

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ B.A. 968/2011

Decided on : 22.08.2012

Sharad Kumar Aggarwal Petitioner
Through: Mr. Sunil Mittal, Adv.

Versus

STATE Respondent
Through: Mr. Sunil Sharma, APP

WITH

Crl.M.C.1530/2011

Arun Mehra Petitioner
Through: Mr. A. Das, Adv.

Versus

State of NCT of Delhi Respondent
Through: Mr. Sunil Sharma, APP

**CORAM:
HON'BLE MR. JUSTICE V.K. SHALI**

V.K. SHALI, J.

1. This order shall dispose of bail application No.968/2011
titled Sharad Kumar Aggarwal -vs- State and

Crl.M.C.1530/2011 titled Arun Mehra –vs- State of NCT of Delhi.

2. Briefly stated, the facts of the case are that a civil suit was filed by one Vishesh Jain, r/o C-48, Shastri Nagar, Ghaziabad, Uttar Pradesh in the High Court of Delhi, which was numbered as CS(OS) No.1136/2005. This was a suit for recovery of ₹ 24,22,500/- from one Arun Mehra and ors., including M/s. Durga Builders Pvt. Ltd.. The defendant, Arun Mehra and his wife, Seema Mehra had contended before the High Court that the suit, which was filed by Vishesh Jain, was based on forged and fabricated documents/agreements purported to have been executed by them. The High Court directed Vishesh Jain to appear in Court, but he failed to do so. Even the processes issued against him could not be served for want of correct address. The suit was dismissed by Hon'ble Justice (Retd.) S.N. Dhingra with a cost of ₹ 10,000/-, however, while dismissing the suit, the High Court directed the Crime

Branch to investigate the whereabouts of Vishesh Jain and unearth the conspiracy between the plaintiff, Vishesh Jain and the defendant no.4, M/s. Durga Builders Pvt. Ltd. to file the said suit on the basis of the forged documents.

3. In terms of the order of the High Court, an FIR No.246/2008 was registered on 7.8.2008 under Sections 420/467/468/471/120-B IPC by PS:Tilak Marg, New Delhi and the matter was investigated by the Special Operation Squad of Crime Branch. During the course of investigation, necessary evidence was gathered and the statements of witnesses were recorded, including that of Arun Mehra and B.L. Wali, Advocate, who is purported to have appeared on behalf of Vishesh Jain. It transpired during the course of investigation that the papers, on the basis of which the suit on behalf of Vishesh Jain was filed, were supplied by an advocate by the name of Anuradha, a junior of the petitioner. It also transpired that the Vakalatnama was filed by the present petitioner for

appearing before the Court for his client, R.K. Nanda and some other papers, including the written statement filed by him on behalf of the said person were bearing the signatures of R.K. Nanda, which were taken from somewhere and affixed on the Vakalatanama, written statement and the accompanying affidavit. The relevant papers were collected by the Investigating Agency and they were sent to the Forensic Science Laboratory for the opinion of an expert, who gave an adverse report, which *prima facie*, confirmed the documents being forged and fabricated in which involvement of one R.K. Nanda, Director of Durga Builders Pvt. Ltd. and Sharad Kumar Aggarwal, Advocate, was *prima facie* established.

4. From the investigation conducted by the Police, it was also established that Vishesh Jain is a non-existent person and the suit had been filed on the basis of forged documents by Sharad Kumar Aggarwal, Advocate, the present petitioner in collusion with Directors of Durga Builders Pvt. Ltd. It is in

respect of this very suit that the present petitioner has filed the application for the grant of anticipatory bail as his application was rejected by Mr. H.S. Sharma, the learned Sessions Judge on 11.5.2011, holding that the petitioner is not entitled to the grant of anticipatory bail.

5. The petition came up for hearing for the first time on 19.7.2011, when it got adjourned to 20.7.2011. As the chargesheet in the matter had already been filed, the petitioner was directed to approach the learned Trial Court for the purpose of grant of bail. The learned counsel for the petitioner had referred to the two judgments of the Apex Court titled *Bharat Chaudhary & Anr. -vs- State of Bihar & Anr.*, (2003) 8 SCC 77 and *Ravindra Saxena -vs- State of Rajasthan*, (2010)1 SCC 684 to contend that mere filing of the chargesheet against the petitioner should not be a ground to disentitle him the grant of anticipatory bail. Accordingly, notice was issued to the respondent and in the

meantime, the petitioner was protected from being arrested.

6. This order of restraint against the arrest has been in operation for almost a year. The matter was heard and the only question which arose was as to whether the petitioner having been protected by the interim order against his arrest ought to be denied the anticipatory bail or he should be granted anticipatory bail so as to appear before the Trial Court and obtain appropriate orders from the Magisterial Court where the chargesheet has been filed.
7. The second question which arose for consideration was regarding an application for intervention in Bail Appn.968/2011 bearing No.1027/2011 under Section 24(8) read with Section 482 Cr.P.C. by Arun Mehra for being impleaded as a party as it was alleged that he was the person who had brought to the notice of the High Court that the suit which was filed by Vishesh Jain against him and his wife, Seema Mehra, was based on the forged

documents so as to manufacture evidence against them in the Company Law Board qua M/s. Durga Builders Pvt. Ltd. He has vehemently opposed the grant of anticipatory bail to the present petitioner, not only on the merits of the present case, but also on account of the fact that the present petitioner is a habitual criminal, as he is involved in number of other FIRs where there are allegations against him that in active collusion with R.K. Nanda, the other co-accused, he has similarly forged the documents and set the judicial process into motion either criminally or by way of company petitions.

8. I have heard Mr. Sunil Mittal, the learned counsel for the petitioner, Mr. Sunil Sharma, the learned APP and have also gone through the written notes handed over to the Court on behalf of the applicant, Arun Mehra, seeking permission to intervene in the matter and not to grant anticipatory bail to the present petitioner.

9. On earlier occasions, submissions were made by the learned counsel appearing for Arun Mehra that as he is the complainant, as it was he who brought it to the notice of the Court which got the FIR registered, therefore, he has the locus, to ensure that the justice is met not only to the accused, but also to the victim. He has vehemently opposed the anticipatory bail application of the petitioner. In this regard, the learned counsel has relied upon the judgment of Apex Court in *Sheonandan Paswan -vs- State of Bihar & Ors.*, (1987) 1 SCC 288 where, in paragraph 14, it has been observed as under:-

"It is now settled law that a criminal proceeding is not a proceeding for vindication of a private grievance but it is a proceeding initiated for the purpose of punishment to the offender in the interest of the society. It is for maintaining stability and orderliness in the society that certain acts are constituted offences and the right is given to any citizen to set the machinery of the criminal law in motion for the purpose of bringing the offender to book. It is for this reason that in *A. R. Antulay v. R.S. Nayak*

MANU/SC/0082/1984 : 1984CriLJ647 ,this Court pointed out that "punishment of the offender in the interests of the society being one of the objects behind penal statute enacted for larger good of society, the right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait jacket formula of locus standi".

This Court observed that locus standi of the complainant is a concept foreign to criminal jurisprudence. Now if any citizen can lodge a first information report or file a complaint and set the machinery of the criminal law in motion and his locus standi to do so cannot be questioned, we do not see why a citizen who finds that a prosecution for an offence against the society is being wrongly withdrawn, cannot oppose such withdrawal. If he can be a complainant or initiation of criminal prosecution, he should equally be entitled to oppose withdrawal of the criminal prosecution which has already been initiated at his instance. If the offence for which a prosecution is being launched is an offence against the society and not merely an individual wrong, any member of the society must have locus to initiate a prosecution as also to resist withdrawal of such prosecution, if initiated. Here in the case, the offences charged against Dr. Jagannath Misra and others are

offences of corruption, criminal breach of trust, etc., and therefore any person who is interested in cleanliness of public administration and public morality would be entitled to file a complaint, as held by this Court in *A. R. Antulay v. R. S. Nayak* (supra) and equally he would be entitled to oppose the withdrawal of such prosecution if it is already instituted.”

The judgment of *Sheonandan Paswan* (supra), in my view, does not apply to the facts of the present case for the simple reason that the facts of the said case are distinguishable from the facts of the case in hand. In *Sheonandan Paswan* (supra), the question which was under consideration was as to whether a criminal prosecution which is initiated at the instance of the complainant, can be permitted to be withdrawn by the State by resorting to Section 321 of the Cr.P.C. without the intervention of the complainant or the complainant has to be heard. It was in this context that the observations of the Apex Court were passed.

10. In the present case, there is no question of withdrawal of prosecution case, in fact the application is only for deciding the grant or denial of anticipatory bail to the petitioner and since it is a State case, I feel that the petitioner does not have any *locus standi* to oppose the bail application.
11. I agree with the contention of the learned counsel for the intervenor/applicant that the concept of locus has been gradually relaxed by judicial pronouncements as well as by way of legislative changes in the Cr.P.C. So far as the judicial pronouncement with regard to relaxation of the concept of locus is concerned, it is in the context that when a final report is filed by the Investigating Officer, seeking closure of a Police case, a protest petition can be filed by the complainant. This concept of protest petition was evolved by a judicial pronouncement in *Bhagwant Singh – vs- Commissioner of Police & Anr.*, (1985) 2 SCC 537. Similarly, in cases where the FIR is sought to be quashed by filing a petition under Section 482 Cr.P.C., the

complainant has to be made as a party. This has also been evolved by the Apex Court in *J.K. International –vs- State, Govt. of NCT of Delhi and Ors.*, AIR 2001 SC 1142.

12. So far as *Sheonandan Paswan* (supra) is concerned, it can be seen in the same light that in case where the prosecution is sought to be withdrawn under Section 321 of Cr.P.C. by the State the complainant has to be heard.
13. So far as the legislative changes are concerned, no doubt, the complainant, under the concept of 'any person aggrieved' can prefer a revision either to the Court of Sessions or to the High Court under Sections 397/401 of the Cr.P.C.. Similarly, under Section 374 Cr.P.C., there are certain contingencies in which a complainant has also been given the right to file an appeal against the acquittal as an aggrieved person, which right was earlier vested only with the State. Therefore, the net result of all these changes with the passing of time is that the concept of locus has been relaxed. There is, no doubt, that in cognizable

offences, the State is the main prosecuting party and the private counsel are given a limited right of assisting the prosecutor, but this role has been modified or relaxed in certain given contingencies. However, at the same time, in a matter where the accused has applied for anticipatory bail, a third party intervention, either by the complainant or by any other interested person, has not been allowed by this Court. Reliance in this regard can be placed on *Sachin Kumar Saraf –vs- State & Ors.*, 2009(4) JCC 2629.

14. The second judgment being relied upon by the applicant is *Brij Nandan Jaiswal –vs- Munna alias Munna Jaiswal*, 2009(1) SCC 678 wherein the Apex Court has held that the complainant can always question the order of granting bail if the said order has not been validly passed. It was also observed by the Apex Court that if the bail is once granted by any court, it is not as if the said bail can be cancelled only on account of its misuse. The bail order can be tested on merits also. No doubt, in the said judgment, the

complainant has been permitted to challenge the bail order after the same had been granted, but in the instant case, this Court has not granted the bail to the petitioner as yet and giving the right of hearing to the complainant at the stage of grant of bail would tantamount to doing something which is prohibited by Section 301 of the Cr.P.C. The said Section reads as under:-

301. Appearance by public prosecutors.

(1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any court in which that case is under inquiry, trial or appeal.

(2) If in any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the court, submit written arguments after the evidence is closed in the case.

A perusal of the aforesaid section would clearly show that the public prosecutor, who is appointed by the State, is in-charge of the case on behalf of the State and if the complainant engages a private counsel, he, at best, can assist the public prosecutor and shall act under the directions of the public prosecutor. Therefore, if at all, the complainant wants to assist the Court in arriving at a just decision, the remedy open to him is not to seek a right of hearing to oppose the bail of the petitioner himself. It would be in consonance with law in case he assists the Public Prosecutor without seeking the right of hearing himself.

15. The other judgments, which have been referred to by the learned counsel for the applicant/intervenor, are *Janta Dal -vs- H.S.Chaudhary*, 1992(4) SCC 305 and *A.R. Antulay -vs- Ramadas Srinivas Nayak*, 1984(2) SCC 500. I have gone through both these judgments. No doubt, in both these judgments, the Apex Court has observed that the rules of locus have been liberalized to meet the challenges faced by a party or the concept of *locus standi* of

the complainant is a concept foreign to the criminal procedure, but the fact of the matter remains that these observations have been passed in the context of the facts and circumstances of those two cases. The Supreme Court, in a catena of cases by now, has observed that the law laid down in the judgments of the Apex Court is not to be applied like theorems. It has been laid down by the Apex Court that while applying the principles of law laid down in a given case, the Court must also correlate the facts of the reported case with that of the case in hand and then apply the law. Reliance in this regard can be placed on *Haryana Financial Corporation -vs- Jagdamba Oil Mills*, 2002(3) SCC 496 and *Sushil Suri -vs- CBI & Anr.*, AIR 2011 SC 1713. I have already observed hereinabove that in the instant case, the factual matrix is totally different and this Court has already held that the third party intervention in an anticipatory bail application, either on behalf of the complainant or on behalf of any aggrieved person, cannot

be permitted and the reason for the same is that it will result in sidetracking the focus of the Court from the main issue. Accordingly, I feel that the application of the applicant seeking impleadment as a party is totally misconceived and the same is liable to be dismissed.

16. Now, the second question is as to whether the petitioner is entitled to a blanket anticipatory bail order till the disposal of the criminal trial. In this regard, Mr. Mittal has contended that the anticipatory bail cannot be denied to the petitioner merely because the chargesheet has been filed. He has prayed that the petitioner has enjoyed the interim protection for almost a year and there being no allegation of his having misused the liberty, he may be granted anticipatory bail till the final disposal of the case. In this regard, he has placed reliance on *Bharat Chaudhary & Anr.* (supra), *Ravindra Saxena* (supra) and *Savitri Aggarwal & Ors. -vs- State of Maharashtra & Anr.*, (2009) 3 SCC (Cri.) 683. This plea has been opposed by the learned APP, who

has contended that there cannot be blanket anticipatory bail order. Reliance in this regard has been placed on a number of judgments of the High Court where such a view has been taken.

17. I have carefully considered this submission of the learned counsel for the petitioner and have also gone through the records.
18. The parameters, which are applicable to the grant of anticipatory bail, are almost the same which are laid down in respect of regular bail, namely, (i) that the Court has to see the nature and the gravity of the allegations; (ii) the antecedents of the accused and his roots in the society, (iii) the possibility of his fleeing away from the processes of law and (iv) the possibility of his tampering with the evidence. The other aspect which becomes relevant in the case of grant of anticipatory bail is the accusation which has been made against the accused persons and the relevance of the custodial interrogation and the stage of the investigation

itself, or in other words, whether the petitioner is sought to be falsely implicated in a case.

19. The statutory provision of Section 438 Cr.P.C. has been the subject matter of judicial pronouncement in a number of authorities, both of the High Courts as well as the Apex Court and the provision has been construed by the Apex Court very liberally for protection of the personal liberty of an individual. Reliance in this regard can be placed in *Siddharam Satlingappa Mhetre -vs- State of Maharashtra*, AIR 2011 SC 312 and *Gurbaksh Singh Sibbia & Ors. -vs- State of Punjab*, (1980) 2 SCC 565. It is also not in dispute that the Apex Court, as a matter of principle, has observed that merely because the chargesheet has been filed in the Court, this should not be a ground for not entertaining the anticipatory bail application of the petitioner. But, merely because the chargesheet has been filed against an accused, it does not mean that he be either denied the bail or granted the bail during the course of the entire trial. The

purpose of the observation that anticipatory bail should be only for a limited period by the Apex Court is that the provision of anticipatory bail is extraordinary in nature and, therefore, it should be granted for a limited period. As the chargesheet itself has been filed, therefore, in my view, it will be inappropriate to grant the anticipatory bail for the entire period during the course of trial. Moreover, the grant of anticipatory bail to the accused for the entire period of trial could be against the very concept of Section 438 of the Cr.P.C. This is on account of the fact that the provision of anticipatory bail is applicable at the stage of pre-arrest of an accused or the grant of bail to an accused in anticipation of his arrest. In the instant case, the chargesheet having already been filed and the accused already having been protected against the arrest for almost a year, I feel that there is hardly any occasion for the Investigating Officer to arrest the petitioner now or even if there is a threat of arrest, this can be allayed by relegating him to go to the

Court concerned and apply for regular bail and in the meantime, protect him till the disposal of the trial. I fully agree with the contention of Mr. Sunil Mittal that merely because the chargesheet has been filed, that does not mean that the Court becomes powerless to grant the anticipatory bail. I am accepting this view on account of the fact that there are a number of judgments of the Apex Court which are detailed hereinabove in this regard, supporting the said proposition of law, but the entertainment of anticipatory bail application while the chargesheet has already been filed and the grant of anticipatory bail during the entire course of trial when a chargesheet has been filed are two different things.

20. I agree with the first proposition, but I do not accept that the Court will be justified and it will be legal to pass an order of anticipatory bail protecting the petitioner till the disposal of the trial because of the reason that it is ultimately the Trial Court which is seized of the matter

where the entire prosecution material is produced before the Judge concerned and it is essential for him to decide as to whether this is a fit case where the regular bail ought to be granted to the petitioner under Section 439 Cr.P.C. or whether this is a case which may warrant denial of the said bail to him, if the facts so justify.

21. Admittedly, in the instant case, one thing is clear that the allegations against the petitioner are very serious in nature. There are allegations not only of forgery and using the forged documents as genuine, but it has also been brought on record by the complainant that there are four or five cases against the petitioner where there are somewhat similar accusations of forging a document on behalf of some persons and then using those forged documents as genuine in collusion with some other accused person. If the allegations against the present petitioner are proved to be correct, then, it not only results in commission of the alleged offence, but at the same time, it is highly

reprehensible that a person, who is techno savvy and belongs to one of the noblest professions has been using the latest technology for the purpose of committing such offences. I, therefore, feel that all these aspects have to be considered by the Trial Court where the trial is going on and the entire evidence has been produced by the Prosecution. There is another aspect of the matter which pertains to the powers of the Police to carry out further investigation which may get impaired in case this Court passes a blanket order granting anticipatory bail till the disposal of the case. Therefore, all these aspects of the matter do not persuade me sufficient enough to grant the petitioner pre-arrest bail during the entire trial of the case.

22. For the reasons mentioned above, I am of the considered opinion that the right of the petitioner to be released on anticipatory bail does not become infructuous on account of filing of the chargesheet and he, having continued to have been under protection of interim bail for the last more than

a year, there is no justification for this Court to deny the anticipatory bail to him so as to enable him to go the Court below for the grant of regular bail on the first appearance itself.

23. Accordingly, the petitioner is permitted to be released in the event of his arrest on his furnishing a personal bond in the sum of ₹ 50,000/- with one surety of the like amount to the satisfaction of the Trial Court/IO/SHO for a period of one month, within which he shall approach the Trial Court and apply for regular bail. It is made clear that expression of any opinion hereinabove may not be treated as an expression on the merits of the case.

24. The petition is allowed in terms of the above directions.

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25. So far as this case is concerned, the prayer of the petitioner is to direct the Registrar-General of this Court to monitor the progress of the case in FIR No.246/2008 under Sections 420/467/471/474/193/196/205/120B IPC pending before

the learned Metropolitan Magistrate and call for the periodical reports. It is this very FIR in which the petitioner has been granted anticipatory bail by this Court. I have considered this prayer of the petitioner. I feel that the prayer of the petitioner is totally unsustainable in the eyes of law on account of the fact that the chargesheet, having been filed against the petitioner, it is essential for the learned Magistrate to supervise the investigation or the trial, as the case may be.

26. Accordingly, this petition is dismissed.

V.K. SHALI, J.

August 22, 2012/tp