

**IN THE COURT OF MS. VINEETA GOYAL, ASJ,
FAST TRACK COURT: SOUTH, SAKET COURT, NEW DELHI**

**Reg. No. : 455/2022
Ajay Singh vs. State
FIR No. 246/2021
P.S. Hauz Khas**

30.03.2022

Present: Shri Anil Kumar, Ld. Addl. PP for State.
Shri Amit Punj, Counsel for accused / applicant joined
proceedings virtually.
Shri Siddhrth Satija, Ld. Counsel for complainant.

Brief written submissions filed by both the parties.
Put up for orders at 4.00 pm.

**(Vineeta Goyal)
ASJ/Spl. FTC/South District/30.03.2022**

At 4.00 pm

Present: Shri Anil Kumar, Ld. Addl. PP for State.
Shri Mukesh, Proxy Counsel for accused / applicant.
Shri Akash Sachan, Ld. Counsel for complainant.

This is an application under section 438 Cr.P.C seeking anticipatory bail moved on behalf of accused / applicant Ajay Singh.

Arguments have already been heard and today the matter is listed for orders.

Ld. Sr. Counsel for accused / applicant submitted that there was no dishonest intention on the part of accused / applicant from the very beginning as contemplated u/s 420 IPC to invoke cheating and dishonestly inducing the delivery of property. It is submitted that parties are bound to act in accordance with terms and conditions as stipulated in Share Purchase Agreement(s) dated 03.02.2017 and 09.07.2018 respectively. While referring to the Condition Precedent as stipulated in Clause 3.1.1, it is submitted that Share Purchase Agreement dated 09.07.2018 (herein referred as SPA-II), transfer of sale shares was comprehensively subject to final outcome of dispute and not

exhaustively limited to the outcome of arbitral proceedings. It is further submitted that erstwhile owners while impugning the arbitral award before Hon'ble High Court of Delhi have also sought restoration of entire shareholding of the company (which includes the sale shares) which was transferred to the accused / applicant in February 2015 by erstwhile owner. It is submitted that had the accused / applicant proceeded ahead with the transfer of shares as per SPA(s) entered into with the complainant, the accused / applicant would have rendered himself liable for contempt. It is further submitted that Delivery Instructions Slips (herein referred as DIS) were handed over to the complainant in year 2015 merely as a security, as by that time no Share Purchase Agreements were executed and Share Purchase Agreement recorded in recital (C) that these shares were for contributions made by the complainant for relaunch of operations of Spice Jet during January 2015 to December 2016 and at that time of handing over of said DIS, the same were valid. The DI slips were blank, undated and signed by the accused / applicant. It is next submitted that the complainant without fulfillment of 'Conditions Precedent to the Closing' as contained in Share Purchase Agreements unilaterally deposited Rs. 10 lakhs in the bank account of accused / applicant and deposited DIS with the agent. It is contended that accused / applicant had never provided bank details to the complainant and the account details were obtained by the complainant through unfair means with mala-fide intention to deceit the accused / applicant. It is next submitted that the accused / applicant vide letter dated 10.10.2019, while responding to complainant's letter dated 01.10.2019 requested that the stance of complainant to proceed ahead with the SPA was immature as the Conditions Precedent as mentioned therein was not yet fulfilled. A sum of Rs. 10 lakhs was refunded back to the complainant vide NEFT dated 05.10.2019. It is also submitted that to the similar lines letter dated 15.01.2020 was also sent to the complainant and the accused / applicant. It is also submitted that dispute is civil in nature and the agreement provides 'Dispute Resolution' clause and the entire dispute between the parties is based on documentary evidence. It is further submitted that accused / applicant has joined investigation as per directions given by this Court vide order dated 09.03.2022 and is still ready and willing to join investigation and undertakes to abide by the terms and conditions as imposed by the Court. On these grounds, a prayer was made that anticipatory bail be granted to accused / applicant.

Per contra, Ld. Addl. PP for State as well as Ld. Sr. Counsel for complainant submitted that offence committed by accused/ applicant is of serious nature. The accused / applicant entered into Share Purchase

Agreement dated 03.02.2017 (herein referred as SPA-I) with the complainant thereby agreeing to sell 10 lakhs fully paid equity shares of Spice Jet for a consideration of Rs. 10 lakhs. In this agreement, the closing date of transaction was mentioned as 01.01.2020. It was also mentioned that parties understand that there are certain SEBI lock-in period for share transfer and also there is a dispute between the accused / applicant and erstwhile promoters of Spice Jet. Thus, as per Clause 3.1.1 of SPA-I after expiry of lock-in period of SEBI on 15.02.2018 the transfer will be subject to removal of restrictions with regard to the transferability. It is further submitted that another Share Purchase Agreement dated 09.07.2018 (SPA-II) was entered between the accused / applicant and the complainant thereby closing date was changed to 30.09.2019 and in Clause 3.1.1 recognizing the dispute between the accused / applicant and erstwhile promoters it was decided that the obligation of the purchaser to purchase the sale of shares is subject to final outcome of the dispute between accused / applicant and the erstwhile promoters of the company. It is submitted that there was no condition precedent for transfer of shares as per SPA-II because it merely provided an option to the purchaser that it (purchaser) can make for transfer of shares till final outcome of dispute. It is submitted that so far as seller / accused / applicant is concerned, it has to affect transfer once the lock-in- period is over and there is no express restriction. It is further submitted that complainant transferred exact amount of Rs. 10 lakhs to the account of accused / applicant and visited to the office of Globe Capital Market Ltd., the Depository Participant with DIS for transfer of shares but it was informed that presented DIS old and outdated which was no more valid. It is submitted that the accused / applicant has dishonestly handed over the expired DIS knowingly well that same would be rejected by the Depository Participant. It is further submitted that the accused / applicant has not effectively joined the investigation and has not provided documentation in support of his contentions and there is every risk of him tampering with evidence and likely to evade the proceedings. On these grounds, a prayer was made that no ground is made out for grant of anticipatory bail.

I have considered the submissions made by both sides and gone through the record.

At the outset, it is mentioned that at the stage of bail, the Court is not expected to delve into the merits / demerits of the case. The paramount consideration at this stage are elaborately laid down by Hon'ble Supreme Court in case of *Siddharam Satlingappa Mhetre vs. State of Maharashtra & Ors.* (2011) 1 SCC 694, that need to be taken

into consideration while dealing with the anticipatory bail application and for the purpose of the present case, the following factor is more relevant :

(h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused.

In the present case, the dispute is regarding transfer of 10 lakhs shares of Spice Jet for consideration of Rs. 10 lakhs from the complainant to the accused / applicant. It is alleged that accused is deliberately and dishonestly resisting transfer of shares in accordance with agreements SPA-I and SPA-II despite closing dates have arrived. The complainant is also emphasizing the accused deliberately and dishonestly handed over outdated / invalid DIS. On the other hand, accused has taken a plea that as per agreement the transfer of those shares were contingent upon final outcome of dispute between him and erstwhile promoters of the company therefore, shares could not be transferred to complainant as the dispute is still pending. Further in so far as DIS is concerned the same has been given as security under bona-fide understanding that this will not be presented.

It emerges from record that accused was in litigation (Arbitration Proceedings) with the erstwhile promoters of Spice Jet which ended in the favour of the accused. Further, the said award was challenged before Hon'ble High Court which is pending but there is allegedly no stay that has been granted in this case.

The investigating officer in his status report dated 28.03.2022 has clearly mentioned that the DIS given to the complainant was issued from the booklet issued to the accused / applicant which was declared invalid after 07.01.2014. This fact was duly conveyed to the accused on 29.12.2015 by M/s. Globe Capital Market Ltd. It is further mentioned in the report that the accused during interrogation on 11.03.2022 on this point submitted that slips were given to the complainant in the year 2015 but he failed to explain against which work these were given as security in year 2015. It is further submitted that accused / applicant also pledged shares of Spice Jet thrice on 25.03.2015, 20.04.2015 and 30.11.2017. It is noteworthy that accused has not stated the occasion on which such deposit slips were handed over to the

complainant because SPA-I and SPA-II were entered subsequently. Moreover, both these agreements do not find mention of having handed over any DIS to the complainant by the accused even though as security. The handing of DIS which are outdated is a serious and grave offence. All these aspects are matter of dispute and require investigation. The investigating officer also submitted that the present FIR has been transferred to EOW and the investigation is in progress.

Hon'ble Supreme Court in *State Rep. by the CBI vs. Anil Sharma* (1997) 7 SCC 187, recognized the fact that in some cases custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order u/s 438 of the Code. The concept was reiterated in *P. Chidambaram vs. Directorate of Enforcement reported as (2019) 9 SCC 24*, stating that grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the Court.

Under these overall facts and circumstances and considering the gravity of offence and the aforementioned ratiocination held, this Court does not find sufficient ground to grant the relief sought in the application filed by the accused / applicant and same is accordingly, dismissed. Interim order provided by this Court vide order dated 09.03.2022 stands vacated.

However, any expression given in the present order would not tantamount to be any final opinion on the merits of the case.

Copy of order be uploaded on the website of District Court, Saket Courts, New Delhi.

(Vineeta Goyal)
ASJ/Spl. FTC/South District/30.03.2022