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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: November 11, 2010

Date of Order: December 06, 2010

+ CrI. MC No.1617/2010

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Sahara India Pariwar

06.12.2010

...Petitioner

Versus

State & Anr.

...Respondents

Counsels:

Mr. Somesh Arora for petitioner.

Mr. Sunil Sharma, APP for State/respondent.

Mr. V.K. Mishra and Mr. A.V. Shukla, Advocates for R-2

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. This petition has been preferred by the petitioner for cancellation of bail granted to respondent no.2 by learned ASJ vide order dated 24th April, 2010.

2. Respondent no.2 was allegedly involved in a case of embezzlement and a case under Section 408, 120B IPC was registered against him. Respondent no.2 applied for anticipatory bail initially before this Court and an interim protection was granted to him on his commitment to pay the amount of Rs.8,65,000/- within a certain period. However, respondent no.2 could not pay this amount on account of his weak financial condition and was arrested by the police. After his arrest by the police on 1st April, 2010, he applied for regular bail. Vide order dated 24th April, 2010, learned ASJ allowed his regular bail observing that respondent no.2's was not in a position to pay the amount as

committed by him and due to his weak financial condition his son studying in engineering college was turned out from the college due to non-payment of fee and his marriageable daughter whose marriage was settled, could not get married. The learned ASJ found that it was not a case of deliberate non compliance of the commitment made before this Court but the respondent no.2 was actually hand to mouth. It was also observed that the alleged embezzlement had taken place on 6th November 2008 but the FIR was registered on 29th April 2009 i.e. after about six months. The learned ASJ, therefore, directed that the accused /respondent no.2 herein be released on bail on execution of personal bond of Rs.50,000/- with one surety.

3. The order of learned ASJ is also assailed on the ground that the bail was not a right of the accused and there was no change of circumstances between making application before this Court for anticipatory bail and application before the learned Sessions Judge. The learned Sessions Judge should have considered the seriousness of the nature of crime and should have denied bail.

4. I consider that the learned Sessions Judge rightly exercised his discretion in enlarging the accused on bail. After the accused was enlarged on bail, there is no complaint that he made an effort to tamper with the evidence or fleeing from the process of justice. Merely because the accused, due to his weak financial condition, could not fulfill the commitment made before this Court, regular bail of the accused could not have been rejected without considering other aspects of the case. I find no reason to cancel the bail of the accused. The application for cancellation of bail is hereby dismissed.

December 06, 2010
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SHIV NARAYAN DHINGRA, J