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

\+ BAIL APPLN. 4206/2024 CRL.M.A. 34592/2024 CRL.M.A. 34593/2024

SANTOSH KUMAR DAS .....Petitioner

Through: Mr. Anurag Ojha, Mr. Subham Kumar and Mr. Dipak Raj, Advs.

versus

STATE (NCT OF DELHI) .....Respondent

Through: Mr. Manoj Pant, APP for the State.

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

O R D E R

% **09.01.2025**

1. This is an application filed under Section 482 of Bhartiya Nagarik Suraksha Sanhita, 2023 (hereafter '*BNSS*'), on behalf of the applicant, seeking grant of anticipatory bail, in case arising out of FIR bearing No. 09/2019, registered at Police Station Krishna Nagar, Delhi, for offences punishable under Section 420 of the Indian Penal Code, 1860 (hereafter '*IPC*').

2. Brief facts of the case, as per the prosecution, are that an FIR was registered based on a complaint made by one Sh. Santosh Kumar Pandey on 08.01.2019, alleging that a fraudulent transaction had occurred in his bank account maintained with the State Bank of India. He alleged that his account had been debited with ₹1,33,000/-, despite his debit card being in his possession.

3. During the investigation, it was revealed that the amount of ₹1,33,000/- was debited from the complainant's account between 01.10.2018 and 06.10.2018 through hacking. A notice was issued to Flipkart.com (hereafter '*Flipkart*') to provide details of the purchases made with the deducted amount. The response from Flipkart indicated that the accused persons had canceled the orders, and the amount was refunded to two different accounts: SBI Account No. 37063327168 and IDBI Bank Account No. 1004104000109482. The details of the bank accounts, and the amounts credited into these accounts are reproduced in the tabular form below:

S. No.	Account Numbers of alleged	Name & Address of account of holder	Amount credited & status of alleged persons.
1.	A/c No. 37063327168, SBI Bank, Branch-Husainabad, Deoghar, Jharkhand.	Santosh Kumar Das S/o Nagdi Das R/o Village-Jama, PS Madhupur, Distt. Deoghar, Jharkhand. (**Applicant**).	Rs.33,000/- Joined the investigation.
2.	A/c No.1004104000109482 IDBI Bank Branch	Sonu Das S/o Unknown R/o Shahi Exports P. Ltd. Kadib Peenya Industrial Area, Bangalore.	Rs.1,00,000/-. Raids conducted at the registered address i.e. Shahi Exports P. Ltd. Kadib Peenya Industrial Area, Bangalore but despite sincere efforts, accused is not traceable.

4. The learned counsel for the accused/applicant contends that the applicant is a poor laborer residing in Jamnagar, Gujarat, for over a year,

and has been working at a thread manufacturing plant. It is stated that the applicant has joined the investigation, has no previous criminal record, and his custodial interrogation is not required. Therefore, it is prayed that anticipatory bail be granted to him.

5. The learned APP for the State opposes the bail application, arguing that the accused persons had hacked the complainant's bank account, resulting in a deduction of ₹1,33,000/-. It is further stated that ₹33,000/- was credited directly into the applicant's bank account. The learned APP contends that after being granted interim protection, the applicant failed to cooperate with the investigation, did not provide details of his bank account or the registered mobile number, and claimed not to remember the mobile number, stating it was misplaced. Thus, it was prayed that the present bail application be dismissal.

6. This Court has heard arguments addressed on behalf of both the parties, has perused the material on record.

7. In the present case, it is *prima facie* evident that a sum of ₹33,000/- was credited into the bank account of the present applicant. In case the said amount did not belong to the applicant, he could have informed the concerned bank, that the said amount did not belong to him, or to the Police, since the applicant himself claims to be a poor labourer working in a thread factory and the sum of ₹33,000/- was a huge sum of money for him. However, the applicant did not adopt either course of action.

8. During the course of investigation, a notice under Section 41A of Cr.P.C. was served upon the applicant for joining investigation, however, he did not join the investigation, and therefore, proceedings under Section 82 of Cr.P.C. were initiated against him, which were stayed by this Court after

grant of interim protection to the applicant *vide* order dated 20.11.2024. The present applicant joined investigation and he was served with a notice under Section 91 of Cr.P.C. to produce the details of his bank account and registered mobile number updated with his bank account, as well as the mobile number that was used by him at the time of commission of the offence. However, he did not submit the details of the registered mobile number and the mobile number used by him. The applicant also stated that he did not remember the registered mobile number, and his mobile phone had already been misplaced, but he could not produce any missing report in this regard.

9. Clearly, the applicant did not provide the details of his mobile phone, which was linked to his bank account, wherein the sum of ₹33,000/- was credited, after being diverted as part of the *modus operandi*, wherein an order was placed on Flipkart after hacking the bank account of the complainant, and thereafter the order was cancelled and the amount of ₹1,33,000/- was diverted to two different bank accounts, including the bank account of the applicant herein.

10. The co-accused Sonu Das remains untraced, and the cheated amount has not been recovered. In such circumstances, this Court is of the opinion that custodial investigation of the accused/applicant is required for recovery of the mobile phone used for placing the orders on Flipkart, as well as the documents pertaining to the mobile phones etc. which he had tendered for the purpose of opening his bank account.

11. Considering the nature of alleged offence, conduct of the applicant and the fact that the investigation is still at the initial stage, no ground of anticipatory bail is made out.

12. The bail application is accordingly dismissed.

13. It is, however, clarified that nothing expressed herein above shall tantamount to an expression of opinion on merits of the case.

14. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 9, 2025/*at*

Click here to check corrigendum, if any