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

+ CRL.M.C. 2049/2022, CRL.M.A. 8694/2022

ASHUTOSH DHYANI AND ORS

..... Petitioners

Through: Mr. Mohit Mathur, Sr. Adv. with Mr.
Rajnish Gaur, Mr. Amol Sharma and
Ms. Divya Rana, Advs.

Versus

STATE GOVERNMENT OF NCT OF DELHI AND ANR.

..... Respondents

Through: Mr. Yudhishter Sharma, Ms. Neelam
Sharma with Inspector Manoj kumar,
DIO/NW
Mr. Hemant Mehla, APP for the State
Mr. Vaibhav Sharma, Advs for
Complainant/R-2

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Date of Decision: 10th April, 2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

JUDGMENT

DINESH KUMAR SHARMA, J. (Oral)

1. The present petition has been filed challenging the order dated 24.03.2022 pursuant to which FIR No. 0351/2022 under section 409/34 IPC at PS Model Town was registered against the present petitioners and various other persons. Order dated 24.03.2022 of the learned MM-03, North, Rohini reads as under:

*“Present: Sh. Archit Upadhyay and Ms. Nikita Maheshwari,
Ld.Counsels for complainant.
IO SI Harish Hooda in person.*

Arguments heard.

I have perused the application u/s 156(3) Cr.P.C as well as status report/reply filed by IO SI Harish Hooda. In the application it is alleged that complainant filed complaint before EOW-II, Gurugram which has been transferred to OCP North West and further to PS Model Town alleging that complainant is aggrieved by the criminal acts of accused persons that they committed criminal breach of trust against the complainant but despite that complaint police did not take any action. It is stated that complainant also made complaint to higher officials but no action was taken.

IO filed his report. It is mentioned in the report that the the complainant has not reported any wrongful loss in his complaint and therefore no cognizable offence is made out.

The Court prima facie believed that cognizable offence have been committed.

Therefore, SHO PS Model Town is directed to initiate the investigation on the complaint of complainant after formally registering the FIR. Compliance report be filed in 7 days. The application u/s 156(3) Cr.P.C is accordingly disposed off.

Copy of this order alongwith copy of complaint be sent to SHO concerned dasti. SHO is directed to comply with the order and file the copy of FIR in court within 7 days.

Put up for filing of final report on 31.03.2022.”

2. FIR No. 351/2022 under Section 409/34 IPC has been lodged against the following persons;
 - i. Mr. Pappu Kumar. ex-employee of Kotak Mahindra Bank Limited bearing employee 1025622.
 - ii. Mr. Deepak, ex-employee of Kotak Mahindra Bank limited, bearing employee 1053846.
 - iii. Mr. Ashutosh Dhyani, Branch Manager., Kotak Mahindra Bank Limited, JMD Regent Square branch, Gurugram- 122002.
 - iv. Mr. Kanhaiya Agarwal, Area Manager, Kotak Mahindra Bank limited, JMD Regent Square branch, Gurugram- 122002.
 - v. Mr. Sumit Gupta, Relationship Manager, Mahindra Bank Limited, JMD Regent Square branch, Gurugram- 122002.
 - vi. Regional Manager, Kotak Mahindra Bank limited, JMO Regent Square branch. Gurugram- 122002.
 - vii. Mr. Haratambos Tsiattalou, Partner, Stokoe Partnership Solicitors S. Omkar Nath Tripathi New Delhi
 - viii. Other Unknown person(s),

3. Learned senior counsel for the petitioners submits that the present petitioners before this Court are the bank employees and they have no role to play. Learned senior counsel has invited the attention of the Court to the status report filed by the State wherein it has been stated that the complainant had also filed a complaint to the Bank and on the internal inquiry of Kotak Bank, it has been established that the accused Deepak accessed and leaked the statement of complainant's company bank account without customer request and for gross negligence alleged Deepak and Pappu Kumar have been terminated from the bank's service. Learned senior counsel for the petitioners submits that though this petition under Section 482 Cr. P.C. However, it may also be treated as petition under Section 438 Cr. P.C. Learned senior counsel submits that as the petitioner(s) are joining investigation as and when directed by the IO, the interim protection to them may be confirmed
4. Learned APP for the State submits that the investigation is still continuing and there is no ground to quash the FIR pending investigation. Learned counsel for the complainant also submitted that in the present proceedings, anticipatory bail cannot be granted.
5. Section 482 Cr. P.C. confers inherent power upon this Court to prevent miscarriage of justice and to prevent the abuse of process of Court. I consider at the outset, the way in which order dated 24.03.2022 is passed, it leaves much to be desired. Learned MM-03 has passed the order for registration of FIR without giving any reason on the basis of which such directions have been made. The

registration of FIR itself causes serious consequences and may even affect the basic fundamental rights of the individual. The direction for issuance of the FIR is an important order and it must have sufficient reasons and must be a speaking order. However, since in pursuance to the FIR, the FIR has already been lodged and the investigation is still continuing, I consider that at this stage, interfering with the order dated 24.03.2022 would be putting the cart before the horse. However, in order to balance the interest of justice, it is directed that in the event of the arrest, the petitioners will be admitted to bail on furnishing a personal bail bond of Rs.30,000/- each with a surety of the like amount subject to the satisfaction of the learned Investigating Officer with the following terms and conditions:

- a) the Applicant shall cooperate in the investigation and appear before the Investigating Officer of the case as and when required;
- b) the Applicant shall under no circumstances leave India without prior permission of the Court concerned;
- c) the Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
- d) the Applicant shall provide his/her mobile number(s) to the Investigating Officer and keep it operational at all times;
- e) In case of a change of residential address and/or mobile number, the Applicant shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.

6. It is also pertinent to note that the petitioners are bank officials and such proceedings may take some time which will prejudice their careers. Accordingly, the investigation officer is directed to conclude the investigation in accordance with the law within six months and file the report accordingly. Further, the petitioners will have the liberty to avail the appropriate remedy in terms of the report filed by the IO.
7. The present petition along with pending applications stand disposed of.

DINESH KUMAR SHARMA, J

APRIL 10, 2023

Pallavi