

6

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

BAIL APPLN. 814/2012

BALWANT SINGH NEGI Petitioner
Through: Mr. Nitin Sehgal, Advocate.

versus

STATE Respondent
Through: Mr. Manoj Ohri, APP for State with
SI Manoj, PS Begumpur, Delhi.
Mr. Sumit Coudhary, Advocate for
complainant.

%

Date of Decision: 28th August, 2012

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J : (Oral)

1. Present petition has been filed seeking anticipatory bail in FIR No. 25/2012 registered with PS Begumpur, Delhi under Sections 420/467/468/471/120B IPC.

2. In the complaint, the complainant has stated that on 09th July, 2010, present petitioner and his wife had entered into two loan agreements wherein they had agreed to pay ₹ 81,90,000/- on or before

04th September, 2010 and ₹ 97,60,000/- on or before 07th October, 2010.

3. It is further stated in the complaint that as the petitioner could not repay under the aforesaid loan agreements, petitioner offered to sell his house bearing No. 132, Pocket-12, Sector-20, Rohini, Delhi-110085 for a total sale consideration of ₹ 26,55,000/-. In addition, the petitioner is alleged to have handed over a cheque of ₹ 12,00,000/- to the complainant.

4. On presentation, the said cheque of ₹ 12,00,000/- was dishonoured and hence a case under Section 138 of the Negotiable Instruments Act, 1881 was filed.

5. Subsequently, as the complainant came to know that petitioner and his wife had sold the aforesaid property to someone else, they therefore, registered the present FIR.

6. The police in its status report stated that petitioner has sold the aforesaid property to three different persons and later on the petitioner and his wife returned the money to two of them, but thereafter, the petitioner is alleged to have mortgaged the said property to ICICI bank. It is further stated in the status report that petitioner had neither joined the investigation nor was he cooperating with the police.

7. In the status report, it was further stated that petitioner had played an active role in forging the documents and therefore, his custodial interrogation was required.

8. On 04th July, 2012, the Police filed a supplementary status report. The relevant portion of the status report reads as under:-

“.....The petitioner during the course of questioning revealed that he has mortgaged the Ground and First Floor of House bearing no. 132, Pocket-12, Sector-20, Rohini, Delhi with ICICI Bank, Sector-8, Rohini, Delhi and all the documents required by the investigating agency are lying in the custody of aforesaid bank. Pursuant to the interrogation of the petitioner, the Investigating Officer gave a notice dated 12.06.2012 to the concerned bank and reply to the same was received on 19.06.2012 wherein it was revealed by the aforesaid ICICI Bank that neither the petitioner nor his wife (co-accused Bimla Negi) have any other relationship with the bank except that they have availed a home loan from the said bank vide Loan Account no. LBNODOOOO1324566 on 26.06.2006 and the same Loan Account No. stood closed. Apart from misleading the investigation agency on this count, the petitioner did not cooperate with the investigating agency and gave only vague answers to the queries raised during his interrogation”

(emphasis supplied)

9. After hearing the parties at length, on 04th July, 2012 this Court in a bid to give one more opportunity to the petitioner to cooperate with the investigating authorities, passed the following order:-

“ Police has filed a supplementary status report. The same is taken on record.

Mr. Nitin Sehgal, learned counsel for petitioner assures this Court that petitioner would not only physically appear before the Investigating Officer on each day beginning from 05th July, 2012 at 3:00 p.m., but would also provide the title deeds and previous chain of title documents as well as all other relevant information asked for by the Investigating Officer.

List the matter for further consideration on 17th August, 2012.

In the meantime, petitioner shall not be arrested in FIR No.25/2012.”

10. Today, learned counsel for petitioner states that petitioner has fully complied with the aforesaid order inasmuch he has appeared before the Investigating Officer on each day at 3:00 p.m. except four or five occasions and that too after intimation to the Investigating Officer.

11. Learned counsel for petitioner further states that petitioner has right to silence and, therefore, petitioner cannot be asked to admit his guilt during police interrogation.

12. Learned counsel for petitioner has also drawn attention of this Court to a judgment of this Court in **Ashok Kumar Gupta vs. State 2007 (141) DLT 94** and a judgment of the Supreme Court in

Others 2010 XII AD (SC) 340 wherein it has been held as under:-

“122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

iii. The possibility of the applicant to flee from justice;

iv. The possibility of the accused's likelihood to repeat similar or the other offences.

v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

123. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case.

124. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.”

13. Mr. Manoj Ohri, learned APP for State has drawn attention of this Court to the fresh status report filed by the police on 16th August, 2012. The relevant portion of the same reads as under:-

“That in continuation to the earlier status reports, it is further submitted that pursuant to order dated 04.07.2012, wherein the counsel for the petitioner had assured this Hon’ble Court that the petitioner would not only physically appear before the Investigating Officer on each day beginning on 05.07.2012, but would also provide the title deeds and previous chain of title documents as well as all other relevant information asked for by the Investigating Officer, it is respectively submitted that the petitioner joined the investigation but did not appear before the Investigating Officer on each day as per the undertaking given by his counsel before the Hon’ble Court. Furthermore, despite issuance of five separate notices u/s 91 Cr.P.C., the petitioner has deliberately chosen not to answer any of the said notices nor has produced any document whatsoever. The petitioner did not cooperate with the investigating agency and gave only vague answers to the queries raised during his interrogation and his custodial interrogation is very much required to recover the original as well as forged documents, prepared by himself and his wife.

The proceedings under section 82 Cr.P.C. already stands initiated against the petitioner since all along he had been evading his arrest. The petitioner is living in a rented accommodation and he has no permanent adobe in Delhi and there is every possibility that the petitioner will hamper the investigation, tamper with the evidence and evade his trial.

That the custodial interrogation of the petitioner is very much required for recovery of forged documents and other case property and his bail application is strongly opposed and the same is liable to be dismissed. However, the undersigned shall abide by the directions passed by this Hon’ble Court.”

(emphasis supplied)

14. Having heard the parties at length, this Court is of the view that nature and gravity of the offence is serious and as the petitioner instead of cooperation, is misleading the police, this Court has no other option, but to reject the present anticipatory bail petition.

Accordingly, the same is dismissed.

MANMOHAN, J

AUGUST 28, 2012

js