

Bail application no. 635/2021
State Vs Anurag Mehrotra
FIR no.181/2020
PS EOW
u/s 406/420/34 IPC

06.09.2021

HEARING THROUGH VIDEO CONFERENCING

In view of the imminent threat of pandemic of COVID 19 and the directions passed by the Hon'ble Delhi High Court in circular nos. 257-258/RG/DHC/2021 dated 08.04.2021, 5/R-1R32/RG/DHC/2021 dated 23.04.2021, 6/R/RG/DHC/2021 dated 14.05.2021, 372/RG/DHC dated 28.06.2021, 438/RG/DHC/2021 dated 22.07.2021 and 569/RG/DHC/2021 dated 19.08.2021, the present application has been taken up for hearing through video conferencing from my camp office with the consent of the Ld. Additional Public Prosecutor and the Ld. Defence Counsel to contain the spread of COVID 19.

Present: Ms Kiran Bala, Id Addl PP for the State through VC.
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Sh Vijay Kumar Aggarwal, Sh Sarthak Sharma, Hardik Sharma and Ms. Barkha, Id counsels for applicant/accused Anurag Mehrotra through VC.
Sh Prashant Diwan, Id counsel for complainant through VC.
SI Shiv Dev through VC.

This is an application u/s 438 Cr.P.C for grant of anticipatory bail moved on behalf of applicant/accused Anurag Mehrotra. No other bail application of applicant is stated to be pending in any other court.

Ld counsel for the applicant has mainly argued that applicant is a permanent resident of Gurgaon. He is well educated and qualified professional of impeccable repute and he is a Managing Director of Ford India. The applicant has been falsely implicated in the present case by complainant deceitfully and dishonestly alleging inter-alia the commission of the offences of criminal breach of trust and cheating by the applicant. The present FIR has been registered on the direction of Ld CMM dated 04.11.2020, despite the fact that in response to the application u/s 156 (3) Cr.P.C, the EOW had already filed the status report in which it has been reported that no offence is made out as such the court was supposed to proceed with the direction passed by the Hon'ble High Court in the case titled **Dr. Rajni Parli Wala Vs Dr. D. Mohan & anr**, (ILR (2009) IV Delhi 760) wherein it has been held as under:-

“15. The fact that the investigation report dated 21st July 2004 of the EOW of the Police was not pursuant to the registration of an FIR consequent upon the order of the Ld MM in application of respondent no. 1 under section 156 (3) Cr.P.C, will not make a difference to the nature of the report. The fact is that this was the report submitted by the police pursuant to the order of ld MM. Again conducting a detailed inquiry would be a futile exercise since the previous one proceeding the said report was a detailed one. This court holds that in the facts of the present case, the report dated 21st July 2004 submitted by the EOW of the police to the Ld MM should be treated as a cancellation report filed by police in terms of Section 173 (1) Cr.P.C pursuant to the investigation carried by it on the direction issued by the Ld MM in the application u/s 156 (3) Cr.P.C.”

He further submitted that there is delay in filing the FIR/making complaint as the complaint has been made after 18 months. The punishment for the alleged offences is less than 7 years, so arrest of applicant is not required in terms of judgment of '**Arnesh Kumar Vs State of Bihar**' and further, in case arrest is required, IO is required to follow the direction passed in the case "**Amandeep Singh Johar Vs State of NCT of Delhi & ors**". He further submitted that the complainant has instituted the complaint as a clear counterblast to the termination of his business relationship with Ford India with the intention of extorting money from Ford India. The allegations made in the FIR are civil in nature. Since the present complainant did not adhere to the terms and conditions of agreement of dealership and also not clear their outstanding credit ie upto Rs. 4 Crores approximate as cleared from letter dated 18.01.2019 wherein specifically mentioned about the misconduct or not following the condition of agreement. Hence, the dealership of the complainant was terminated vide termination letter dated 05.03.2019. Ld counsel has referred to the letter dated 18.01.2019. Ld counsel further submitted that post termination complainant had paid Rs. 65 lacs to the Ford company. Had there been any clause with regard to the payment of compensation of Rs. 35 Crores in the alleged agreement dated 24.04.2018, complainant would have never paid Rs. 65 lacs to the Ford Company post termination. Ld counsel further submitted that applicant is the Managing Director of the company Ford India (US based) which is a reputed company and have large business in India as such there is no chance of absconding of the applicant. The applicant has nothing to do with the alleged offences and no offence u/s 420/406 IPC is made out against the applicant. He further submitted that it is not the applicant company who cheated the complainant rather complainant himself cheated the public at large as he had not

followed the terms and conditions of the agreement of dealership in the present case. Ld counsel further submitted that the alleged Article 2 Clause 10 in agreement dated 24.04.2018 was not found in the agreements of the contemporary period of Ford Company. The applicant has already joined the investigation, so custodial interrogation of applicant is not required. Ld counsel has referred to standing order no. 173/2021 dated 21.01.2021 issued by Commissioner of Police, Delhi and submitted that even the approval for arrest of applicant has not been taken by IO in terms of above said standing order. Ld counsel requests for grant of anticipatory bail to the applicant. Ld counsel has relied upon the judgments titled **K.Jayram & Anr Vs State**, 2006 SCC OnLine Del 997, Sharad Kumar Aggarwal Vs State, 2012 SCC Online Del 4327, Vesa Holding Private Ltd & anr Vs State of Kerala & ors, (2015) 8 Supreme court Case 293, **Amandeep Singh Johar Vs State of NCT of Delhi & ors**, W.P.C © 7608/17, DOD 07.02.2018, **Sushila Aggarwal & ors Vs State** (NCT of Delhi) and anr, Special Leave Petition (Criminal) nos. 7281-7282/2017, DOD 29.01.2020.

Ld Addl PP for the State assisted by ld counsel for the complainant has mainly argued that the applicant has committed offences u/s 420/406 IPC. Ld Addl PP has referred to Article 2 Clause 10 of agreement dated 24.04.2018 sent on the Whatsapp number of this court. Ld Addl. PP submitted that applicant had not complied with the terms and conditions of agreement dated 24.04.2018. Complainant had not tendered any resignation but Ford company duplicitously published a public notice in one of the leading newspapers of the country that complainant resigned from the dealership of the Ford India, thereby deceiving not only the complainant but also the public at large. Accused persons admitted the said cheating as they had published a corrigendum dated 11.05.2021 with regard to public notice dated 13.04.2019. The said corrigendum amounts to admission on the part of accused persons. Applicant also filed a complaint bearing no. 172/5P dated 11.03.2021 before police station Sushant Lok, Gurugram, Haryana with the similar level of allegations, however after due inquiry the same was closed by the police on 14.04.2021. She further submitted that original agreement dated 24.04.2018 is lying with the Ford company and they have deliberately and intentionally concealed the same. The complainant did not have the original DSSA dated 24.04.2018 as he after his signatures submitted it in the Gurgaon office of the alleged company M/s Ford India Pvt Ltd on 21.01.2019. IO has also verified that complainant visited the alleged company office on 21.01.2019 and an entry to this effect bearing no. 1582 mentioned the visit of the complainant. Ld Addl. PP further submitted that specimen signatures of both the accused persons are required. Ld Addl.

PP for the state requests for dismissal of the bail application.

As per reply filed by IO, it has been alleged by the complainant in his complaint that the complainant, Managing director of Libra Cars Pvt Ltd had entered into an agreement (termed as Dealer Sales and Service Agreement) dated 24.04.2018 with the alleged company M/s Ford India Pvt Ltd through the applicant/Managing Director and Director David Allan Schock, who are also the signatories of the said agreement. As per the agreement, it is specifically mentioned in the Article 02 Clause 10 of the agreement dated 24.04.2018 entered into between the complainant company and alleged company that alleged company/directors will not authorize/permit any other service station workshop within the radius of 10 kms from the complainant's showroom. Further due to their decreasing sales figure complainant came to know about existence of another service center running within 10kms apx from the complainant service center at Bakoli. The complainant reported this matter to the alleged company but the alleged company started sending notices qua outstanding dues. It is further stated that the alleged company terminated their dealership w.e.f 21.03.2019 and caused them wrongful loss of Rs. 35,00,000,00 (Rs. Thirty Five crores). The alleged company published a notice in the Hindustan Times on 13.04.2019 regarding termination wherein they categorically stated that the dealer resigned from the dealership in place of termination. The complainant's grievance is that the alleged company in violation of the Article 02 Clause 10 of the said agreement dated 24.04.2018 appointed another service center Harpreet Ford within the distance of 10kms at Kundli, Sonipat, Haryana. During the course of investigation, notice u/s 41A Cr.P.C. was served to accused David Allan Schock who joined the investigation and denied the contents of Article 02 Clause 10 and Clause 95 of DSSA dated 24.04.2018. During the course of investigation notice u/s 160/91 Cr.P.C was served to the CEO/MD M/s Harpreet Ford regarding the allegation of the complainant that M/s Harpreet Ford facility is within the distance of 10 kms of the complainant facility in violation of the Article 02 Clause 10 of the said agreement dated 24.04.2018. Reply has been received and as per the reply, they had letter of intent dated 20.12.2017 for setting up of Ford authorized Service facility (Body Shop) at Kundali, Sonipat from M/s Ford India Pvt Ltd for denting and painting of Ford vehicles and they started their facility w.e.f 17.05.2018. In compliance of the directions dated 11.05.2021, agreement/documents/ email submitted by the alleged company and complainant have been examined and verified. During the course of investigation, complainant was served with the notice u/s 91 Cr.P.C to produce the original DSSA dated 24.04.2018. The complainant was

examined and during the course of the examination, he stated that he did not have the original DSSA dated 24.04.2018 as he submitted it in the Gurgaon office of the alleged company M/s Ford India Pvt Ltd on 21.01.2019. The visitor register and the inward courier register kept at the alleged company Gurgaon office were also scrutinized and on the perusal, it is revealed that the complainant visited the alleged company office on 21.01.2019 as a entry to this effect bearing no. 1582 mentioned the visit of the complainant but on the other hand there was no entry in the inward courier register of that day regarding the complainant. The alleged company stated that the complainant never submitted the DSSA dated 24.04.2018 to them. During the verification of the Dealers Sales Agreements originals were seen particularly the Article 02 Clause 10 and Clause 95 of the said agreements. On perusal it has been observed that the Article 02 Clause 10 heading as “Non – Exclusive Appointment” in the Dealer Sales & Service Agreement dated 24.04.2018 and the other agreements is same but the clause “there is/ shall be no other Ford dealer workshop operating within a radius of 10 kms from the Dealer Showroom”, as mentioned in the agreement in question dated 24.04.2018 was not found in the agreements of the contemporary period submitted by the alleged company. On perusal of clause 95 of the agreement submitted by the alleged company, there is no mentioning of compensation in monetary terms in any agreements but in Clause 95 of the Dealer Sales & Service Agreement dated 24.04.2018 there is mentioning of the compensation of Rs. 35,00,000,00/-.

Heard. Record perused.

IO has nowhere stated in his reply that custodial interrogation/arrest of applicant is required nor he stated that he has taken the approval from competent authority in terms of standing order no. 173/2021 dated 21.01.2021. IO submitted that accused David Allan Schock who is a resident of USA, has joined the investigation through VC and applicant Anurag has also joined the investigation. IO has also not stated that the specimen signature of applicant is required. Ld counsel for applicant has filed copy of reply filed by SI Shiv Dev Singh, Sec-V/EOW to the complaint u/s 156 (3) of Cr.P.C moved by complainant before Ld CMM, North West, Rohini wherein it has been stated that the complaint is devoid of any substance to bring the allegations under alleged offences. No cognizable offences have been made out in the contents of the complaint.

Without commenting on the merits of the case and without going through the documents referred by both the parties at this stage, the present application is allowed. Since the investigation in the present case is still pending, it is

directed that in the event of arrest, applicant be released on interim bail for a period of 30 days on furnishing of bail bonds in a sum of Rs 5 lacs with one surety in the like amount to the satisfaction of IO/SHO subject to the following conditions :

1. That applicant shall join the investigation as and when required by IO and cooperate in the same.
2. That applicant shall not try to intimidate or influence the prosecution witnesses.
3. That applicant shall not temper with the evidence.
4. That applicant shall provide his mobile number to the IO and shall not change his mobile number without informing the new number, if any to the IO.

Application stands disposed of accordingly. Dasti.

RAJ RANI Digitally signed by RAJ
RANI
Date: 2021.09.06
22:37:32 +05'30'
(Raj Rani)
Addl. Sessions Judge-04
Special Judge : POCSO Act
North-West, Rohini Courts, Delhi
06.09.2021