$~

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

% Reserved on: 2nd June, 2021
Decided on: 4th June, 2021

\+ **BAIL APPLN. 1644/2021**

BHANU PRAKASH SINGH ..... Petitioner
Represented by: Mr. Manav Gupta, Advocate with Mr. Zafar Khurshid, Mr. Sahil Garg & Mr. Ankit Gupta, Advocates.

versus

STATE (G.N.C.T OF DELHI) ..... Respondent
Represented by: Mr. Amit Gupta, APP for the State with Insp. Arun Kumar Chauhan, PS Kirti Nagar.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition the petitioner seeks anticipatory bail in case FIR No. 96/2021 under Sections 419/420/120-B/34 IPC and Section 66-C/66-D of the Information Technology Act, 2000 registered at PS Kirti Nagar.

2. Learned counsel for the petitioner contends that the petitioner is a young boy aged 32 years and is not concerned with the so-called fake call centre being run. Petitioner has clarified that he is working with M/s. Deans Infratech Pvt. Ltd. which has its offices in Delhi, Mumbai and are engaged in the road construction business, which fact has been verified by the investigating officer. Hence the petitioner is sought to be falsely implicated in this case. The so-called employees of the call centre were all granted regular bail without any Police custody remand. All the computers, datas, phones which are required for investigation have already been recovered and

Signature Not Verified
Digitally Signed By:JUSTICE MUKTA GUPTA
Signing Date:04.06.2021 15:43:51

no recovery is required to be made from the petitioner. Since the offences alleged against the petitioner are punishable with sentence upto seven years imprisonment, the petitioner was required to be given a notice under Section 41-A of the Cr.P.C. in terms of the decision of the Supreme Court reported as (2014) 8 SCC 273 *Arnesh Kumar Vs. State of Bihar & Anr*. Further while issuing the guidelines for arrest the High Powered Committee of this Court directed that in view of the COVID-19 situation the judgment of the Supreme Court in *Arnesh Kumar (supra)* should be followed and accused who are not required for interrogation be not arrested and in this regard the High Powered Committee issued directions to the Commissioner of Police to issue guidelines to all DCPs to ensure compliance of the decision of the Supreme Court in *Arnesh Kumar*, (supra), DLSA to conduct sensitization programme and directions on administrative side to the concerned District and Sessions Judges to ensure compliance of the directions passed by the Hon'ble Supreme Court. All accused have been released on bail including the accused in whose name the property was leased where the said alleged fake call centre was being run. Petitioner is suffering from serious ailments which medical documents have been duly verified and in view of the COVID-19 situation, the petitioner be not subjected to Police or Judicial custody. The only evidence against the petitioner is the disclosure statements of the co-accused persons which are not admissible in evidence and cannot be relied upon to deny anticipatory bail to the petitioner.

3. Learned APP for the State on the other hand contends that the petitioner is the king pin of the fake centre being run by virtue of which several victims in USA were cheated by way of VOIP calls. The petitioner is one of the main accused who was running the centre, as is evident from

Signature Not Verified
Digitally Signed By:JUSTICE
MUKTA GUPTA
Signing Date:04.06.2021
15:43:51

the investigation carried out from the co-accused who were found working at the said centre. The co-accused were taking instructions from the petitioner and were duly reporting to him. The money transaction was done by the petitioner through crypto currency and Zelle account and to overcome trail of the money, call centre employees were paid the salary in cash. Learned APP further contends that one of the victims from U.S. has joined the investigation who has been cheated to the tune of USD 6683.34 by the petitioner and the co-accused. Considering the gravity of the offence and that necessary investigation is still required to be carried out to unearth the deep conspiracy and the magnitude of the offence, no anticipatory bail be granted to the petitioner.

4. The above-noted FIR was registered after a secret information was received on 25th March, 2021 in respect of an organized gang of cyber criminals who were posing themselves to be Amazon Tech supporters through VOIP calls over phone and engaging in cheating USA based victims from 5/8, Industrial Area, Kirti Nagar, West Delhi. A raiding team was constituted which raided the 2nd floor of the premises where several callers were engaged in receiving the calls from international numbers. Two persons Taranjot Singh and Krishna Gurung were identified as senior executives supervising the activities of 13 other tele-callers, who were attending the calls and were passing on directions to the callers.

5. As per the status report the said 15 accused were arrested and it was revealed that the offence by the accused was committed in the manner, beginning with a VICI Dial software generated pre-recorded threatening robo-call claiming to be from Amazon, being sent to victim and telling the recipient US resident that suspicious transactions have taken place in their

Signature Not Verified
Digitally Signed By:JUSTICE MUKTA GUPTA
Signing Date:04.06.2021 15:43:51

Amazon account and thereafter deceitfully persuading the victims to connect with them via Remote Access Software for resolving that issue. The victim's computer/ mobile remote access was connected to the software like Quick Support, AnyDesk, etc., in the fictitious name of connecting victim to secure Amazon server. Thereafter the victim was made to purchase e-Gift cards (X-Box, Gpay etc.) through their Amazon account linked Credit/Debit cards claiming that to be dummy transaction and part of verification process, thereby persuading the victim to login into their internet banking for getting Amazon refund amount resulting in the accused getting the information regarding victim's banking credentials and making them transfer amount to temporary Zelle accounts, crypto-currency wallets of the accused. E-mail was then sent to the victim that they had been successfully granted refund amount, finally sending the victim to store/supermarket for purchasing gift pack (Target, Nike, Walmart, Google Play, Best Buy etc.) and conveying the e-gift card numbers to the accused as part of refund process thereby exploiting the victim financially and once the victim could not be further duped the further calls were hung up. Since the accused connected with the victim through spoofed VOIP numbers, the victim could neither call back nor were the numbers traced. Thus, the magnitude of cheated amount is huge, as presently the number of victims is unknown. One of the US resident victims has joined the investigation and stated that he has been cheated by the present centre for an amount of USD 6683.34.

6. From the spot 23 computers, Internet distribution switch, Internet Routers, mobile phones, several pages of hand-written cheating script booklet about the communication to be made to the victims for cheating, telecommunication softwares, VOIP (Internet) calling dialers, incriminating

Signature Not Verified
Digitally Signed By:JUSTICE MUKTA GUPTA
Signing Date:04.06.2021 15:43:51

data in computers and mobile phones were recovered at the instance of the 15 accused arrested on 26th March, 2021. During the course of investigation two other accused, namely, Balwan Singh Yadav (technical support & VOIP software dialer provider) and Surender Pal Singh in whose name rent agreement for the premises was entered into, were also arrested. According to the investigation, the entire illegal operation was being carried out at the instance of the petitioner and one more co-accused who had hired the 17 arrested accused in a pre-planned criminal conspiracy to cheat US victims. The e-gift cards procured from the US victims deceitfully were converted into Indian currency in cash by the present petitioner. The Zelle account/ US accounts/ crypto-currency wallets used to receive cheated amount were also procured and under the control of the present petitioner. The mobile phone of the petitioner was connected with the e-mail ID which was being used at the alleged centre to deceive the victims and as per the co-accused arrested, the petitioner was acting in the capacity of the owner of the centre. On arrest of the co-accused screen-shots of the chats between the petitioner and the co-accused were recovered which indicated that the petitioner used to give instructions to the 15 accused present and working at the centre.

7. Accordng to the State, custodial interrogation of the petitioner is required to unearth the source from which the petitioner procured the data of US resident victims, Zelle accounts/ US bank accounts, crypto-currency wallets (used to receive the cheated amount). The petitioner was the Admin of the WhatsApp group of the centre, namely, $$SALES$$ which also contains incriminating details of the cheated amount, crime methodology and the role of the other co-accused. Since the petitioner could not be arrested, his non-bailable warrants were sought from the learned Trial Court

Signature Not Verified
Digitally Signed By:JUSTICE MUKTA GUPTA
Signing Date:04.06.2021 15:43:51

which were granted on 13th May, 2021. The complete trail of money of the cheated amount is also required to be identified and unearthed. Considering the gravity of the offence, learned APP for the State submits that present is not a case for grant of anticipatory bail as the petitioner is involved in a serious offence which has ramifications internationally, as citizens of US were cheated in a fraudulent manner by VOIP call by misleading the victims, the material evidence in relation to the manner of cheating, the procurement of data, the violations committed resulting in loss to the Government exchequer are still to be unearthed.

8. Undoubtedly, the offences alleged against the petitioner are punishable upto 7 years imprisonment, however the magnitude of offence is enormous. In *Arnesh Kumar (supra)* relied upon by learned counsel for the petitioner, Supreme Court dealt with Section 41 Cr.P.C. and emphasising on Section 41(1)(b) Cr.P.C. it was observed that when a person is accused of an offence punishable with imprisonment for less than 7 years or which may extend to 7 years with or without fine, not only has the Police officer to be satisfied that the accused has committed the said offence, but he is also required to be satisfied that the arrest of the accused is necessary to prevent such person from committing any further offence, or for proper investigation of the offence or to prevent such person from exploiting the evidence of the offence to disappear or tamper such evidence in any manner or to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or the Police Officer, or unless such person is arrested his presence in the Court whenever required cannot be ensured, and the Police Officer shall record his reasons in writing while making such

Signature Not Verified
Digitally Signed By:JUSTICE MUKTA GUPTA
Signing Date:04.06.2021 15:43:51

arrest. Thus, the law does not mandate a blanket ban on arrest of accused against whom there is a reasonable suspicion of commission of a cognizable offence punishable with imprisonment for a term of less than 7 years or which may extend to 7 years but requires that the Police officer should be satisfied about the necessity of arrest on the conditions as noted in the sub-clauses (a) to (e) and should record reasons for the same. Even the High Powered Committee of this Court constituted under the directions of the Hon'ble Supreme Court issued direction to scrupulously follow the directions in the decision in *Arnesh Kumar*.

9. As noted above, not only is there prima facie material available with the prosecution to show that the petitioner is involved in the alleged offence as besides the statement of the co-accused from their WhatsApp chat it is evident that the petitioner is giving them instructions, the investigation is at a very preliminary stage when the entire conspiracy and the manner in which various datas of the victims were collected and the money trail pursuant to the cheating is required to be unearthed. Further, the losses to the Government exchequer and the extent of cheating to the number of victims involved is also required to be unearthed and based on this material the investigating officer sought the non-bailable warrant of the petitioner which has already been granted by the learned Trial Court vide its order dated 13th May, 2021.

10. Learned counsel for the petitioner has vehemently relied on the fact that the petitioner is working with M/s. Deans Infratech Pvt. Ltd. with its offices at Delhi and Mumbai and the company is engaged in the road construction business. Though this fact has been verified form the Managing Director of the company who stated that the petitioner was

Signature Not Verified
Digitally Signed By:JUSTICE MUKTA GUPTA
Signing Date:04.06.2021 15:43:51

appointed in his company on 8th September, 2017 as Business Development Manager and his work profile was to develop new business opportunities throughout India without being physically based in any particular office location, however, the petitioner's employment as Business Development Manager with M/s. Deans Infratech Pvt. Ltd. does not lead to an inference that the petitioner is not running a centre from which 15 employees and two other co-accused have already been arrested. Further, the medical documents filed by the petitioner have also been verified. However, the medical report of the petitioner relate back to June 2016 whereafter a medical prescription dated 23rd May, 2021 and report of the blood test conducted on 22nd May, 2021 has been placed on record. The prescription dated 23rd May, 2021 suggests tenderness in L-5 region and X-Ray and MRI of lumbar spine has been prescribed which reports have not been placed on record. The other ailments relied upon are relating to the eye, which prescription date back to the year 2013 and the recent prescription is of 17th February, 2020 when two eye-drops were prescribed. Thus, even on the medical condition this Court finds that there is nothing on record to suggest that the petitioner is suffering from any co-morbidity which is likely to affect him due to the COVID-19 pandemic.

11. In view of the discussion above, this Court finds no ground to grant anticipatory bail to the petitioner. Petition is dismissed.

12. Order be uploaded on the website of this Court.

(MUKTA GUPTA)
JUDGE

JUNE 04, 2021/'ga'

Signature Not Verified
Digitally Signed By:JUSTICE MUKTA GUPTA
Signing Date:04.06.2021 15:43:51