



2024 : DHC : 3889



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

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*Date of Decision: 8<sup>th</sup> May, 2024*+ **BAIL APPLN. 2403/2023 & CRL.M.A. 19041/2023,  
CRL.M.A. 19553/2023, CRL.M.A. 19554/2023, CRL.M.A.  
19555/2023**

DEEPAK GARG @ TANISHQ ..... Applicant

Through: Mr. Mohit Rana, Ms. Sapna,  
Mr. Gajendra Singh and Mr.  
Anuj Raj, Advs.

versus

STATE OF NCT OF DELHI ..... Respondent

Through: Mr. Amol Sinha, ASC for the  
State with Mr. Kshitiz Garg,  
Mr. Ashvini Kumar and Ms.  
Chavi Lazarus, Advs. with Insp.  
Hansa Ram, Cyber PS South.**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J.**

1. The present bail application is filed under Section 438 of the Code of Criminal Procedure, 1973 (CrPC) seeking pre-arrest bail in FIR No. 70/2022 dated 24.08.2022, registered at Police Station Cyber Police Station South, for offences under Sections 419/420 of the Indian Penal Code, 1860 (IPC) and Section 66(D) of the Information Technology Act, 2000 (IT Act).

2. The FIR was registered at the behest of Mr. Sumit Kumar, the director of M/S Headsup Corporation Pvt. Ltd. (hereafter 'the company'). The company was engaged in the business of providing



services of Human Resource Management and IT solutions. It is alleged that certain unknown individuals were falsely misrepresenting themselves under the company's name to offer some fraudulent jobs in order to cheat money illegally in exchange for the same. It is alleged that the offenders created a forum, namely, "Task Reception" on Telegram whereby they insisted on completing certain tasks to earn a monetary benefit in return. They also issued fake certificates with the company's details in order to cheat money from many individuals while asking them to complete the said tasks.

3. It is alleged that some of the cheated amount was transferred to the account of one firm namely, "Blachit Overseas Pvt. Ltd.". The firm was registered by an accountant namely, Sunny Aggarwal at the request of the applicant. It is alleged that a mobile phone was seized from the possession of co-accused Arpit Jain, in which some WhatsApp chats were also found indicating that the applicant is the operator of accounts of the firms collecting cheated amounts from the victims. It is alleged that the applicant was also involved in the manipulation of Aadhar cards as per the WhatsApp chats between the applicant and co-accused Arpit Jain.

4. During the investigation, co-accused Anant Jain @ Aashu disclosed that he was an employee of the applicant and getting a salary of ₹25,000/- per month for assisting him in taking premises on rent for the fake companies, opening and verifying the current accounts of those companies and delivery of banking kits to the applicant.

5. During the investigation, bank officials of IDFC First Bank told



that the applicant introduced himself as the owner of the firm “Blachit Overseas Private Ltd.” during the opening of its account and physical verification of its address. As per the account analysis of Blachit Overseas Pvt. Ltd and Kaiyar Logistics Pvt. Ltd, it was discovered that there is a total transaction of ₹10,01,33,603/- in both the companies.

6. The learned counsel for the applicant submits that the applicant had no role to play in the commission of the alleged offences and had been falsely implicated in the present FIR. He submits that the investigation agency had failed to establish any connection whatsoever of the applicant in relation to the facts of the present FIR.

7. He submits that the investigation agency rather than serving the applicant with the notice under Section 41-A of the CrPC had mischievously obtained NBW by misrepresenting the court regarding the whereabouts of the applicant and had initiated the proceedings under Section 82 of the CrPC against the applicant.

8. He submits that the complainant is a company which cannot be manipulated or influenced by the applicant and no loss has been caused to them. Moreover, there exists no witness in the present case to whom there may be chances of threat.

9. He submits that the applicant was granted interim protection by this Court by order dated 31.07.2023 and he has already joined the investigation and provided the necessary information available with him.

10. *Per contra*, the learned Additional Public Prosecutor for the State opposed the grant of any relief to the applicant. He submits that



the allegations against the applicant are serious in nature. It is argued that the *modus operandi* of the present applicant amply demonstrates his dishonest intention.

11. He submits that raids were conducted at the residence of the applicant and notices under Section 41 of the CrPC were also served in the month of April, 2023 but he did not join the investigation. Therefore, proceedings under Section 82 of the CrPC were initiated against the applicant.

12. I have heard the learned counsel for the parties.

13. It is to be kept in mind that the considerations governing the grant of pre- arrest bail are materially different than those to be considered while adjudicating the 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.

14. 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 in Pokar Ram v. State of Rajasthan [(1985) 2 SCC 597 : 1985 SCC (Cri) 297 : AIR 1985 SC 969] : (SCC p. 600, para 5)*

*“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.”*

*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)*

*“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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*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.”*

15. 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*]. Granting pre-arrest bail to the applicant would undoubtedly impede further investigation. An order of pre-arrest bail cannot be granted in a routine manner so as to allow the applicant to use the same as a shield. The interim protection provided by this court to the applicant by order dated 31.07.2023, in my view does not come in aid of the applicant.

16. In the present case, specific allegations have been levelled against the applicant involving a meticulously orchestrated, alleged financial entrapment schemes *via* online platforms (Telegram) wherein the innocent people are duped under the guise of employment opportunities. The Court acknowledges that such activities constitute fraudulent practices that not only inflict harm upon individual victims but also undermine public trust in online financial transactions. Instances of fraudulent schemes, cast a significant shadow of uncertainty and insecurity over digital platforms integral to contemporary financial frameworks.

17. The allegations against the applicant, as detailed in the FIR registered at the instance of Mr. Sumit Kumar, director of M/S Headsup Corporation Pvt. Ltd., involve the misuse of the company's name to orchestrate job-related frauds. Some unknown individuals, allegedly under the applicant's direction, formed a Telegram forum called "Task Reception" to deceive people into completing tasks for monetary gains and issued fake certificates to extort money. The applicant is implicated in channelling some of the fraudulent proceeds to "Blachit Overseas Pvt. Ltd.", a firm registered by accountant Sunny



Aggarwal at his behest. Investigations in the present case also uncovered WhatsApp chats on co-accused Arpit Jain's phone, indicating the applicant managed the accounts involved in the fraud and manipulated Aadhar cards. Further, co-accused Anant Jain @ Aashu, an employee of the applicant, confessed to aiding in operational tasks for the fraudulent firms. Bank officials from IDFC First Bank also identified the applicant who introduced himself as director of "Blachit Overseas Private Ltd".

18. The nature of allegations indicate that further investigation needs to be carried out. The same in the opinion of this Court would require custodial interrogation of the applicant. The allegations do not seem to have been made to unnecessary implicate or injure the applicant.

19. Considering the above and the nature of the offence and the possibility of multiple victims who have been cheated, this Court does not find the present case to be a fit case for exercising jurisdiction under Section 438 of the CrPC.

20. The present application is accordingly dismissed.

21. 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**

**MAY 8, 2024**