

2022/DHC/005875

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 30.12.2022

+ **BAIL APPLN. 3077/2022**

ASHWANI KUMAR

..... Applicant

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. R.K. Tarun, Mr. Rohit Shukla & Mr. Abhay Solanki, Advs.

For the Respondents : Ms. Richa Dhawan, APP

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed under section 438 of Cr.P.C for grant of pre-arrest bail in FIR No. 0299/2020 dated 15.12.2020 under Section 419/420/468/471/120B/34 of the Indian Penal Code, 1860 (IPC) & Section 66 C & D of the Information Technology Act, 2000 (IT Act) at police station Special Cell, New Delhi.

2. The complaint was registered on a secret information that a fake call centre being run at 34, DLF, 3rd Floor, Industrial Area, Main Najafgarh Road, Moti Nagar, Delhi is involved in large scale cyber cheating with US citizens on the pretext of misuse of Social Society Number (SSN) of the citizens of United States. A raid was conducted

2022/DHC/005875

at the call centre and a total number of 54 accused were apprehended from the call centre and a large number of Computer system, Sever, Routers, Switches and headphones alongwith other incriminating evidence were also seized from the premises. It was alleged by the accused persons that the owner of the call centre is the applicant Ashwani Kumar and he is actively involved in the scam. The complete racket of cheating and impersonation with US citizens was run by the applicant along with other co-accused who were managing on behalf of the applicant.

3. Learned counsel for the applicant submits that he has been falsely implicated. He submits that the only fault of the applicant is that the applicant is the owner of the property from where the alleged fake call center was run.

4. He submits that the said property bearing No. 34, DLF Industrial Area, Main Najafgarh Road, Moti Nagar, Delhi was given on rent to one Mr. Kamal Kumar through rent agreement dated 13.10.2020.

5. The police verification of the tenant was also done in compliance of the statutory mandate on 24.11.2020.

6. The FIR was registered on 15.12.2020 and the applicant at that time was staying in Dubai. In support of his contentions, the applicant relies upon the passport issued from the Dominion Republic, the rent agreement dated 13.10.2020 and the copy of the tenant verification form dated 24.11.2020.

2022/DHC/005875

7. It is stated that the notice under Section 41A was issued to the applicant for the first time on 18.07.2022. The applicant, at that time not being in India, sent a whatsapp to the Investigating Officer pointing him out that he is not in a position to join the investigation on such a short notice. The applicant, thereafter, moved an application under Section 438 of the Code of Criminal Procedure, 1973 (CrPC) before the learned Trial Court which was dismissed by order dated 07.07.2022. A subsequent application seeking the same relief was also dismissed by the learned Trial Court by order dated 26.07.2022.

8. Learned APP has opposed the present application. She submits that not only the applicant but also the other co-accused persons namely, Parashar Kumar and Archit Garg, are absconding and wilfully evading to join the investigation.

9. She further submits that the proceedings under Section 82 of the CrPC have already been initiated, which are pending consideration before the learned Trial Court. The allegation involves large scale cheating of foreign nationals. The calls were made to US citizens impersonating as Social Security Administration Department, USA officers. Such person, if granted bail, would tarnish the image of our country. The investigation has not proceeded because of non-cooperation.

10. She submits that the agreement relied upon by the applicant is found to be not genuine and is a self-serving document. No record of

2022/DHC/005875

alleged police verification of the tenant is found with the concerned Police Station.

11. She further submits that as per the details taken from the Intelligence Bureau, the applicant is found to have travelled to India on a number of occasions. Therefore, reliance on the petitioner's passport issued by Dominion Republic is of no consequence because the petitioner has not surrendered his Indian passport and is found to be travelling on the said passport.

Reasoning

12. The FIR was registered way back on 15.12.2020. There are serious allegations that the citizens belonging to the United States of America were cheated in the manner as stated in the FIR. The applicant is, admittedly, the owner of the property from where the call centre was being run which was used for the purpose of committing crime. The applicant is stated to be kingpin of the entire fraud.

13. Prior to filing of the present application, an application under Section 438 of Cr.P.C. was filed before the Court of learned ASJ. The said application was dismissed noting that the custodial interrogation of the applicant is required to unearth the conspiracy and that the direct evidence to conspiracy is seldom found.

14. The applicant has relied upon a rent agreement dated 13.10.2020, in order to show that the property from where the call centre was being run, was in possession of the tenant, namely, Mr.

2022/DHC/005875

Kamal Kumar. The status report categorically states that the said alleged tenant, Mr. Kamal Kumar, is not found to be residing at the address mentioned in the rent agreement.

15. It is also significant to note that, though, it is claimed that the property was given to the said tenant on rent, the only evidence, at this stage, is that an advance rent for two months was received in cash. No banking transaction has been found to have been entered into with the said alleged tenant. It is also pointed out in the status report that the property, address of which is allegedly shown of the said tenant is owned by one Mr. Vijender Singh Thakur, who resides in the said property and had purchased the same on 29.12.2006.

16. The said agreement dated 13.10.2020, at this stage, seems to be a self-serving document. The authenticity of the said agreement would be tested at the time of trial. However, at this stage, the genuineness is doubtful, specially when even the record of the police verification of alleged tenant is not found with the concerned Police Station.

17. IO has also handed over the documents during the present proceedings which show that the claim of the applicant that he is not staying in India is also incorrect. Travel details taken out from the Ministry of Home Affairs show that the petitioner had arrived in Delhi on 07.01.2022 and then departed from Mumbai on 26.03.2022.

2022/DHC/005875

18. Therefore, *prima facie*, the claim of the applicant that he had not joined investigation on account of not being available in the country is incorrect.

19. It is also significant to note that the proceedings under Section 82 of Cr.P.C. have been initiated against the petitioner.

20. Arrest is a part of procedure of the investigation to secure not only the presence of the accused but also to serve other purposes. The grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail.

21. Anticipatory bail is not to be granted as a matter of routine and it has to be granted only when the court is convinced that circumstances exist to resort to that extraordinary remedy. Custodial interrogation is a recognized mode of investigation which is not only permitted but is held to be more effective.

22. Protection would also be detrimental for the purposes of carrying out the investigation of the instant case without a free hand to the Investigating officer on certain crucial aspects of the case, including:

- a) Ascertaining the role of other key persons involved in the commission of the offence herein, and to determine the modus operandi adopted by the said Accused persons.

2022/DHC/005875

- b) Ascertaining all known/unknown entities/accounts which have been used in the commission of offences including the parking of the proceeds of crime.
- c) Ascertaining the end use of such funds involved in the instant case.
- d) Confronting him with the voluminous incriminating material for bringing the investigation to a logical conclusion.

23. Interrogation of an accused, while in custody, is qualitatively different from that undertaken while the accused is enjoying protection under an order of a Court against his arrest. This is a well recognized position in law. It is the right of the investigating agency to conduct a proper and fair investigation. Hon'ble Apex court in the case of *CBI vs Anil Sharma [1997 7 SCC 187]* held that investigating a person appearing before the Investigating Officer under the protection of the Court order under 438 of the Cr.P.C. is qualitatively different from the custodial interrogation which would lead to better collection of evidence, thereby ensuring a proper investigation. Custodial interrogation is more elicitation – oriented than questioning an individual/suspect ensconced with a protection of Court Order.

24. The order of bail in anticipation of arrest cannot be granted for it to be used as a shield. In the facts of the present case, it cannot be said, at this stage, that the allegations made against the applicant are frivolous or have been made to falsely implicate the applicant.

25. Keeping in mind the nature of allegations, and the fact that the applicant has not joined and cooperated in investigation which has

2022/DHC/005875

also led to initiation of proceedings under Section 82 of Cr.P.C., this Court feels that it is not a fit case for exercise of discretion under Section 438 of Cr.P.C.

26. The application is, therefore, dismissed.

27. It is, however, made clear that any observations made in the present order are only for the purpose of deciding the present bail application and should not influence the outcome of the trial.

DECEMBER 30, 2022
KDK/"SS"

AMIT MAHAJAN, J



सत्यमेव जयते