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

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Date of Decision: 7th May, 2024

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BAIL APPLN. 1608/2024

DEEPAK MANDAL

..... Applicant

Through: Mr. S. K. Santoshi, Adv.

versus

THE STATE NCT OF DELHI

..... Respondent

Through: Mr. Ajay Vikram Singh, APP
for the State with Mr. Arun
Shukla and Mr. Vijaya Kumar,
Advs. with SI Ankur Sejwal, PS
Cyber South, Saket.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. (Oral)

CRL.M.A. 14013/2024 (*exemption from filing certified copies of the annexures*)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 (**CrPC**), seeking pre-arrest bail in FIR No. 104/2023 dated 20.11.2023, registered at Police Station Cyber Police Station South, for offences under Sections 419/120 of the Indian Penal Code, 1860 (**IPC**).



4. The FIR was registered on a complaint lodged by the complainant, namely - Anjali Kapoor Bissel, alleging that she has been cheated for a sum of ₹4,98,860/- by unknown persons. It is alleged that the complainant received a text message on her mobile phone prompting her to update her PAN Card details. Subsequently, when she opened the link and filled in the requisite details, she received a phone call purportedly from a Bank Manager, who requested access to the portal. Succumbing to this request, the complainant shared the portal information. Following this, the complainant received notification that a sum of ₹4,98,860/- had been fraudulently withdrawn from her account.

5. During investigation, the Police found that the cheated amount had been transferred to the accounts of one person namely- Jugal Kishor.

6. Two persons, during the course of the investigation, were arrested from Jharkhand, who disclosed that they were associates of the present applicant and they had been duping many people in a similar manner. They also disclosed that the applicant was the one who arranged the data of the victims to enable cheating.

7. The Police found that some of the accounts in which the money was transferred, were registered in the name of the applicant and a huge amount of money has been credited over a period of time.

8. The learned counsel for the applicant submits that the father of the applicant who is also named as a co-accused in the present case, has already been admitted on bail under Section 438 of the CrPC.



9. He submits that another co-accused namely, Pankaj Prasad Verma, was also admitted on bail under Section 438 of the CrPC.
10. He further submits that the amount of money has already been returned to the complainant.
11. *Per contra*, the learned Additional Public Prosecutor for the State opposed the grant of any relief to the applicants. He submits that the allegations against the applicants are serious in nature. He submits that the learned Additional Sessions Judge has rightly rejected the pre-arrest bail application of the applicants vide a detailed and reasoned order and there is no ground to interfere with the same.
12. I have heard the learned counsel for the parties.
13. It is to be kept in mind that the investigation is currently at a nascent stage. The considerations governing the grant of prearrest 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 has already been carried out by the investigating agency.
14. It is alleged that the applicant along with other accused, have also cheated various other persons. Even though the present FIR is registered on a complaint given by one person, the Police are trying to trace the other complainants from whose accounts the money has been transferred into the applicant's accounts.
15. From the mode and manner in which the offences have been committed, it is apparent that the complainant is not the only person who has been cheated.



16. This court observes with grave concern - the proliferation of cyber frauds, wherein the accused exploit the vulnerability of gullible individuals, particularly those enticed due to the prevalent reliance on online banking services. In contemporary times, the advent of online banking has become ubiquitous, rendering it indispensable for numerous financial transactions. However, this convenience has unfortunately paved the way for unscrupulous elements to engage in fraudulent activities, preying upon the trust and naivety of the public.

17. The nature of the offence is such that the task of the Investigating Agency has become onerous. The same, in the opinion of this Court, requires custodial interrogation of the present applicant. Given the pattern of conduct and the serious implications of the offences as alleged, there is a justified concern regarding the applicant's potential influence over the evidence and the possibility of committing similar offences if not detained.

18. The investigation conducted thus, so far does not indicate that the applicant is sought to be falsely implicated. The material presented by the prosecution establish a prima facie involvement of the applicants. The evidences, including digital records and communication, link the applicants to the alleged offence.

19. 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.”

20. 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 anticipatory bail to the applicant would undoubtedly impede further investigation. An order of bail cannot be granted in a routine manner so as to allow the applicant to use the same as a shield.

21. 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.

22. The present application is accordingly dismissed.

23. 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 7, 2024 / 'KDK'/UG