainant is facing multiple litigations.

6. The learned counsel for the applicant submits that the applicant is innocent and he has been falsely implicated in the present case.

7. He submits that the complainant has given a criminal characteristic to a civil dispute. He submits that the applicant has already suffered the brunt of financial losses suffered by the

Company, even though he was not in charge of the day to day affairs, as against the complainant who is demonstrably in charge of the day to day affairs and has been receiving regular tranches of money in her own name and that of her family.

8. He submits that there is no evidence to support the allegations levelled against the applicant and the existing Bank Records as well as the Ledgers of the company show that the applicant had acted in a *bona fide* manner.

9. He submits that the applicant has joined investigation on a number of occasions and the case is based on documentary evidence. He submits that the custodial interrogation of the applicant is not required in such circumstances.

10. The learned Additional Public Prosecutor for the State strongly opposes the grant of any relief to the applicant.

11. He, however, fairly concedes that the applicant has joined the investigation and cooperated with the same.

12. I have heard the counsel and perused the record.

13. While determining the parameters in granting pre-arrest bail, the Hon'ble Apex Court in ***Siddharam Satlingappa Mhetre v. State of Maharashtra*** **: (2011) 1 SCC 694** held as under:

> *"112. ....*
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> *(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
>
> *(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;*
>
> *(iii) The possibility of the applicant to flee from justice;*
>
> *(iv) The possibility of the accused's likelihood to repeat similar or other offences;*
>
> *(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her; (vi) Impact of grant of anticipatory bail*

particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

14. It is the case of the prosecution that the applicant induced the complainant into investing certain sum, and thereafter, siphoned off huge sum of money from the accounts of the company–M/s. S.R. Foils and Hygiene Pvt. Ltd., causing wrongful loss to the complainant.

15. It is argued on behalf of the applicant that the case pertains to a commercial dispute between two Directors and there is no element of criminality.

16. The updated status report has been handed over by the learned APP, which indicates that a sum of ₹2,07,00,000/- was allegedly paid by the complainant to certain companies between the period from 30.11.2016 to 31.12.2019. The status report indicates that the complainant had also received a sum of

₹1,17,75,000/-. It is also mentioned that during investigation, it is found that the loan account with M/s. India Bulls Housing Finance Limited, to whom the applicant had allegedly made a misrepresentation regarding his shareholding, has already been closed/ settled.

17. It is pertinent to note that while the investments made on the basis of the alleged inducements were made way back between the years 2016 and 2019, the cheque against the settlement between the parties was issued on 16.04.2021 as per the FIR. The FIR was however registered only on 17.08.2022. While it is trite law that mere delay in lodging an FIR is not always fatal to the case of the prosecution, however, it is incumbent on the Court to see whether the delay has been satisfactorily explained and if the explanation provided for such delay is sufficient to believe the case of the prosecution (Ref. ***Sekaran v. The State of Tamil Nadu*: 2023 INSC 1062**).

18. In the present case, the FIR was registered pursuant to an application under Section 156(3) of the Code of Criminal Procedure, 1973. Even so, there is considerable delay in registration of FIR after the alleged inducement and mortgaging of the properties. The cogency and sufficiency of any explanation would be tested during the course of trial, but at this stage, the benefit of the delay cannot be denied to the applicant.

19. It also cannot be ignored that it is not the case of the complainant that she was ignorant about the mortgaging of the two flats. Furthermore, the applicant and the complainant are admittedly directors of the concerned company, whose funds are alleged to have been siphoned of. Whether any element of cheating or inducement was involved in the alleged transactions would be tested during the course of the trial, however, at this

stage, the allegations cannot be said to be wholly true or untrue and any observation in this regard will be premature.

20. As per the statutory provision, the maximum sentence for the offence punishable under Section 420 of the IPC is seven years. The evidence, at this stage, seems to be documentary in nature.

21. It is relevant to note that the applicant was granted interim protection from arrest by order dated 16.08.2024. Pursuant to the same, the applicant has undisputably joined the investigation and cooperated with the same on multiple occasions and also given detailed records.

22. The purpose of custodial interrogation is to aid the investigation and is not punitive. The prosecution has not been able to show any cogent reason as to why the arrest of the applicant is required.

23. It is not in doubt that an order for grant of pre-arrest bail cannot be passed in a routine manner so as to allow the accused to use the same as a shield. At the same time, it cannot be denied that great amount of humiliation and disgrace is attached with the arrest. In cases where the accused has joined investigation, he is cooperating with the Investigating Agency and is not likely to abscond, the custodial interrogation should be avoided.

24. In the light of the aforementioned discussion, in the opinion of this Court, no purpose would be served by allowing the custodial interrogation of the applicant.

25. It is undisputed that the applicant has no antecedents. Any apprehension regarding the applicant fleeing from justice, tampering with evidence or not cooperating with the investigation can be taken care of by putting appropriate conditions.

26. In view of the above, it is directed that in the event of arrest, the applicant be released on bail on furnishing a personal bond of ₹20,000/- with two sureties of the like amount, subject to the satisfaction of the concerned SHO, on the following conditions:

a. 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;
b. The applicant shall join and cooperate with the investigation as and when directed by the IO;
c. The applicant will not leave the boundaries of the country without permission of the learned Trial Court;
d. The applicant shall give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;
e. The applicant shall provide the address of his residence to the IO/SHO and shall not change the same without informing the concerned IO/SHO.

27. In the event of there being any FIR/DD entry/ complaint lodged against the present applicant, it would be open for the State to seek redressal by way of cancellation of bail.

28. It is clarified that the observations made in the present order are for the purpose of deciding the present pre-arrest bail application, and should not influence the outcome of the Trial and should not be taken, as an expression of opinion, on the merits of the case.

29. The present application is allowed in the aforementioned

terms. Pending application also stands disposed of.

AMIT MAHAJAN, J

APRIL 28, 2025
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