

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

+ Bail Application No.102/2009

% Reserved on : 19.1.2009
Date of decision: 23.1.2009

SANJEEV MATHUR ...PETITIONER
Through: Mr.Ramesh Gupta and Mr.Sumit
Arora, Mr.Sulaiman Khan, Advocates

Versus
STATE ...RESPONDENT
Through: Mr.Navin Sharma

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers
may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be
reported in the Digest? Yes

MOOL CHAND GARG, J.

1. This order shall dispose of the anticipatory bail application filed under Section 438 Cr.P.C. in case FIR No. 43/2008 registered at Police Station Anti Corruption Branch, Delhi under Sections 7 and 13 of the Prevention of Corruption Act.
2. The aforesaid case was registered on 19th December, 2008 on the complaint of one Ajeet Kumar, who was working as a contractor for parking of vehicles in the area of P.S. Barakhamba. On 12.11.2008 the complainant approached the Anti-Corruption Branch, Govt. of NCT of Delhi with regard to harassment and demand of bribe by the applicant/accused Sanjeev Mathur. As advised, he tape recorded the

conversation with the help of the secret tape recording device which he handed over to the Branch and also lodged a report which was marked for investigation to Inspector Kailash who prepared a transcription of the conversation running into six pages with one CD Mark AMKETTE Compact Disk Recordable 52XCDR 700 MB 80 MM for which a DD Entry was also made and on that basis the FIR was registered in which the applicant is required to be arrested. The transcription reveals receipt of bribe by the applicant.

3. Apprehending his arrest in the aforesaid matter, the present applicant moved an application for grant of anticipatory bail before the learned Additional Sessions Judge, who vide its order dated 13th January, 2009 dismissed the same. Hence, the applicant filed the present petition.
4. It is submitted by learned counsel for the applicant that there is no explanation whatsoever as to why no FIR was registered on 12.11.2008 when the first complaint was made or on 13.11.2008 when the conversation was taken on tape recorder. It is also submitted that the tape remained with the complainant for almost 35 days before it was handed over to the police and therefore, tampering of the voice material on the said tape cannot be ruled out. He further submitted that the applicant has made the complaint against the complainant to his DCP on 18.11.08 and on 26.11.08, which were under inquiry by Inspector Vimlesh of PG Cell, New Delhi District and thus there is a possibility that to put the applicant and other

police officials under pressure, the present FIR was falsely registered against the applicant. However, no such record has been filed. Moreover, even if there is any such complaint it is made after 13.11.2008. He also submitted that the complainant has a very strong dubious past as he is involved in a rape and assault case which is being registered at P.S. Tilak Marg and Shastri Park Metro Station and that he is habitual of making complaint against public servants. He also submitted that the voice sample of the applicant could not have been taken by the Police in view of the judgment delivered by learned Single Judge of this Court in the case of *Rakesh Bisht Vs. CBI [2007 [1] JCC 482]*. It is also submitted that the complainant is also not entitled to any protection under Section 24 of the Prevention of Corruption Act prior to the registration of the FIR as he was himself an accomplice and has every reason to implicate the applicant in this case.

5. It is also stated that the applicant is an innocent person and had always been ready to join the investigation and nothing material is to be recovered from him and therefore, there is no requirement of his custodial interrogation.
6. In support of his case, the learned counsel for the applicant has relied upon the following judgments:
 - (1) *Ashok Kumar Gupta Vs. State, 141 (2007) DLT 94.*
 - (2) *Bail Application No. 2277/2008 titled as D.N.Rana Vs. State of NCT of Delhi decided on 2.12.2008.*
 - (3) *Bail Application No. 1933/2008 titled as Y.A. Jafri Vs.*

State of Delhi decided on 26.11.2008.

- (4) *Bhupinder Singh Patel and Ors. Vs. CBI, 2008 V AD (Cr.) (DHC) 293.*
- (5) *Bhardwaj Media Pvt. Ltd. (Sri) Vs. State, 2007 X AD (DELHI) 561.*
- (6) *Niranjan Patnaik Vs. Sashibhusan Kar and Anr., AIR 1986 SC 819.*
- (7) *Lokanath Vs. State of Orissa, 1988 (1) II 498.*

7. It is the contention of the applicant that the aforesaid judgments goes to show that in the facts of the present case no prima facie case is made out against the applicant which requires his arrest. He is an innocent person and needs to be protected because once he is arrested he is likely to be harassed by the investigating agency and his service would also be jeopardized even though there is no need of any custodial interrogation as neither his voice sample can be taken nor any further information is required to be elucidated from him as he has already joined the investigation. He has also pointed out some infirmities in the registration of the FIR which he submits goes to prove that the applicant is sought to be involved in the present FIR for ulterior motives.
8. Learned APP for the State on the other hand has submitted that the very fact that the applicant already received a sum of Rs. 3000/- from the complainant and had been pressing him to pay such amount every month and this version had been recorded on 13.11.2008 on a SD Card of a secret tape

recorder which was preserved in a computer on 13.11.2008, there was no chance of tampering with the recorded conversation. The transcription of the recorded conversation was made on 13.11.2008. Since the investigating agency wanted to lay a trap on the applicant but it could not be done because of the transfer of the applicant to District Lines, the complainant then wrote his complaint dated 19.12.08 and it is on that basis that an FIR was registered. It has been submitted that from the perusal of the tape recorded conversation it transpires that the applicant received a sum of Rs. 3000/- and wanted the complainant to pay the said amount on monthly basis. It is submitted that the issue regarding the admissibility of the tape recorded conversation cannot be scrutinized at this juncture. The charges are serious which involves corruption by public functionaries.

9. I have also gone through the order passed by the learned Additional Sessions Judge who himself went through the tape recorded conversation and was satisfied that the same could not be disbelieved. The learned Additional Sessions Judge has also referred to a judgment of the Hon'ble Supreme Court in the case of *State Vs. Anil Sharma, 1997 SCC 1039*, which has also been cited before me by the learned APP appearing for the State which refers to the necessity of custodial interrogation and importance thereof particularly in matters like the one in which the applicant is involved. The observations made by Hon'ble Supreme court are reiterated

hereunder for the sake of reference:

“Custodial Interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with favourable order U/s 438 of Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful information and also material which could have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible police officers would conduct themselves in a responsible manner and those entrusted with the task of disinterring offences would not conducted themselves as offenders.”

10. I have also gone through the judgments relied upon by learned counsel appearing for the applicant. The judgment delivered by Justice (Retd.) R.S. Sodhi in the case of *Ashok Kumar Gupta Vs. State (supra)* where the learned Judge expressed his disagreement with the system of custodial interrogation is of no consequence in view of the judgment of the Supreme Court in *Anil Sharma's case (supra)*.
11. The judgment given by Justice Aruna Suresh in the case of *D.N.Rana Vs. State of NCT of Delhi (supra)* had not been given on the facts of this case and cannot be of any help to the present applicant.
12. The second judgment delivered by Justice Aruna Suresh in *Y.A. Jafri Vs. State of Delhi (supra)* where the request made by the APP for custodial interrogation of the petitioner was not taken seriously by the learned Judge does not lay down any good law in view of the judgment delivered in *Anil Sharma's case (supra)*.

13. The judgment delivered by Justice Sanjay Kishan Kaul in the case of *Bhupinder Singh Patel and Ors. Vs. CBI (supra)* is not a judgment dealing with the issue of anticipatory bail.
14. The judgment delivered in the case of *Bhardwaj Media Pvt. Ltd. (Sri) Vs. State (supra)* is a judgment for quashing of FIR which again does not help the present applicant, who is seeking anticipatory bail.
15. Similarly in the case of *Niranjan Patnaik Vs. Sashibhusan Kar and Anr. (supra)* the bribe givers have been condemned and have been described as accomplice to the crime. However, it is a matter of evidence and it would depend from case to case as to whether the testimony of the complainant is to be believed or not. It is not at this stage that these issues are to be examined.
16. Insofar as the provisions contained under Section 438 Cr.P.C. are concerned, they provides for a very special protection where the applicant can be protected from his physical arrest by issuing a protection to the Investigating Agency not to arrest the person or to release him on bail in the event of arrest but such powers are circumscribed by conditions laid down by a Constitution Bench judgment of the Supreme Court in the case of *Gurbaksh Singh Sibbia Etc. Vs. State of Punjab [1980] 3 S.C.R. 383* which judgment is often quoted whenever the issue of the grant of anticipatory bail arises. Those conditions which have been laid down in this case are reproduced hereunder:

“1) The power under Section 438, Criminal Procedure Code, is of an extra-ordinary character and must be exercised sparingly in exceptional cases only.

2) Neither Section 438 nor any other provision of the Code authorizes the grant of blanket anticipatory bail for offences not yet committed or with regard to accusations not so far leveled.

3) The said power is not unguided or uncanalised but all the limitations imposed in the preceding Section 437, are implicit therein and must be read into Section 438.

4) In addition to the limitations mentioned in Section 437, the petitioner must make out a special case for the exercise of the power to grant of anticipatory bail.

5) Where a legitimate case for the remand of the offender to the police custody under Section 167(2) can be made out by the investigating agency or a reasonable claim to secure incriminating material from information likely to be received from the offender under Section 27 of the Evidence Act can be made out, the power under Section 438 should not be exercised.

6) The discretion under Section 438 cannot be exercised with regard to offences punishable with death or imprisonment for life unless the Court at that very stage is satisfied that such a charge appears to be false or groundless.

7) The larger interest of the public and State demand that in serious cases like economic offences involving blatant corruption at the higher rungs of the executive and political power, the discretion under Section 438 of the Code should not be exercised; and

8) Mere general allegations of mala fides in the petition are inadequate. The Court must be satisfied on materials before it that the allegations of mala fides are substantial and the accusation appears to be false and groundless.”

17. It may also be not out of place to mention the views expressed by the Apex Court in the case of *Adri Dharan Das v. State of W.B.*, (2005) 4 SCC 303, at page 309, where while dealing with the powers exercisable under Section 438 Cr.P.C., it has been held:

“7..... The power exercisable under Section 438 is somewhat extraordinary in character and it is only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty, then power is to be exercised under Section 438. The power being of important nature it is entrusted only to the higher echelons of judicial forums i.e. the Court of Session or the High Court. It is the power exercisable in case of an anticipated accusation of non-bailable offence. The object which is sought to be achieved by Section 438 of the Code is that the moment a person is arrested, if he has already

obtained an order from the Court of Session or the High Court, he shall be released immediately on bail without being sent to jail.”

18. Applying the tests aforesaid to the facts of this case including the ratio of other judgments referred to by the Additional Sessions Judge in his order, I am not satisfied that looking to the charges which have been levelled by the complainant against the applicant, he is entitled to be protected under Section 438 Cr.P.C. In fact, in the present case, the custodial interrogation of the applicant is very much needed. As such, I do not find any good reason to grant the applicant the relief as asked for by him.
19. The anticipatory bail application is accordingly dismissed.
Dasti.

MOOL CHAND GARG, J.

January 23, 2009
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