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

+ **BAIL APPLN. 2317/2021**

PRABIR PURKAYASTHA

..... Petitioner

Through : Mr.Kapil Sibal, Mr.Dayan Krishnan,
Senior Advocates with Mr.Arshdeep
Singh, Ms.Aakashi Lodha, Mr.Hitesh
Rai, Mr.Sanjeevi Seshadri,
Mr.Shreedhar Kale, Mr.Harsh
Srivastava, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through : Mr.M.S.Oberoi, APP for State.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **07.07.2021**

1. The hearing has been conducted through Video Conferencing.

CRL.M.A.No.10034/2021

2. Exemption allowed, subject to the condition that petitioner will file the duly sworn/attested affidavit and the requisite Court fee within 72 hours from the date of resumption of the regular functioning of this Court.

3. The application stands disposed of.

CRL.M.A.No.10032-33/2021

4. Exemption allowed, subject to all just exceptions.

5. The application/s stand disposed of.

BAIL APPLN. 2317/2021 and Crl.M.(Bail).No.894/2021

6. The petitioner herein seeks anticipatory/interim bail in case FIR No.116/2020 dated 26.08.2020 under Section 406/420/120B IPC registered at EOW.

7. It is the case of the petitioner he is aged 71 years and is a reputed journalist, being founder editor of the digital media platform *Newslick.in* set up on 2009 which has become one of the most popular and well-reputed digital media platforms in the country as well as abroad. It is stated the petitioner is a qualified engineer who has worked in the power sector for more than 40 years in leading companies such as the NTPC. The expertise of the petitioner in various issues relating to industry and technology have also been recognised by the Government of India. He has been a member of the National Steering Committee, ASTeC Programme as well as a Member of the Expert Group on Industrial Application of Ministry of Electronics and Information and Technology, Government of India.

8. The petitioner is the director of M/s.PPK Newslick Studio Pvt. Ltd., a corporate entity incorporated under Companies Act. It owns and operates *Newslick.in*, which hosts the work of critical and progressive voices from across the country and it also focuses extensively on science and technology and on data journalism.

9. The allegation against the petitioner herein is the petitioner's company, received FDI to the tune of Rs.9.59 crores from one M/s.Worldwide Media Holdings LLC, USA, during the financial year 2018-19 which investment was made by greatly overvaluing the shares of the company to avoid the alleged cap of 26% of FDI in a digital news website. It is further alleged that over 45% of this investment was diverted/siphoned off for the payment of salary/consultancy, rent and other expenses, which payments are alleged to have been made for ulterior motives. Therefore it is alleged the said company have violated the FDI and other laws of the country and caused a loss to the exchequer. It is alleged the FIR is based on

the provisions of FEMA which the respondent has no power to enquire/investigate.

10. It is further stated the present FIR was registered on 26.08.2020 but was not uploaded on the website of Delhi Police. Further no investigation into the said FIR was carried out by the respondent for over ten months. The petitioner became aware of the said FIR only when the Directorate of Enforcement (ED) carried out search and seizure operation at the residence of the petitioner. It was thereafter the petitioner was informed that based on the said FIR the ED had registered an ECIR bearing no. ECIR/14/HIU/2020 dated 02.09.2020 under Sections 3 and 4 of PMLA, 2002. Admittedly the petitioner has been granted interim protection in the ED proceedings in W.P.(CRL.)1129/2021.

11. Since the FIR was not uploaded on the website of Delhi Police, hence the petitioner wrote letters dated 26.04.2021 and 15.05.2021 to the Delhi Police and sought copies of the FIR but the respondent did not respond on the said letters and hence the company preferred to file an application before the learned CMM, South East on 05.06.2021 and only on 06.06.2021 the copy of the said FIR was provided to the petitioner.

12. It is argued a bare perusal of the FIR would show no cognizable offence, let alone offences under Section 406/420/120B IPC is made out as it is evident at best the said allegations could constitute violations of *FEMA, 1999*, to which the respondent has no power to investigate.

13. The company also filed a W.P.(CRL.)1130/2021 for quashing of such FIR which was listed on 21.06.2021 on which date the counsel for the respondent stated the respondent will issue notice before taking any coercive steps. The said matter is now listed on 29.07.2021 before the Co-ordinate

Bench wherein the notice has been issued. It is submitted considering the requests of the respondent, the company did not pressed the stay on the investigation at this stage.

14. W.P.(CRL.) 1129/2021 was filed by the petitioner seeking supply of copy of ECIR dated 29.07.2020 registered by ED, wherein notice was issued and ED was directed *not to take any coercive steps* against the petitioner.

15. Admittedly more than ten months have elapsed from the date of registration of present FIR and it was only after the petitioner secured interim protection in relation to the ED proceedings, a notice under Section 41A dated 30.06.2020 was issued directing the petitioner to present before the respondent at 4 PM on 07.07.2021, hence, the petitioner herein apprehends arrest.

16. It is stated that offence under Section 420 IPC cannot be made out as there are no allegations of inducement nor is there any deliver of property. The allegations even does not disclose, prima facie as to the person cheated in the instant case apart from the vague allegations that there is loss to exchequer.

17. It is submitted the investment of FDI by Worldwide Media House in the said company was duly disclosed arms-length commercial and lawful investment in terms of the law regarding FDI in digital news media in 2018. The entire FDI was received *through legal banking channels under intimation to the Reserve Bank of India.*

18. Secondly, it is alleged the allegations of over valuation of shares, apart from being patently absurd, cannot be sustained as the valuation of shares was in terms of FEMA, which require shares or securities to be transferred to entities abroad at a price above the fair value. In the instant

case, the fair value of the equity shares was determined by an independent valuer, M/s. BGJC Associates LLP as being Rs.9,188/- per share. Therefore the transfer of shares at Rs.11,510/- per share was a *lawful transfer* which cannot be assailed on any ground.

19. Thirdly, as regards the allegation of overvaluation, the company through its counsel received clarification from the Ministry of Information and Broadcasting, confirming there were in fact no restrictions on FDI in digital news media in 2018. The restrictions of 26% of FDI in digital news media were only introduced by the Government through press note no.04/2019 dated 18.09.2019 as “new clauses”. Further it is submitted the investor company was incorporated in 29.11.2017 in Delaware and is a company with good standing and has legal sanction in the State of Delaware. It is also argued allegations of siphoning are baseless, as the same pertains to expenses incurred by the company such as payment of salary, consultancy fee and rent which are all *permissible expenses* in law.

20. Heard.

21. Issue notice. Learned APP for the State accepts notice and seeks time to file status report. As sought, status report be filed before the next date of hearing with an advance copy thereof to the learned counsel for petitioner through email.

22. List on 05.08.2021 and till then the petitioner be not arrested. However the petitioner is directed to join the investigation as and when required by the Investigating Officer.

YOGESH KHANNA, J.

JULY 07, 2021

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