

**IN THE COURT OF Dr. KAMINI LAU : JUDGE (MACT)-01
(CENTRAL) TIS HAZARI COURTS, DELHI**

Bail Application No. 949/2022

FIR No.167/2022

PS – Darya Ganj

U/S-381 IPC

State Vs. Sachendra

25.05.2022

Present: Sh. Pankaj Bhatia, Ld. Addl. PP for the State.

Sh. Nitish Mishra Advocate for the applicant/ accused.

IO ACP (Operation Cell) Sh. Yogesh Malhotra in person.

Vide a detailed order dated 12.05.2022, this Court had directed the applicant/ accused to make himself available in Delhi. I am informed by the Ld. Counsel that the applicant/ accused is on his way.

At this stage, the accused has appeared.

The Investigating Officer ACP Sh. Yogesh Malhotra submits that the applicant/ accused has joined the investigations. A detail report has been filed by the ACP which I have duly perused. The accused Sachendra who is present, submits that he has been falsely roped in by the complainant who himself is involved into large scale smuggling and illegal activities along with his other associates. He submits that one person of his village by the name of Vimal had introduced him to one Fahad Khan who in-turn introduced him to Mohd. Saad and lured him into going to Dubai for doing some job for Mohd. Saad (complainant).

At this stage, Ld. Addl. PP for the State has made a request to this Court that whatever is being submitted by the accused Sachendra be

recorded since he is making certain damning allegations against the complainant and also against the local police i.e. officials of Police Station Darya Ganj. On request of the Ld. Addl. PP for the State the submissions so being made by the applicant/ accused who is present in the Court, is recorded and is reproduced as under:

*“..... Main complainant Mohd. Saad ko janta hu. Mere gaon ke larke jiska naam **Vimal** hai, ne mujhe **Fahad Khan** se milwaya tha or usme mujhe **Mohd. Saad** se milwaya. **Fahad Khan** Mediator ka kaam karta hai or Mohd. Saad ko ladke supply karta hai. Mujhe Vimal ne bataya tha ki veh bhi kayi bar Dubai gaya hai or **Mohd. Tohid** jo ki Dubai me saman deta tha, vo saman Mohd. Saad ko diya jata tha, jiska commission **Rs.10,000/-** diya jata tha. Vimal ka **mobile no. 9634169693** hai. **Fahad Khan** ka mobile number mere mobile phone me hai i.e. **9818465650 & 9250023214**. Mohd. Tohid ka mobile number jo mujhe diya gaya tha vo hai **8287745785**. Uska Dubai ka number mere mobile phone me hai.*

Dubai me Mohd. Saad ka ladka (worker) milta tha. Vahan par Mohd. Saad ka ek kiraye ka makan hai jahan par main rukta tha or uske ladke se milta tha. Starting me mujhe kuch nahi pata tha. Mujhe bas ye batya gaya ki Dubai se Burke or perfume laane hain. Ek samay me 10 se 20 burkey aate they. Har bar meri tickets Mohd. Saad hi arrange karata tha lekin mujhe nahin pta ki kese karwata tha.

Court Question: What have you smuggled this time from Dubai?

Ans: Is bar mujhe ek belt jisme gold chupaya tha, burkey or perfume diye gaye jo main lekar aaya hoon. Belt ka weight karib 800gm – 1kg hoga.

Mujhe interrogation ke liye bulaya gaya. SI Mahavir sir ne mujhe bola ki complainant Mohd. Saad se milo or compromise kro. Uske tahat maine saman

i.e. belt jisme gold tha, burkey va perfume Mohd. Saad ko uske ghar ja kar diya or uski compliance ki videography kar ke Mohd. Saad ko whatsapp pe bhej di.

Main apna mobile phone saath le jata tha or vo hamesha on rehta tha.

Mujhe apni va mere pariwar ki jaan ka khatra hai. Mujhe Protection di jaye....”.

The Investigating Officer ACP Sh. Yogesh Malhotra who is present in the Court has placed before me the investigation file which I have duly perused. He submits that whatever has been stated by the applicant/ accused Sachendra today as herein above was earlier disclosed to him during investigations pursuant to which he had recorded his statement under **Section 161 Cr.P.C.**

I have gone through the said statement present in the investigation file wherein he had disclosed to the Investigating Officer that he was working as driver with NVS Lighting, Sururpur, Faridabad since July 2021 and in January/ February 2020 he was introduced to Fahad by his village friend Vimal who told him that **he used to bring Gold from Dubai for one Mohd. Saad @ Amaan met through Fahad** for which he would get **Rs.10,000/- for each trip excluding lodging, boarding and travelling charges.** He had further disclosed to the Investigating Officer that **on suggestion of Vimal he got his passport prepared in 2019 and Fahad introduced him to Mohd. Saad @ Amaan and the first time he went to Dubai on 25.02.2021 along with Vimal and came back to Amritsar on 03.03.2021, where Vimal was caught by the Custom**

officials. Thereafter twice he went to Dubai on 10.12.2021 and came back on 13.12.2021 at New Delhi and again on 09.04.2022 and came back on 18.04.2022 at Ahmedabad Airport. He further disclosed that **each time he brought gold but could not be caught.** The accused also disclosed to the Investigating Officer that in **Dubai he lived in Room No 401, new building, behind Alfuttain Masjid near Talal Super Market rented by one Toheed** (according to the Investigating Officer the complete address was provided by Toheed only on his interrogation). In the said statement recorded by the IO, **the accused Sachendra informed him that he had compromised the matter with the complainant and given back the gold he had brought from Dubai (i.e. smuggled gold).** The accused further disclosed to the Investigating Officer that he arrived at Ahmedabad Airport on 18.04.2022. In his statement, he further clarified that he had given **Rs.6,00,000/- to Fahad in November 2021 to do the same business separately and this amount he paid by taking loan from his owner Narvir Yadav.** The accused further clarified to the Investigating Officer that this Fahad only returned **Rs.4,00,000/-** to him but since his owner was demanding his money, so he escaped from Ahmedabad with the gold brought by him for Mohd. Saad @ Amaan and during this period Vimal was with him as he had called him in Ahmedabad.

The Investigating Officer ACP Sh. Yogesh Malhotra has pointed out that the mobile phone of accused was also checked which is found to contain the whatsapp chatting (including sharing of photographs/videos) with the complainant Mohd. Saad and Fahad, which

chats indicate that they all seems to be **indulging in illegally bringing of Gold from Dubai**. The mobile phone of the accused had been seized and lying in Malkhana of PS Daryaganj. Investigating Officer has pointed out that in the said seized mobile a video showing the return of the smuggled belt to Mohd. Saad was found thereby confirming that as a settlement he had returned the smuggled belt allegedly containing gold along with *Burkas* and perfumes to Mohd. Saad. **The accused Sachendra has informed the Court that he had done so on the directions of the officials of Police Station Darya Ganj and as a token of compliance he had made the said video so recovered from his mobile phone.** The still photographs of the video are present on the investigation file.

Investigating Officer ACP Sh. Yogesh Malhotra further submits that all the three persons i.e. complainant **Mohd. Saad @ Amaan** S/o Mohd Saleem, R/o H.No 2729, Gali Masjid Kale Khan, behind Moti Mahal Daryaganj, Delhi-06, age-28 years, 9953669908; **Fahad Khan** S/o Fateh Mohammad R/o H. No 2377, Kucha Mir Hashim, Turkman Gate Delhi-06, age-38 years, 9818465650, 9250023214 and **Mohd Toheed** S/o Mohd Hafeez R/o H.No 1154, Sayed wali kucha faulad khan Daryaganj Delhi-06, age-28 years 8287745785 were interrogated but they have denied any wrong doings and explained that they only used to bring/ get brought *Burkha*, Perfumes, supplements and ladies garments from Dubai.

The Investigating Officer has placed his reliance on the statement of Mohd. Saad wherein he has admitted that he had filed a false/ fake FIR against accused as he had run away from Ahmedabad with *Burkha*, Perfumes and supplements brought by accused for him. He with

his father has a shop of sale purchase of cars/ two wheelers in Darya Ganj. He would also go to Dubai to bring Burkha, Perfumes, supplements and ladies garments and sale it. It is submitted by the Investigating Officer that Mohd. Toheed in his statement admitted that in February last year he had given Gold in the trolley bag to Vimal who was caught in Amritsar Airport. The Investigating Officer has also flagged the details of the passports of all these three persons which reveal that they were frequent travelers to Dubai. The Chart of their travels placed on record along with the report reveal as many as **37 travels** by Mohd. Saad., **8 travels** by Fahad Khan and **36 travels** by Mohd. Toheed.

It is also pointed out that the statement of Narvir Yadav, Director of NVS Lighting Pvt Ltd. was recorded who has confirmed that Sachendra had worked as Driver from 26.08.2021 to 8.4.2022. In so far as the salary shown in the chart, he stated salary in amount column pertains to whole set of employees and only September month is of individual nature as his account was not linked with salary transaction. He also confirmed that Sachendra had borrowed **Rs.6,00,000/-** for one month on the pretext of business and returned **Rs.4,00,000/-** only.

According to the ACP Sh. Yogesh Malhotra, a request has already been sent to **FRRO Delhi** for providing the travel details of various persons as named above whose details are yet to be received. Also, the statements of bank accounts provided by accused, complainant, his family members, Fahad and Toheed have been obtained but no transactions appears to have taken place between accused and others in the accounts so disclosed by them. He submits that he is sending necessary

communications to the Customs Department.

It is also pointed out by the Investigating Officer that the CDR's of above persons has been obtained which shows that the accused Sachendra has been found to be in regular touch with Fahad. The other person namely Vimal has not joined the investigations despite the request electronically sent to him twice through his mobile phone number **9634169693**.

At this stage, Ld. Addl. PP for the State on the basis of the report of the Investigating Officer and the investigation report submits that the investigations conducted so far reveal that the complainant Mohd. Saad along with accused, Fahad and Mohd. Toheed along with others is running **a racket of fraudulent evasion of duty on Gold brought from Dubai (large scale smuggling of gold)**. He submits that this aspect requires a thorough investigation/ enquiry and according to the Investigating Officer the communication to this effect has been sent to the concerned departments including Customs and shall be sent to Enforcement Directorate. It is also submitted by the Ld. Addl. PP for the State that as per the instructions from the Investigating Officer the present FIR lodged by the complainant appears to be false/ fake and appropriate legal steps are being initiated in this regard and necessary steps shall be taken in respect of fresh material which has now come on record.

I have considered the submissions made before me. The investigations have taken a new turn prima facie revealing large scale smuggling activities. This requires monitoring and supervision by senior officers and investigations by specialized agencies particularly in the light

of wide-spread investigative ramifications both inter-state and abroad as per the existing law. Further, the applicant/ accused Sachendra has specifically sought the intervention of this court expressing danger to his life and that of his family in view of the disclosures made by him not only against the complainant and his associates but also against the local police. This being so, information be sent to the Special Commissioner of Police concerned to ensure the presence of some senior officer of the level of DCP in the post lunch session.

Be awaited for remaining part arguments.

(Dr. Kamini Lau)
PO (MACT)-01 (Central)
Tis Hazari Courts, Delhi / 25.05.2022

3:50 PM

Present: Sh. Pankaj Bhatia, Ld. Addl. PP for the State.

Applicant/ accused Sachendra in person.

DCP Ms. Shweta Chauhan along with Investigating Officer
ACP (Operation Cell) Sh. Yogesh Malhotra in person.

On the last date of hearing while dealing with the present bail application and while protecting the applicant/ accused Sachendra from coercive action, certain observations were made, the relevant portion is reproduced as under:

“..... Vide a detail order dated 29.04.2022 this Court had noticed certain glaring aspects not only in the manner in which the FIR was got registered and investigations initiated but also with regard to the credentials of the parties, relevant portion of which order is reproduced as under:

“..... The original passport has been produced in the Court. At the very Outset, I may observe that the entries on the said Passport shows that the applicant/ accused Sachendra is a permanent resident of Mainpuri, Uttar Pradesh i.e. 306, Fazipur, Post Juharinagar, Ghiror, Mainpuri, Uttar Pradesh. It further shows that he had gone to Dubai from New Delhi on **09.04.2022** and returned at Ahmedabad Airport on **18.04.2022 at around 6:30 to 7:00 AM**. The details of the applicant/ accused to his visit to Dubai, as reflected from his Passport, are as under:

| Sr. No. | Country | Date of Departure & Place | Date of Arrival & Place |
|----------------|----------------|--------------------------------------|------------------------------------|
| 1 | Dubai, UAE | 25.02.2021 (New Delhi) | 03.03.2021 (Amritsar) |
| 3 | Dubai, UAE | 10.12.2021 (New Delhi) | 13.12.2021 (New Delhi) |
| 4 | Dubai, UAE | 09.04.2022 (New Delhi) | 18.04.2022 (Ahmedabad) |

As per the FIR, the incident of theft took place in Delhi on 18.04.2022 between 7:00 PM to 9:00 PM. There is no investigation with regard to the movement of the applicant/ accused from Ahmedabad to Delhi by Air so as to reach Delhi on the same date i.e. 18.04.2022 between 7:00 PM to 9:00 PM.

The applicant/ accused has also attached along with the application a copy of the Register of Jai Radhe Hotel at Ahmedabad showing that he had checked-out the said hotel by **6:30 PM on 18.04.2022**. In fact, the CCTV footage of the said hotel would confirm the timings when the applicant/ accused left the said Hotel.

Secondly, It is also the case of the applicant/ accused that he is **working at M/s. NVS Lighting Pvt. Ltd. at Plot No.21, Sarurpur Nangla Industrial Area, Ballabgarh, Sohna Road, Faridabad, Haryana.** The salary slips of the applicant/ accused have been attached along with the application showing that his salary is around **Rs.15,000/- per month.** However, the Annexure-I

attached along with the bail application reveals some inconsistency. For the month of September 2021 the applicant/ accused is shown to have received a salary of **Rs.14,516/-**; for the month of October 2021 he is shown to have received **Rs.1,57,800/-**; for the month of November 2021 he is shown to have received **Rs.1,87,718/-**; for the month of December 2021 he is shown to have received **Rs.1,63,127/-**; for the month of January 2022 he is shown to have received **Rs.83,974/-**; for the month of February 2022 he is shown to have received **Rs.1,30,858/-** and for the month of March 2022 he is shown to have received **Rs.1,49,318/-**. Ld. Counsel for the applicant/ accused is unable to explain the above inconsistency and submits that it could be a typographical error. This aspect requires a detail inquiry.

Thirdly, in so far as the complainant Mohd. Saad is concerned, his credentials have also not been verified by the local police before registration of the FIR or even after receiving the copy of the bail application having documents which prima facie shows the allegations to be false. On query by the Court with regard to his credentials, Ld. Addl. PP for the State on instructions from Inspector Raj Kumar, AT, PS Darya Ganj, submits that probably the complainant is a builder by profession.

Fourthly, as per the record available attached along with the bail application, the applicant/ accused is shown as Driver working with **M/s. NVS Lighting Pvt. Ltd. at Plot No.21, Sarurpur Nangla Industrial Area, Ballabgarh, Sohna Road, Faridabad, Haryana**. Something appears to be dubious requiring a detailed inquiry and investigations.

Lastly, the credentials with regard to the background, identity and association of both the complainant Mohd. Sadd S/o Mohd. Saleem as well as the accused Sachendra S/o Sh. Ran Singh Tomar require a detailed inquiry and investigations. There is no reason why such serious allegations could be against the applicant who claims that he has no contact or association with the complainant. I may observe that not all appears to be well and there is much more than meets the eye.

Ld. Addl. PP for the State on instructions from the ACP Sh. Gursewak Singh submits that the applicant/ accused shall not be arrested till a detailed inquiry is conducted on the material discrepancies which have emerged.

Ld. Counsel for the applicant/ accused submits that he will supply the mobile number of the applicant/ accused to the Investigating Officer and also to this Court during the day. The Investigating Agency shall also collect the details of the mobile phones of the applicant/ accused and complainant, their statements of accounts, their background and the connection between the applicant/ accused and the complainant.....”

*Pursuant to the aforesaid, the Ld. Addl. PP for the State on instructions from the Addl. DCP submits that since the issue involved in the present case appears to have partly arisen out of the jurisdiction of GNCT of Delhi or may be the Indian Territory, therefore investigations relating to frequent visits by the applicant/ accused to Dubai from Delhi as well as other States is required. He submits that the assistance of the Specialized Agency shall be taken and the further investigations shall be got conducted by an officer **not less than the rank of ACP Special Staff under the personal supervision of the DCP concerned.***

While dealing with the application of the accused Sachendra, this Court is expressing its reservations on the manner in which the FIR has been faked and hurriedly registered with the investigations mandatory being set into motion. In order to rule out any foul play, hidden agenda or dubious transactions with inter-state or international ramifications, the report of the Investigating Agency is required on the following aspects:

- 1. Background relating to the inter-se relationship and association between the complainant and the applicant/ accused.*
- 2. The employment/ source of income of both the complainant as well as the applicant/ accused.*
- 3. The details with regard to the visits of the complainant as well as the applicant/ accused to other countries and duration thereof along with the details (including documentary details) of their stay/ itinerary and reasons/ justification of the visits thereof.*

4. *Antecedents (civil as well as criminal) of the applicant/ accused and the complainant and their respective family members/ close associates.*
5. *Electronic evidence in the form of Call Detail Records and CCTV Footages.*
6. *Statement of bank accounts of the applicant/ accused and the complainant along with their family members/ associates.*

*Further, I am informed that the applicant/ accused is not available in Delhi. Ld. Counsel for the accused who was asked to place the previous Passport of the applicant/ accused on record, submits that he will file a proper affidavit to the effect that the applicant/ accused has no previous Passport for which he seeks two days time. Two days time is granted to the applicant/ accused to make himself available in Delhi and file an affidavit before this Court by **17.05.2022**, an advance copy of which be supplied to the concerned DCP by **14.05.2022** failing which all interim protection granted to the applicant/ accused shall stand revoked.*

Subject to the compliance of the above directions by the applicant/ accused, no coercive action shall be taken against him till the next date of hearing with additional directions that both the complainant and the applicant/ accused shall not leave Delhi without prior permission of the DCP concerned.....”.

A detailed report has been submitted by the Investigating Officer in the light of which the DCP (Central) has appeared. She submits that she is appearing pursuant to the directions of the senior officers. She has assured that all necessary steps shall be taken at her level to protect the applicant/ accused, presently under interim protection of this Court, particularly in view of the conduct of certain officers of Police Station Darya Ganj which has now come to light and are under a scanner of the Department. The DCP further requests for a short date to enable her to file a detailed status report in the present FIR and also the status of the appropriate legal action being taken by the Department in the light of the

turn of events during investigations prima facie incriminating the complainant and many of his associates.

Ld. DCP submits that in the light of the additional incriminating material which has come on record involving wide ramifications, appropriate steps in accordance with law relating to registration of fresh FIR and transfer of investigations to Specialized Branch i.e. Crime Branch/ Special Cell, may be taken after due consultation with the senior officers.

On request, the case is listed for remaining part arguments on **27.05.2022 at 2:00 PM** (*time given on the request*). Investigating Officer to place a copy of the status report and also the case diaries before the Ld. MM for information purpose. The investigation file is duly returned to the IO.

A copy of this order is directed to be placed before the Commissioner of Police, Delhi and Special Commissioner of Police concerned.

One copy of the order is also directed to be placed before the concerned Ld. MM.

(Dr. Kamini Lau)
PO (MACT)-01 (Central)
Tis Hazari Courts, Delhi / 25.05.2022