

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **BAIL APPLN. 1738/2010**

Decided on 25.11.2010

IN THE MATTER OF :
NARESH KUMAR

..... Petitioner

Through: Mr. Siddharth Luthra, Sr.Advocate With
Mr.Ritesh Bahri and Mr.A.K.Bansal, Advocates

versus

STATE

.... Respondent

Through: Mr. Navin Sharma, APP
Inspector Rajendra Prasad, ALBR Sec./EOW
Crime Branch

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

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| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioner praying *inter alia* for grant of anticipatory bail under section 438 of the Cr.P.C., in respect of FIR No.511/2007 lodged by the complainant, Mr.Naresh Sabharwal against the petitioner and three others under Section 120B/406/419/420 IPC registered with PS Defence Colony.

2. In the order dated 1.11.2010, counsel for the petitioner had stated that the ground for preferring yet another petition seeking anticipatory bail in FIR No.511/2007, after the rejection of his earlier anticipatory bail application is the fact that the learned APP had wrongly made a submission on 18.8.2010 to the effect that the petitioner was involved in four other separate cases. It was submitted on 1.11.2010 by the

counsel for the petitioner that on the contrary, the petitioner was not involved in FIRs No.41/2005 and 237/1999 at all. However, the involvement of the petitioner in FIRs No.71/2005 and 342/2004 was not denied. In view of the submissions made on behalf of the petitioner, the learned APP was directed to file a status report giving the current position regarding the aforesaid FIRs, which found mention in para 8 of the rejection order dated 18.8.2010, passed in Bail Application No.1847/2009.

3. A verification report is handed over in the court. As per the said report, the petitioner is stated to have been charge-sheeted in FIRs No.71/2005 and 342/2004. It is further stated that the petitioner was named in FIR No.237/1999. However, there is no mention of FIR No.41/2005 in the said report. Learned APP admits that the petitioner is not involved in FIR No.41/2005. It is therefore clear that on 18.8.2010, the statement made on behalf of the prosecution that the petitioner is involved in FIR No.41/2005, was incorrect. Furthermore, as pointed out by the counsel for the petitioner from the reply dated 18.10.2010 issued by the DCP, South Gurgaon to the petitioner, on an application filed by him under the RTI Act, while FIR No.41/2005 was filed under Section 451 IPC alone, as per the Status Report dated 6.11.2009, filed in the earlier Bail Application, the offences mentioned were under Sections 406/419/420/467/468/471 IPC. This fact is also not denied by the prosecution.

4. The second fact that emerges is that in so far as FIR No.237/1999 is concerned, the said FIR does not mention the name of the petitioner as an accused, as is apparent from the aforesaid reply dated 18.10.2010 given by the DCP South Gurgaon to the RTI application filed by

the petitioner. Perusal of the judgment dated 2.5.2008, passed by the Judicial Magistrate, Ist Class, Gurgaon, in CrI.Case No.663/17.9.2001, arising out of FIR No.237/99 under Sections 426/468/471/467/506 and 120-B IPC shows that the petitioner is not named as an accused and after trial, all the four accused were acquitted in the case.

5. In so far as FIR No.342/2004 is concerned, documents have been placed on record by the petitioner to show that quashing proceedings, in respect of the said FIR are pending before the Punjab & Haryana High Court and the matter is now listed on 9.12.2010. Counsel for the petitioner specifically draws the attention of this Court to a certified copy of the affidavit dated 22.12.2005 of the complainant in the aforesaid case confirming the fact that he did not want any legal action to be taken against the petitioner.

6. On the prosecution being asked as to how such an incorrect submission could have been made in the Status Report filed in Bail Application No. 1847/2009 that FIRs No.41/2005 and 237/1999 are also registered against the petitioner, it is stated that the submission was made on the basis of information furnished by the complainant to the previous IO. The Court expects a greater sense of responsibility from the prosecution in discharge of its duty, particularly when it relates to making averments with regard to pending cases against an accused, as that would result in the Court formulating an opinion as to his antecedents while exercising its discretion for grant of relief under Sections 438/439 of the Cr.PC. The prosecution is directed to be more careful in future.

7. While passing the order dated 18.8.2010 in Bail Application

No.1847/2009, rejecting the relief of anticipatory bail to the petitioner, the antecedents of the petitioner were highlighted as not being above board and it was stated with much emphasis that he was involved in other cases in which he had adopted a similar *modus operandi* to dupe innocent purchasers, as adopted in the present case. The said fact did weigh with the Court while denying him the relief of anticipatory bail. Learned APP for the State does not deny the fact that right from the date of passing of the interim order on 6.10.2009 in BA No.1847/2009 till passing of the order dated 18.8.2010, rejecting the earlier bail application moved by the petitioner, he had been appearing before the IO as and when summoned for interrogation. It is further stated that even today, there is sufficient material available with the IO for him to file a charge sheet against the petitioner herein, without insisting on his custodial interrogation.

8. In view of the aforesaid facts and circumstances of the case, the present petition is allowed. It is ordered that in the event of arrest, the petitioner shall be released on bail, subject to his furnishing a personal bond in the sum of ₹ 50,000/-, with one surety in the like amount, to the satisfaction of the investigating officer/arresting officer. Needless to state that the petitioner shall continue to participate in the investigation as and when called by the IO and shall not tamper with the evidence or create any hindrance or impediment during the course of investigation.

9. The petition is disposed of.

NOVEMBER 25, 2010
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(HIMA KOHLI)
JUDGE