

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

% Reserved on: 17th July, 2018
Decided on: 20th July 2018

+ **BAIL APPLN. 2378/2017**

SUNIL MEHRA

... Petitioner

Represented by: Mr.Dayan Krishnan,
Sr.Advocate with
Mr.R.K.Thakur, Advocate

versus

THE STATE (GOVT. OF NCT OF DELHI) ... Respondent

Represented by: Ms.Rajni Gupta, APP for the
State with ACP Surinder
Kumar Dahiya, ACP/DIU Hari
Mohan, SI Sushil, PS Rajender
Nagar and SI Mahesh, DIU
Mr.Mohit Mathur, Sr.Advocate
with Mr.Aman Sareen,
Mr.Nishant Pathak and
Mr.Gurpratap Singh,
Advocates for the complainant

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this application the petitioner seeks anticipatory bail in case FIR No.174/2017 under Sections 406/34 IPC registered at PS Rajinder Nagar on the complaint of Deepak Gambhir.

2. In the complaint Deepak Gambhir alleged that he was residing at 6B/8, Old Rajinder Nagar and have been doing business of cloth at Gandhi Nagar in the name of Yogesh Trading Company. According to him he used to do cash transactions of ₹2.5 to ₹3 crores daily. The petitioner, who is a resident of 3/15, Second Floor, East Patel Nagar, is an agent of cloth and

thus Deepak Gambhir knew him for the last 12-15 years due to the long business relationship. As the house of the complainant was under construction for 3-4 months, it was risky for him to keep cash at his house. Besides, his father-in-law was unwell and he had to frequently visit the hospital. Therefore, he gave ₹2 crores to Sunil Mehra, the petitioner herein, for keeping safely. ₹1 crore was given to him by the complainant at his residence in front of Pradeep Gattani and Parveen Gadhok and ₹1 crore was given by his nephew Gagan and his driver Jait Ram to Sakshi Mehra, wife of Sunil Mehra and his son Vaibhav Mehra at their residence. This amount was to be returned by him on 3rd October, 2016. On 1st October, 2017, father-in-law of the complainant expired. Sunil Mehra came to the cremation ground at 4.00 P.M. and thereafter went to his house. After about half an hour, the complainant received a call from Sunil Mehra that a theft had taken place in his house and all the money had been stolen. The complainant, his younger brother and his nephew Gagan reached the house of Sunil Mehra and saw that he had called the police but surprisingly no door was broken, the interlock of the iron door was as it is and besides the money of the complainant, nothing special had been stolen. The complainant asked Sunil Mehra to give the exact amount in the complaint to the police which had been handed over by the complainant to him and give a copy of FIR to him. When the complainant asked where he was yesterday, he replied that he had gone to Chandigarh to attend the business meeting and on a query as to where his mother, wife and son were, he stated that they had also gone with him to Chandigarh. As per the information of the complainant, petitioner had no business relations in Chandigarh and if the whole family had to go outside, they should not have left the money at home

and handed over the same to him. According to the complainant Sunil Mehra in conspiracy with his wife and son, committed fraud on his money and lodged a fabricated report of theft which was bogus. When the complainant downloaded the copy of the FIR he was shocked to note that Sunil Mehra had not written the money which had been stolen though complainant had specifically told him to get the same written. On 6th October, 2017 he again came to know that Sunil Mehra had got registered another FIR for second theft in his house to destroy the remaining evidence. Thus the entire story of Sunil Mehra was fabricated to commit criminal breach of trust of the complainant's money.

3. Learned counsel for the petitioner contends that the story of the complainant is wholly improbable. In the FIR the complainant does not give the date when he entrusted the money and when this fact was argued on behalf of the petitioner a supplementary statement was recorded giving the two dates of entrustment as 21st September, 2017 and 29th September, 2017. According to the petitioner the bag had been handed over by the complainant 4½ months ago and two polythene bags 1½ month ago. However, the petitioner was not aware of the contents of the bag and they were lying as it is in the almirah. The theft took place when the petitioner and his family were not in Delhi and which was in the knowledge of the petitioner from the SMS sent by the petitioner to the complainant on 29th September, 2017 itself. The complainant cooked up the story and filed a false FIR against the petitioner. Further, even if accepting the version of the complainant that the two entrustments were on 21st and 29th September, 2017 respectively, the same is improbable as according to the complainant himself the renovation in his house was going on for the last 3-4 months.

4. Despite the fact that on the application of the petitioner the CDRs of the parties were directed to be taken, no scientific investigation has been conducted by the police. After registration of FIR, the petitioner has been called only once to join the investigation and thus he is not required for any further examination. The only purpose of custodial interrogation now is to cough up the money from the petitioner. The FSL report clearly shows forced entry into the house of the petitioner.

5. Learned APP for the State countering the contentions of learned counsel for the petitioner submits that the FSL report does not show that there is a forced entry. The messages sent by the petitioner were clearly manipulated. Petitioner has not been cooperating and when he was called to join investigation it was a case of complete denial and thus there was no purpose of calling him any further. It is further stated that on the two FIRs of theft registered by the petitioner cancellation report has been prepared and despite the fact that an application for polygraph test by the petitioner was filed, petitioner refused to undergo the polygraph test. The petitioner does not deny entrustment of one bag and a polythene bag as per his own FIR though his case is that he did not know the contents of the polythene bag and the other bag which is highly unnatural. The bag which contained the money had a numerical lock which was found intact however, the money inside was missing. Further, if a stranger was to take the money he would take away the bag easily and not leave the bag there. The petitioner has deliberately misappropriated the cash entrusted to him and thus his custodial interrogation is required to recover the amount involved and to unearth the role of the other co-accused persons involved therein. Statements of independent witnesses have been recorded who have supported the case of

the complainant. The witnesses have stated that the amount was counted by the accused persons before keeping in their possession and thus their claim that they were not aware of the contents of the bag and the polythene bag is incorrect.

6. Report of the FSL pursuant to the crime team inspection visit on 5th October, 2017 reads as under:-

“The undersigned along with the above mentioned team visited H No.-3/15, First Floor, East Patel Nagar, Delhi, where it was reported that theft has taken place at the aforesaid place. The scene of occurrence was examined and following observations were made.

- 1. There were two gates at the main entrance. The first gate was metallic with net framed and the second was wooden which was from inside.*
- 2. At the time of visit the lock hole attached to the metallic gate from outside was found in half broken condition and the other half was found absent.*
- 3. The lever lock system attached to metallic gate was found in locked and broken condition, from inside.*
- 4. In the wooden gate there were two types of locking system. Both the locking systems were found intact.*
- 5. No sign of any tool mark was observed on the corresponding places of respective locking systems in the main entrance door frame.*
- 6. No sufficient gap between the frame and the door was found to damage the lock from outside to inside.*
- 7. The entry door and the cabinets in the first room, situated in the right corner from main entrance, were also stated to be forced open.*
- 8. The surrounding area of the locking system of the wooden door was found in broken condition.*

9. *The locking system was found in locked condition. However no prominent tool marks found on the corresponding places of respective locking system in the adjacent frames.*

10. *The locking system of the third cabinet was found in damaged condition although there were no signs of tool marks in the bolt and its corresponding hole in the wooden frame.*

11. *No sufficient gap between the frame and the cabinet door was found to damage the lock from outside to inside.*

12. *In the third room situated at the left corner from the main entrance, there were two cabinets. First cabinet locking system was found locked but the bolt lock was found in unlock condition.*

No clue which could clearly indicate the forcible entry into the house from outside to inside and subsequently to the adjacent bedroom was found at the time of visit. Similarly, no clue which could clearly indicate the forcible opening of the cabinets was found at the time of visit.”

7. Version of the petitioner that he was not aware of the contents of the bag and the polythene bag cannot be believed for the reason as he stated that he thought it would be containing samples, in that case the complainant would not have kept the bag and the polythene bag in the almirah but would have kept it otherwise. Thus the very fact that the bag and the polythene bag were kept in the almirah, the petitioner was aware of the fact that the same contained cash. No doubt in his complaint the complainant did not state the date of entrustment of the two tranches of money which was stated subsequently, however, the fact remains that the bag and the polythene bag from where money was stolen was lying in the care and custody of the petitioner.

8. As noted above, there was no clue for a clear conclusion to be drawn with regard to forcible entry from outside to inside or forcible opening of the cabinets. Further, as the petitioner was entrusted with money by the complainant though he had messaged that he was leaving for Chandigarh, however, he did not inform that the entire family was leaving in which case the petitioner was duty bound to return the money to the complainant. Considering the facts noted above this Court does not find the present case fit for grant of anticipatory bail to the petitioner as the contours of the entire offence committed and the manner in which it was committed is required to be unearthed.

9. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

JULY 20, 2018
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