

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

+ **Bail Appl.No.1305/2008**

% **Date of decision : 28.07.2008**

Devender Pant

..... Petitioner

Through: Mr.R.N.Mittal, Sr.Advocate with
Mr.Puneet Mittal, Advocate.

Versus

State (NCT of Delhi)

..... Respondent

Through : Mr. R.N. Vats, APP for the State.
Mr.Anil Soni, Advocate for the
complainant.

CORAM :-

* **HON'BLE MR. JUSTICE ANIL KUMAR**

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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This is a petition under Section 438 of the Criminal Procedure Code for grant of anticipatory bail in case FIR No.132/08, P.S.Anand Vihar, under Section 384/120B/34 of IPC.

The petitioner has contended that on the basis of a complaint dated 6th March, 2004 by Sameer Soin a FIR was registered on 10th March, 2008 against him and his father under Section 384/120B/34 of

IPC. The allegation against the petitioner is that he was harassing the complainant along with his father on one pretext or other by making repeated complaints to various authorities regarding the functioning of the petrol pump. The petitioner further contended that complainant found the demands of his father unreasonable and on asking as to how the grievance of the father of the petitioner could be redressed, an alleged demand of Rs.5 lakh was made and thereafter the present complaint was registered.

The conversation which took place between the complainant, his father and the petitioner on 5th March, 2008 and 6th March, 2008 were recorded. Father of the petitioner is stated to be the Vice President of Rashtravadi Janta Party, a recognized political party by the Election Commission of India.

It was also asserted on behalf of petitioner that his father is a senior journalist writing in various newspapers for the last 40 years. The allegation of black marketing of essential commodities by the complainant was also made adopting the modus operandi of transferring the fuel to the adjoining State, Uttar Pradesh.

The learned counsel for the petitioner has emphatically contended that prior to 6th March, 2008 there is no prior incident related to the petitioner and considering the definition of extortion in Section 383 of the Indian Penal Code, contemplating putting the other person to fear and to induce to deliver something has not been made out as nothing

was delivered to the petitioner. It is also pleaded that at the maximum on the basis of the allegations made against the petitioner it can be a case of attempt to extortion and it shall be punishable in that circumstance only for one and a half year.

The learned senior counsel for the petitioner, Mr.Mittal further submitted that since the father of the petitioner who is the main accused according to the allegations made in the complaint has already been released on bail and his remand was also refused, it will be just and appropriate to grant anticipatory bail to the petitioner. It is submitted that custodial interrogation of the petitioner in the facts and circumstances is not required. Considering the totality of facts it is submitted that there are no grounds to deny anticipatory bail to the petitioner.

Petition is contested contending that the first bail application had been withdrawn on 6th June, 2008 and thereafter without any modification or change of circumstances, the present bail application was filed on 11th June, 2008 and consequently the application of the petitioner is not maintainable. The counsel for the respondent has also opposed the bail application on the ground that the petitioner is absconding and, therefore, he is not entitled for bail. Grant of bail is also opposed on the ground that in the dealings with another bank, the petitioner has given two addresses and in the circumstances he should not be released on bail.

The learned counsel for the respondent has also relied on 132(2006) DLT 622, Balbir Kaur & Anr v. State to contend that second bail application does not lie after the earlier bail application was dismissed as withdrawn, after the Court had heard arguments and accepted the same.

The learned senior counsel for the petitioner, Mr.Mittal in contradistinction has relied on 117(2005) DLT 619, Mahender Rani Johar v. State of NCT of Delhi and Sulakhan Singhayar v. Smt.Kuldeep Kaur and Ors, 1996 JCT 107 to contend that no fetter is imposed on the power of the High Court, that once an application is dismissed the Court ceases to have jurisdiction to entertain the second application.

The judgments cited by the respondent are distinguishable. It cannot be disputed that a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. In P.S.Rao Vs State, JT 2002 (3) SC 1, the Supreme Court had held as under:

". There is always a peril in treating the words of judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusion in two cases.

In Rafiq Vs State, 1980 SCC (Crl) 946 it was observed as under:

“The ratio of one case cannot be mechanically applied to another case without having regard to the fact situation and circumstances obtaining in two cases.”

The learned counsel also contended that the first anticipatory bail application was filed on behalf of petitioner and his father, which was withdrawn without arguments and later on the present bail application was filed only on behalf of petitioner. The father of the petitioner later on had surrendered in June, 2008 and after two days of surrendering he had been released on bail.

The perusal of the complaint made against the petitioner reveal that the main allegations are against the father, of the petitioner. I have also heard the taped conversation between the petitioner, his father and the complainant. The father of the petitioner has already been released on bail. Considering the facts and circumstances it is apparent that nothing is to be recovered nor any such facts has been disclosed by the respondent which will entitle the respondent for custodial interrogation.

The judgments cited by the parties are distinguishable and on the basis of the same it cannot be held in the present facts and circumstances that this second petition only on behalf of petitioner for anticipatory bail shall not be maintainable. The bail cannot be denied to the petitioner even on the ground that while getting two vehicles financed from a bank two different addresses and the proof in support thereof has been given as no case has been registered nor any complaint has been pending regarding that by the Bank or by any other person.

For the foregoing reasons in the present facts and circumstances the petitioner is entitled for grant of anticipatory bail. Consequently, in the event of arrest of the petitioner, he be released on furnishing a personal bond of Rs.20,000/- with one surety of like amount to the satisfaction of the Arresting/Investigating Officer. The petitioner shall join the investigation as and when directed by the I.O. and will not try to influence any witness in any manner.

Dasti.

July 28th , 2008
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ANIL KUMAR, J.