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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: June 06, 2013

Date of Decision: June 07, 2013

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Bail Appln.1017/2013

MOHINDER PAL SINGH SAHNI

..... Appellant

Through: Mr.Hariharan, Sr.Advocate with
Mr. M.P.Sinha, Advocate

versus

STATE

..... Respondent

Through: Mr.Mukesh Gupta, APP for State.
Inspector Dinesh Kumar, P.S. Tilak
Marg

CORAM:

MR. JUSTICE R.V. EASWAR

JUDGMENT

R.V. EASWAR, J.:

This is an application filed by one Mohinder Pal Singh Sahni under Section 438 of the Cr.P.C. in case F.I.R. No.308/2005 registered in P.S. Tilak Marg under Section 420/467/468/471 of the IPC.

2. The facts giving rise to the filing of the bail application in brief are that in the year 1997 the complainant Harnam Singh filed a complaint against the applicant under Section 138 of the Negotiable Instruments Act. The applicant is a Non-resident Indian settled in Kuwait. In connection with the complaint, the applicant filed exemption applications seeking exemption from personal appearance on 26.5.1999 and 10.6.1999 on the basis of two OPD medical

slips dated 20.5.1999 and 7.6.1999 respectively. Exemption was granted on the basis on these certificates. On 22.9.2003 the complaint under Section 138 was withdrawn.

3. On 1.3.2005, on the basis of another complaint filed by the complainant alleging that the medical certificates were forged, the summoning court issued orders summoning the applicant. In addition thereto, the complainant preferred another complaint alleging forgery and fabrication of the medical certificates and this was registered on 29.07.2005 as FIR bearing No.308/2005.

4. Against the aforesaid FIR the applicant filed a petition before this Court under Section 482 of the Cr.P.C. which was however withdrawn. A second petition was filed under Section 482 which is stated to be pending disposal.

5. In the meantime, the applicant had also preferred Crl. M.C. 3193/2005 against the summoning order passed on 1.3.2005. By order dated 30.5.2013, this Court (S.P.Garg, J.) quashed the summoning order and allowed the petition.

6. Apprehending arrest in the FIR filed by the complainant, the applicant seeks anticipatory bail.

7. The learned counsel for the applicant strongly relies on the order of this Court cited above and states that the basis for the issue of summons and

the basis for the registration of the FIR being the same, and the summons having been quashed, there is nothing which survives in the FIR and, therefore, the applicant is entitled to be enlarged on bail. He points out that there is inordinate delay in filing the FIR which has not been explained. It is further pointed out that he is 68 years of age and is willing to join the investigation for which purpose he may be put to terms.

8. On the other hand, the learned APP contends that as per the correspondence with the Indian Embassy in Kuwait, the medical certificates would appear to have been forged and thus a case of forgery has been prima facie made out. He submits that the originals of the medical certificates were never filed and were withheld from the Court. The investigation into the case is afoot and the applicant has failed to join the same. It is also pointed out that the originals are to be recovered from the applicant in order to establish the case of forgery.

9. In his brief rejoinder, the learned counsel for the applicant states that even on 5.4.2013 the applicant had communicated with the investigating officer which shows his bonafide. He further points out that the complainant had withdrawn the complaint under Section 138 against the applicant and there is nothing to show that any benefit was obtained by the applicant by the use of the certificates. He also submitted that there is no question of Section

468 of the IPC being applicable and so far as Section 471 is concerned, the same is bailable.

10. On a careful consideration of the matter, I am of the view that the applicant is entitled to anticipatory bail. As rightly pointed out by the learned counsel for the applicant, the basis for the summoning order dated 1.3.2005 and the basis for the FIR are the same. The summoning order has been quashed by a judgment of this Court. I have carefully studied the judgment. This court has held as under:-

- (a) It is unclear whether at the time of seeking exemption on behalf of the applicant, the complainant had raised any objection or suspected the genuineness of the medical certificates.
- (b) The complaint was filed in July, 2002 after a delay of three years for which there is no explanation.
- (c) It is not clear whether the complainant challenged the exemption granted to the accused.
- (d) The application filed by the complainant under Section 340 Cr.P.C. was withdrawn.
- (e) There is no finding of the court concerned that the accused had sought exemption on forged/fabricated documents.

(f) The original medical certificates are not on record and the hand-writing expert (Private) merely examined the photocopies of the originals.

(g) There was no cogent material before the trial court except the bald statement of the complainant to form a prima facie opinion that the certificates were forged.

(h) No coercive action was taken by the trial court against the accused.

The above finding of this Court impinge on the present proceedings also which arise out of the FIR filed on the same facts and material.

11. Copies of the correspondence with the Indian Embassy in Kuwait have been filed by the learned APP. There is no categorical statement in the communication dated 27.11.2012 in file No.22/172/11-10454 issued by the Ministry of Foreign Affairs, Consulate Department to the effect that the medical certificates were forged or fabricated. All that is stated is that the medical certificates cannot be approved because they are not attested by the concerned authorities and not signed by two doctors and the director of the hospital as required by the ministerial decisions and that the certificates were issued more than 13 years ago and there is no record in Al-Razvi Hospital or medical file before or after 1999. There is nothing in this communication from which forgery or fabrication can be established.

12. For the above reasons, the applicant is enlarged on bail, subject to the execution of a personal bond for ₹50,000/- with one surety for the like amount to the satisfaction of the SHO/IO concerned. The applicant is directed to join the investigation as and when required. He shall also make available his contact telephone number, fax number and E-mail ID to the SHO/IO concerned. Subject to these conditions, anticipatory bail is granted and the bail application is allowed in the above terms.

Dasti, under the signature of the court master.

(R.V. EASWAR)
VACATION JUDGE

June 07, 2013
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