

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **BAIL APPLN. 218/2011**

Reserved on: 04.04.2011

Date of Decision: 08.04.2011

IN THE MATTER OF :

JACOB MARTIN

..... Petitioner

Through: Mr. Rakesh Dwivedi, Senior Advocate with
Mr. Abhijat P. Medh, Mr. Rauf Rahim,
Mr. Viplav Sharma and Mr. Yadunandan Bansal,
Advocates alongwith petitioner in person.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Pawan Sharma, Standing Counsel with
Mr. Navin Sharma, APP for the State, Mr. Harsh
Prabhakar, Advocate and Mr. R.A. Sanjeev, DCP,
Mr. Dev Raj, ACP and SI Rang Lal, Police Station:
IGI Airport, in person.

CORAM

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

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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? | Yes |
| 3. Whether the judgment should be
reported in the Digest? | Yes |

HIMA KOHLI, J.

1. The present petition is filed by the petitioner under Section 438 of the Cr.PC praying *inter alia* for grant of anticipatory bail in FIR No.554/2004 dated 11.12.2004, lodged at the instance of Immigration Department, IGI Airport, New Delhi, under Sections 420/468/471 IPC and Section 12 of the Passport Act, registered with Police Station: IGI Airport,

New Delhi, against a passenger by the name of Nemesh Kumar Manu Bhai Patel, R/o Ahmedabad, who was caught by the United Kingdom Immigration Department and deported back to India, as an illegal entrant on the ground that on a scrutiny of his passport, it was found that the home stamp of United Kingdom was counterfeit. In the FIR, it was noted that on questioning the passenger, it was ascertained that during his stay in United Kingdom, he had contacted an agent by the name of Ashwin Patel, who had arranged the counterfeit home stamp for him on payment of 3000 pounds.

2. The facts of the case, as stated in the status report filed by the State, are that the accused/passenger, Nemesh Kumar Manu Bhai Patel was arrested on 11.12.2004 and was granted bail after 10 days. In the course of investigation, he disclosed that his journey to UK was arranged by two agents namely, Rajender Bhikhubhai @ Rajubhai Patel and the petitioner herein, upon payment of ₹7 lacs. The accused/passenger further disclosed that the petitioner had obtained a visa for him from the UK Embassy, by showing him and some other persons as members of a cricket team by the name of Ajwa Sports Club, Baroda, Gujarat, of which the petitioner, who is an international cricket player, was the manager. He further disclosed that before sending him and the other persons to United Kingdom, the petitioner had provided them basic information about the game of cricket, as none of them had any knowledge of the game. The petitioner managed to take the accused/passenger and some other persons to United Kingdom in October 2003, by posing them as members of the cricket team. While the accused/passenger Nemesh Kumar Manu Bhai Patel stayed back in United Kingdom, the petitioner returned to India with the rest of the cricket team. In United Kingdom, the petitioner and one Rajubhai Patel, got the

counterfeit/forged United Kingdom home office stamp affixed on the passport of the passenger/accused, through an agent by the name of Janakraj Bhogilal Pancholi, on payment of 3000 pounds. As per the prosecution, three public witnesses, namely, Kritbhai Shankarbhai, brother-in-law of the accused/passenger, Rohit Purushottam Patel, a friend of Kritbhai and Rekha Ben Patel, mother-in-law of the accused/passenger were examined and they corroborated the facts disclosed by the accused/passenger.

3. In January 2005, the British High Commission confirmed that on 11.08.2003, a visa for United Kingdom had been issued to the accused/passenger, who was shown to be a part of a cricket group comprising of 20 members. On 09.06.2006, a verification report regarding the United Kingdom home office stamp, affixed on the passport of the passenger/accused, was received from the British High Commission, wherein it was stated that the home office stamp was a counterfeit/forged. As per the prosecution, repeated reminders were sent to the British High Commission through the Ministry of External Affairs, requesting them to provide the relevant visa forms and other documents relating to the aforesaid cricket team for the purposes of investigation. However, on 22.07.2010, the British High Commission furnished a report that the aforesaid papers and documents had been weeded out and, therefore, could not be provided.

4. On 13.07.2010, a notice under Section 160 Cr.PC was issued to the petitioner, calling upon him to appear on 27.07.2010 before the Investigating Officer, but he did not join the investigation. A second notice was issued to the petitioner on 28.07.2010 asking him to appear on

23.08.2010 before the Investigating Officer and to provide a list of the players of Ajwa Sports Club, Baroda, who had gone to United Kingdom alongwith the petitioner. However, the petitioner neither joined the investigation nor did he furnish the list of players to the Investigating Officer. Finally, on 16.11.2010, the Investigating Officer approached the trial court with a request that non-bailable warrants be issued against the petitioner and the agent, Rajender Bhikhubhai @ Rajubhai Patel. After the said non-bailable warrants were issued, raids were conducted at the houses of the aforesaid persons, but the warrants could still not be executed.

5. Finally, on 03.1.2011, the co-accused Rajender Bhikhubhai @ Rajubhai Patel was arrested and he got bail after a period of one month. The aforesaid co-accused disclosed that he alongwith the petitioner had arranged the journey of the accused/passenger, Nemesh Kumar Manu Bhai Patel and for the said work, he had received a commission of ₹25,000/-, while the remaining amount of ₹6,75,000/- was paid to the petitioner. He further disclosed that the petitioner had sent abroad some people, including the passenger/accused, by fraudulently posturing them as members of his cricket team. He further stated that the petitioner had fraudulently obtained visas for the aforesaid persons. He also disclosed that in United Kingdom, he alongwith the petitioner, had arranged for a counterfeit/forged United Kingdom home office stamp for the accused/passenger, Nemesh Kumar Manu Bhai Patel on payment of 3000 pounds to one, Janakraj Bhogilal Pancholi, an associate of the petitioner, who has been declared a proclaimed offender on 04.03.2010.

6. Learned Standing Counsel submits that as the non-bailable warrants issued against the petitioner could not be executed, proceedings

under Section 82 Cr.PC were initiated against him on 22.12.2010, to declare him a proclaimed offender. It is further stated that the petitioner who is employed in the Western Railways as a CTI, has remained absent from duty for a period of one and a half years. On 21.01.2011, the petitioner was declared a proclaimed offender but he has continued to abscond. On 13.01.2011, charge-sheet was filed against the accused/passenger, Nemesh Kumar Manu Bhai Patel and Rajender Bhikubhai Patel. On 01.02.2011, the petitioner filed his first application for grant of anticipatory bail, which was dismissed in default on the same date by the learned ASJ. He filed yet another application for grant of anticipatory bail, which was dismissed on 10.02.2011. Learned Standing Counsel for State stated that despite the fact that his application for grant of anticipatory bail was dismissed by the learned ASJ on 10.02.2011 and the petitioner was advised to join the investigation, he did not participate in the investigation and instead, he filed an application before the learned ACMM on 03.03.2011, seeking cancellation of the non-bailable warrants and the proceedings initiated against him under Section 82 Cr.PC, which came to be dismissed on 05.03.2011, with yet another direction to the petitioner to join the investigation.

7. Learned Senior counsel appearing for the petitioner submitted that the incident was of the year 2003, whereas custodial interrogation of the petitioner has been sought in the year 2011, with no explanation for the long gap. He further stated that the incident alleged against the petitioner had occurred on foreign soil and no case can be made out against the petitioner in India. It was argued that having regard to the fact that the petitioner does not have any past history of crime, is an employee of the Indian Railways and that this was a onetime trip arranged by him, the

present petition be allowed. It was also asserted that the contention of the prosecution that the petitioner had concealed himself and had avoided service of non-bailable warrants, is factually incorrect and the fact of the matter is that on 30.12.2010, the petitioner had visited Delhi and along with his advocate, had met ACP Dev Raj and DCP R.A. Sanjeev at Police Station: IGI Airport, remained with them for two hours and subsequently, the said officers contacted the Investigating Officer over the telephone and after a detailed discussion with him and on an assurance given by the petitioner that he would join the investigation, he was allowed to go back to Vadodara. Learned Senior Counsel for the petitioner also placed reliance on the decision of the Supreme Court in Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors. in **Crl.Appeal No. 2271/2010**, to contend that the case of the petitioner does not fall under any of the parameters laid down in this decision for non-grant of anticipatory bail to him and that this decision has clearly laid down that arrest should be the last option and should be restricted to exceptional cases.

8. In view of the aforesaid oral submission made by the counsel for the petitioner on 09.03.2011 and reiterated on 15.03.2011, it was deemed appropriate to call upon the petitioner and the aforesaid officers to be present in Court on 04.04.2011. Before the aforesaid date, an additional status report was filed by ACP Dev Raj, IGI Airport, to the effect that neither he nor DCP R.A. Sanjeev, IGI Airport had met the petitioner or his advocate on 30.12.2010 at the Police Station: IGI Airport, New Delhi, as alleged by the petitioner. It was further stated that the petitioner had not joined the investigation despite repeated orders of the learned ASJ.

9. Learned Standing Counsel for the State strongly opposed the present petition and submitted that the petitioner has made false averments in the petition while seeking anticipatory bail. In support of his submissions, he handed over copies of the bail application dated 3.2.2011 filed by the petitioner before the learned ASJ, the orders dated 7.02.2011, 8.02.2011 and 9.2.2011 passed on the said application, the affidavit of the DCP and ACP dated 9.2.2011 filed before the learned ASJ and the additional affidavit filed by the petitioner on 9.2.2011 seeking to amend his bail application. It was stated by the learned Standing Counsel that the petitioner had sought to amend his bail application by filing an additional affidavit dated 9.2.2011, wherein he averred that the date of his meeting with the ACP/DCP was not 28.12.2010, as stated earlier, but was 30.12.2010. He submitted that the change of the date, as mentioned above, was a sheer afterthought on the part of the petitioner and an attempt to mislead the court and as a matter of fact, the petitioner and his lawyer had never met the ACP/DCP either on 28.12.2010 or 30.12.2010. He further stated that the petitioner has approached this court with unclean hands, as he has deliberately avoided informing this Court that he had made similar submissions, of having met the ACP/DCP at Delhi on 30.12.2010, before the learned ASJ and the same had been duly considered and rejected by the said court as is evident from a perusal of the orders dated 7.2.2011, 8.2.2011 and 9.2.2011.

10. Learned Standing Counsel further canvassed that the present petition is liable to be rejected for the reason that a perusal thereof reveals that while the same was drafted on 17.02.2011 and filed in the Registry on the same date, the affidavit of the petitioner prepared and notarized at Vadodara, bears the date of 10.02.2011. In other words, on the date when

the affidavit of the petitioner was got prepared and notarized at Baroda, no such petition for grant of anticipatory bail was in existence. He also drew the attention of this Court to the letter dated 18.01.2011 issued by the petitioner to the ACP/DCP (Annexure-VI colly), wherein the petitioner referred to his meeting in the office of the ACP/DCP on 28.12.2010, and stated that the said letter was faxed by the petitioner two days later on 20.01.2011 as is apparent from the fax confirmation report enclosed with the letter and placed on record. It is further submitted that the subsequent letter dated 09.02.2011, dispatched by the petitioner to the DCP/ACP was a clear attempt on his part to improve his case, by falsely claiming that he had mistakenly mentioned the date of his meeting with the ACP/DCP as 28.12.2010 instead of 30.12.2010. It was also pointed out that the aforesaid letter bears a date of the same day on which the petitioner had filed his additional affidavit before the learned ASJ, after being confronted for the first time by the affidavit of the ACP/DCP wherein it was stated that DCP R.A. Sanjeev was on casual leave w.e.f. 27.12.2010 to 29.12.2010.

11. This Court has heard the counsels for the parties and carefully perused their submissions. Ideally, while dealing with a petition for grant of anticipatory bail, the Court ought to refrain from conducting an indepth analysis of the material placed on record, for the reason that the investigations are still going on and no conclusive conclusion can be arrived at this stage. At this stage, what primarily weighs with the Court is the antecedents of the applicant, the apprehension that he may tamper with the evidence or influence the witnesses.

12. In the present case, the fact that clearly and starkly emerges is that even though the petitioner failed to join the investigation, after being served a notice under Section 160 Cr.PC dated 13.07.2010 and a second notice dated 28.7.2010 for his appearance on 23.08.2010, yet the IO refrained from initiating any coercive steps against him. Admittedly, he neither joined the investigation pursuant to the notices, nor furnished the information sought by the Investigating Officer and chose to remain unavailable. After the petitioner remained unavailable for about four months, the Investigating Officer was compelled to approach the trial court for obtaining non-bailable warrants against the petitioner. The non-bailable warrants also remained unexecuted as the petitioner continued to evade service. Finally, process under Section 82 Cr.PC had to be issued against the petitioner on 22.12.2010. As per the petitioner, it was at that stage that he surfaced and he alleged in his bail application dated 3.2.2011, that he had actually joined the investigation and had travelled to Delhi to meet the Investigating Officer at the ACP/DCP Office at the IGI Airport on 28/30.12.2010. In the present petition also, it has been the stand of the petitioner that he had duly met the aforesaid officers and he had been interrogated for a couple of hours before he was permitted to return to Vadodara, on his assurance that he would re-join the investigation.

13. What the petitioner has conveniently chosen to withhold from this Court is the fact that he had made identical submissions before the learned ASJ, which were duly taken note of, carefully looked into by summoning the concerned officers to Court and ultimately rejected. The facts discernible from the record are that the petitioner had stated in the bail application filed before the learned ASJ, that he had met the ACP/DCP on

28.12.2010 at Delhi. Having regard to the said submission made by the petitioner, the Court below noted in its order dated 7.2.2011 that the facts as narrated by the petitioner and his counsel were disturbing and as a result, the ACP and the DCP concerned were called upon to be present in Court on 08.02.2011. On 08.02.2011, the said officers were present before the learned ASJ and sought time to file an affidavit to give their response and the matter was adjourned to 09.02.2011. An affidavit dated 9.2.2011 was filed by Shri R.A. Sanjeev, DCP and Shri Dev Raj, ACP stating *inter alia* that neither of them had met the petitioner or his counsel at Police Station: IGI Airport on 28.12.2010 and further that the DCP had remained on casual leave w.e.f. 27.12.2010 to 29.12.2010. A perusal of the order of the learned ASJ dated 9.2.2011 shows that the affidavit of the DCP/ACP was taken on record and at that stage, the petitioner had sought time to rectify some mistake in the affidavit filed by him.

14. It was at this stage that on being confronted with the affidavit of the DCP/ACP and the documents showing the sanction of leave to the DCP by the competent authority, the petitioner appears to have changed his story and filed an additional affidavit dated 9.2.2011 stating therein that in his bail application filed on 3.2.2011, he had incorrectly mentioned the date of the meeting as 28.12.2010, and actually the correct date was 30.12.2010, when he alongwith his lawyer had visited and met the DCP/ACP at the Police Station : IGI Airport. Simultaneously, the petitioner faxed a letter dated 09.02.2011 to the ACP/DCP stating *inter alia* for the first time that he had erroneously mentioned the date of meeting with the aforesaid officers at Police Station: IGI Airport as "28.12.2010" and that he actually meant that the date be read as "30.12.2010". This was followed by the

order dated 10.12.2010 passed by the learned ASJ, rejecting the bail application of the petitioner and advising him to join the investigation.

15. The above stand of the petitioner is clearly an afterthought and an attempt on his part to improve upon his case as originally set up by him. Pertinently, there is not a whisper in the present petition of all that transpired before the court below, even though the petition runs into 39 pages, and the list of dates and events filed by the petitioner runs into seven pages. Even at the stage when this Court deemed it appropriate to examine the submission of the learned counsel for the petitioner that the petitioner had submitted himself for investigation before the ACP/DCP on 30.12.2010 by summoning the DCP/ACP, it was incumbent upon the petitioner or his counsel to apprise this Court that the aforesaid enquiry had already been undertaken by the learned ASJ at the instance of the petitioner. All the documents including the orders dated 7.2.2011, 8.2.2011 and 9.2.2011 have been placed before this Court by the learned Standing Counsel and the picture that has emerged from these, is completely contrary to the submissions made in this regard before this Court. From the above, this Court cannot help but conclude that a deliberate attempt was made by the petitioner to keep it in the dark. Even if the claim of the petitioner that he had appeared before the DCP/ACP at PS IGI Airport on 30.12.2010, did not find favour with the learned ASJ, it was his duty to have apprised the Court of the said facts.

16. Furthermore, from the status reports placed on record, it prima facie appears to be a case of human trafficking behind the smoke screen of leading a cricket team abroad. The allegations levelled against the petitioner are serious in nature. The petitioner claims to be an international cricket

player of repute, who has represented India abroad, but it prima facie appears that by illegally attempting to send people abroad, by posturing them to be cricket players, when they did not have even the basic knowledge of the game, he has done disservice to the game. Rather, what has emerged more plainly is the fact that the petitioner has attempted to mislead this Court by making false averments and concealing material information. Looking at the stature of the petitioner, it has to be said that by his aforesaid conduct, the petitioner has neither brought any glory to the country which he has had the privilege to represent at the international level in the past, nor to the sport which is so close to the heart of millions of its fans in this part of the world and least of all to himself.

17. Even a perusal of the decision relied upon by the learned Senior Advocate for the petitioner in the case of Siddharam Satlingappa Mhetre (supra) to support his plea of grant of bail, makes it apparent that one of the parameters for grant of anticipatory bail is that where the accused has joined the investigation and is fully co-operating with the investigating agency and is not likely to abscond, should the custodial interrogation be avoided. In the present case, the conduct of the petitioner does not inspire such confidence and right from July 2010, his conduct and actions do not appear to be *bona fide*. Rather, the petitioner has used every trick in the book to evade appearing before the Investigating Officer.

18. Having regard to the aforesaid facts and circumstances, the prayer made by the petitioner in the present petition is declined. The petition for grant of anticipatory bail is dismissed.

19. Needless to state that the observations made hereinabove are limited to the scope of grant of anticipatory bail to the petitioner and shall not be treated as a reflection on the merits of the case, which is pending before the court below and the said court shall proceed to deal with and decide the case in accordance with law, uninfluenced by the observations made hereinabove.

APRIL 08, 2011
rkb

(HIMA KOHLI)
JUDGE