

*** HIGH COURT OF DELHI AT NEW DELHI**

+ BAIL APPL. No.2492/2009

Date of Decision : 19.03.2012

MONIKA SINGH

..... Petitioner

Through: Mr. Satish Tamta, Adv.

Versus

STATE

..... Respondent

Through: Mr. Navin Sharma, APP

BAIL APPL. No. 238/2011

MONIKA SINGH

..... Petitioner

Through: Mr. Satish Tamta, Adv.

Versus

STATE

..... Respondent

Through: Mr. Navin Sharma, APP

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. These are two anticipatory bail applications filed by the petitioner in respect of two different FIRs lodged by the father and the son against the present petitioner.
2. The bail application no. 2492/2009 is a case registered

by Dr. Rupinder Singh, S/o Waryam Singh, R/o Waryam Singh Hospital, Jagadhari Road, Yamuna Nagar, Haryana on 01.10.2009. The allegations made in the FIR no. 271/2009, u/S 419/420/465/467/468/471/120B IPC, registered by P.S. Kotwali, Delhi are that Dr. Rupinder Singh along his wife Monika Singh was residing at 128-A, Lok Vihar, Pitampura, Delhi and he was informed by Manager, Allahabad Bank, Chandni Chowk Branch, Delhi on 27.12.2008 on his mobile phone no. 09812005900 that there was a housing loan of Rs.14.25 lakhs in the name of Ms. Monika Singh and himself as a co-borrower and the payments of the loan had been defaulted and the same were to be paid immediately. On 29.12.2008, after an enquiry by the Vigilance Branch, a case was registered against the present petitioner. During the investigation, it was revealed that the name and the address of the co-applicant Rupinder Singh were correct but photograph and occupation as mentioned in loan application was not that of the complainant. It was

further alleged that the petitioner had earlier forged General Power of Attorney and some other documents in respect of flat bearing no. 7152, Block B-10, Vasant Kunj, New Delhi. In sum and substance, the complainant had made allegations of cheating, forging the documents, and using the forged documents as genuine and criminal conspiracy against the present petitioner along with the other persons who are purported to have impersonated as the co-owner of the property and taken loan.

3. The application for grant of anticipatory bail was rejected by the learned Additional Sessions Judge on 16.12.2009. The petitioner feeling aggrieved, approached the High Court by filing the present bail application and the following order was passed on the first date in the bail application on 23.12.2009:

"Notice.

Counsel for the State accepts notice.

State report has been filed. The complainant is Dr.

Rupinder Singh, the husband of the petitioner. Allegations are that the petitioner had taken a house loan of Rs.14.24 lacs in her own name as also in the name of a co-borrower i.e. the complainant husband and defaults have been made in the said payment; the document in support of the loan application of the complainant were found to be fake and forged in the course of investigation. It is pointed out by counsel for petitioner that the loan amount has since been paid. This factum is admitted by learned APP under instructions of the Investigating Officer.

The petitioner undertakes to join the investigation. He is directed to appear before the Investigating Officer as and when summoned and not to tamper with the evidence; he will fully cooperate with the investigation. Till then no arrest.

Renotify for 10.03.2011.

Dasti.

**Sd/-
INDERMEET KAUR. J"**

4. A perusal of the aforesaid order would show two things. First, so far as the allegation of non-payment of loan of Rs.14.25 lakhs purported to have been borrowed by the present petitioner and the complainant allegedly as a co-borrower is concerned that stood paid to the bank. The petitioner was directed to join the investigation and

appear before the IO as and when summoned and she was not to tamper with the evidence and in the meantime, no arrest. This interim order of no arrest has continued till date. It has now been urged that as the interim order has continued for a long time, the bail order be confirmed.

5. The complainant has vehemently opposed the bail application. The sum and substance of opposition of the grant of anticipatory bail from both the sides i.e. prosecution and the complainant's side has been that the allegations against the petitioner are very serious in nature in as much as they are not only of cheating the bank but also forging the documents and using the forged documents as genuine by the petitioner for the purpose of borrowing that money from Allahabad Bank and representing somebody else whose identity is yet not known. It was contended that repayment of loan does not obliterate the offence.
6. The second limb of argument has been that the petitioner

is a habitual cheater and forger, who forged documents. It is alleged that she has also been involved in number of other cases, and therefore, she is not entitled to the grant of anticipatory bail. In this regard, the prosecution has drawn the attention of the Court to an FIR No. 625/2003, under Section 420/468/471/34 IPC, registered by P.S. Vasant Kunj, New Delhi with regard to the flat in question to which a reference was made in the present case also. It is contended by the learned counsel for the petitioner that the said FIR was quashed on being compromised by the Apex Court in CrI. A. No. 1286/2009. The copy of the order has been placed on file.

7. During the course of submissions, the learned APP has also pointed out that the petitioner had been declared proclaimed offender in a case under Section 138 of the Negotiable Instrument Act by Chandigarh Court which was refuted by the learned counsel for the petitioner stating that the petitioner was not served, and therefore,

she was declared a proclaimed offender and in any case she has put in appearance in the Trial Court and it has granted her bail. It is further alleged that the FIR has been registered at the instance of the complainant in the instant case.

8. The third submission, which has been made by the learned APP is that the petitioner has not been joining the investigation and whenever she has joined the investigation, she has not given the correct information to the IO in order to save her skin. Therefore, this also disentitles the petitioner to the grant of anticipatory bail.
9. So far as the bail application bearing Bail Appl. No.238/2011 is concerned, this was also a case in respect of FIR No. 113/2010, under Section 420/468/471/120B IPC, registered by P.S. Rani Bagh, Delhi. This FIR had been lodged by Dr. Waryam Singh, father of Dr. Rupinder Singh wherein the allegations have been made against the petitioner that she has forged the documents of property bearing no. G-1219-A, Chitranjan

Park, New Delhi belonging to Dr. Waryam Singh and Sumitra Guha which was duly registered in their name by the conveyance deed dated 16.11.2004 by the L&DO and the same is registered by Sub-Registrar, Delhi on 23.11.2004. It has been alleged that after forging the documents in respect of the aforesaid property, the petitioner had conspired with Prem Singh, Ramesh Chand, Sanjay, Ashok Kumar, UDC in the office of L&DO, Attar Singh, LAO, DDA forged and fabricated a power of attorney dated 04.09.1998 and got prepared a conveyance deed dated 11.05.2004 in her own name in respect of the aforesaid property. Thereafter, it has been alleged that the said forged documents were presented as genuine documents to establish her ownership with the State Bank of India, Shakur Basti, Rani Bagh, Delhi and she was able to secure a medium term loan of Rs. 10,00,000/- on 08.06.2005 by mortgaging the said property. Accordingly, the case under Section 420/465/467/468/471/120B IPC was

registered.

10. The bail application of the petitioner was rejected by the learned Additional Sessions Judge on 19.02.2011 by observing that the petitioner is involved in three other similar cases, and therefore, the grant of anticipatory bail was refused.
11. The petitioner feeling aggrieved preferred the present bail application, which the Court was pleased to refer the matter to Meditation Cell vide order dated 24.02.2011 because the Court felt that there is some matrimonial discord between Dr. Rupinder Singh and Ms. Monika Singh as they had a live in relationship and the matter could be settled amicably. In the meantime, the petitioner was protected. This direction has continued from time to time till date, although, Mediation did not bring about any fruitful result.
12. The matter has been heard on different dates and this is one of such rare cases where there has been great deal of opposition from the side of the complainant as well as

the learned Prosecutor to grant the anticipatory bail. Normally, I have not seen such a great opposition by the learned APP, as has been done in the present case. In case a person has committed a crime, he must meet the consequences but in the instant case, it seems that as there was a live in relationship between the petitioner and Dr. Rupinder Singh and as they have fallen apart each one of them wants to score a point over the other.

13. In the second bail application the grounds for opposition of bail is almost the same, therefore, I do not want to repeat the same.
14. So far as the learned counsel for the petitioner is concerned, her case has been that she had live-in relationship with Dr. Rupinder Singh which also resulted in a birth of a son to the parties. The son is presently with the petitioner. The petitioner was a divorcee and from the previous marriage, she has a daughter. It is the case of the petitioner as she was a divorcee, she was very depressed and lonely. It is at that point of time that

her father was taken ill and he was being treated at the hospital being run by the complainant and his father Waryam Singh when she came in contact with Dr. Rupinder Singh. It has been stated that Dr. Rupinder Singh was also running into rough weather so far as his marriage is concerned, and in order to find solace and peace, he started paying visits to the petitioner and showed that he had soft corner for her. They came nearer to each other and their friendship blossomed into a live-in relationship. During this relationship, the petitioner alleges that she got pregnant and Dr. Rupinder Singh wanted the pregnancy to be terminated for fear of social stigma for which she did not accede to and she gave birth to the male child. During the pregnancy, she came to Delhi where she came to stay at different places in Pitampura, etc. and Dr. Rupinder Singh visited her towards the weekend in order to give her financial help. It is the case of the petitioner that she was helped by him. Whatever papers for loan were signed by her were

allegedly brought by Dr. Rupinder Singh and she would only sign the same. She denied that she had committed any offence. It has been alleged by the petitioner that the dispute is essentially between the petitioner and Dr. Rupinder Singh, which is a matrimonial dispute for which a complaint has been lodged by her in the Chandigarh Court and it is about the custody of the male child, which pleas have been refuted by the Doctor in writing stating that no details have been given, therefore, this is a false plea.

15. No doubt, the offence of cheating, forging documents and using forged documents as genuine are essentially very serious in nature, but the severity of the charge or the nature of offence is determined by the sentence which it carries. The offence under Section 420 IPC carries a maximum sentence of seven years and is also liable for fine. The next charge of conspiracy and the allegation against the petitioner is that she has forged the signatures and presented somebody else as co-borrower

in the case of Dr. Rupinder Singh and obtained the loan which admittedly stands paid. The offence of conspiracy and forging a document and using the same as genuine, will also carry almost maximum of same punishment.

16. So far as Dr. Waryam Singh is concerned, the petitioner is alleged to have forged the signatures of Dr. Waryam Singh or somebody else and shown herself as the owner of the property. The bail application has been opposed on two counts. Firstly, the petitioner is not joining the investigation. Secondly, the petitioner is not cooperating with the IO and revealing the identity of the person who had represented as the co-borrower.

17. I do not agree with the learned APP that the offence against the petitioner can be established only if she is taken for custodial interrogation. Let's assume that she is not permitted to be custodially interrogated, even then, if she has forged the signatures of Dr. Rupinder Singh, this can be established by obtaining the signatures of Dr. Rupinder Singh and comparing the same with the

questioned document. That in itself would clearly establish that Dr. Rupinder Singh is not a co-borrower, therefore, this bogie of custodial interrogation or the petitioner not joining the investigation does not convince me as the real reason for opposing the bail of the petitioner by the prosecution. Similarly, in the case of Dr. Waryam Singh, the allegation is that the petitioner has taken a loan by forging the documents and presenting herself as the owner of the property bearing no. G-1219-A, Chitranjan Park, New Delhi and this can be established by subjecting the petitioner to simple interrogation. This is on account of the fact that if the said property is registered in the name of Dr. Waryam Singh, all that needs to be established from the Sub Registrar record is as to whether the loan documents and the other documents are signed by Dr. Waryam Singh or not. Therefore, emphasis which is sought to be placed on the custodial interrogation by both the parties, in my opinion, is totally misconceived. At the back of this, is

essentially, a sense of vendetta, which seems to have been adopted by the complainants only to ensure that the petitioner be sent behind the bars. No doubt, credentials of the petitioner also do not seem to be very clean in as much as she is facing trial in a case under Section 138 of the Negotiable Instruments Act or she was an accused in another FIR of cheating which ultimately ended in a compromise. But as she is a women and in terms of proviso to Section 437 Cr. P.C., she is not alleged to have committed an offence which carries a punishment of life imprisonment. I intend to give her the benefit of doubt, at this stage, when the cases are still at the investigating stage.

18. I have also gone through the police files and I am at a loss to understand what type of investigating officer is conducting the investigation which was in the form of questions and answers, and subsequently, the accused was made to sign the same. That obtaining a signature of the accused on any kind of custodial or non-custodial

interrogation, in my considered opinion, is impermissible as it is being done by the police in the instant case. In this regard even the witnesses whose statements are recorded under Section 161 Cr.P.C. cannot be made to sign the same much less the accused. So far as the first parameter with regard to the seriousness of the allegation is concerned, I am of the view that no doubt there is seriousness of the allegation qua the petitioner but they are not so serious as envisaged under Section 437 Cr. P.C. to carry a sentence of life which entails denial of anticipatory bail to the petitioner. More so when the Supreme Court has construed the said provision of Section 438 Cr.P.C.very liberally in the case titled **Siddharam Satlingappa Metre vs.State of Maharashtra** (2011) 1 SCC 694. Therefore, I feel that the seriousness of the allegations is not a ground to deny the bail to the petitioner in the instant case.

19. The second consideration which is the non-cooperation of the petitioner/accused with the investigating agency, that

is also, I feel, a bogie which has been set up to deny the bail to the petitioner. The petitioner has admittedly been on bail in one case from the year 2009 and in the other case for more than a year and denying the said anticipatory bail now on the specious ground that the petitioner is not cooperating in the investigation would only be inappropriate.

- 20 The other consideration for grant of bail is that as to whether she will flee from the processes of law or whether she will tamper with the evidence. There has been no allegation from the prosecution that she will flee from the processes of law or she will tamper with the evidence. I also do not feel that she will flee from the processes of law as she has a fixed place of residence and also has two children whom she has to take care of. So far as the tampering with the evidence is concerned, obviously the complainant in both the cases are beyond approach and rest of the evidence is in the nature of documents which can hardly be tampered with as the

same are not in her possession.

21. Keeping in view the totality of circumstances, I feel that it is a fit case where the petitioner deserves to be enlarged on anticipatory bail in the event of her arrest. Accordingly, in the event of her arrest, the petitioner shall be enlarged on bail on furnishing her a personal bond in the sum of Rs. 25,000/- with one surety for the like amount to the satisfaction of the IO/SHO concerned, in both the FIRs bearing no. 271/2009, under Section 419/420/465/467/468/471/120B IPC, registered by P.S. Kotwali, Delhi and the FIR No.113/2010, under Section 420/468/471/120B IPC, registered by P.S. Rani Bagh, Delhi. This shall be subject to the following conditions:-
- (i) The petitioner shall join the investigation;
 - (ii) The petitioner shall not leave the National Capital Region of Delhi without the permission of the Court;
 - (iii) The petitioner shall not change her place of residence without the prior permission of this court;
 - (iv) The petitioner shall also make her mobile number

available with the SHO concerned within whose jurisdiction she is residing:

- (v) The petitioner shall not tamper with the evidence or create any conditions which are not conducive to the fair investigation.

22. The petitions are accordingly, disposed of.

V.K. SHALI, J

March 19th, 2012
KP