

**Court No. - 16**

**Case :-** CRIMINAL MISC ANTICIPATORY BAIL  
APPLICATION U/S 438 CR.P.C. No. - 2618 of 2023

**Applicant :-** Sagir Ali

**Opposite Party :-** C.B.I. Thru. Branch Hear Central Bureau  
Investigation Economic Offence 0ii New Delhi

**Counsel for Applicant :-** Amresh Singh, Arpit  
Chaudhary, Ratnesh Tripathi, Subhash Chandra

**Counsel for Opposite Party :-** Anurag Kumar Singh

**Hon'ble Subhash Vidyarthi, J.**

1. Heard Sri Arpit Chaudhary, the learned counsel for the applicant as well as Sri Anurag Kumar Singh, the learned counsel appearing on behalf of the C.B.I. and perused the records.

2. This second application has been filed by the applicant seeking anticipatory bail in RC No.220/2022/E0011-CBI/EO-11/ND, under Sections 120-B, r/w 419, 420 I.P.C. & 7 (C), 13 (1) (A) r/w 13 (2) of Prevention of Corruption Act, registered at Police Station CBI/EO-II/New Delhi.

3. This court has rejected the first Anticipatory Bail Application No.1971 of 2023 in absence of learned counsel for the applicant after taking into consideration preliminary objection raised by learned counsel for the C.B.I. that proclamation under Section 82 Cr.P.C. had been issued against the applicant on 01.08.2023 and therefore the anticipatory bail application cannot be entertained in view of the law laid down by Hon'ble the Supreme Court in the case of ***Lavesh Vs. State of (N.C.T. of Delhi): (2012) 8 SCC 730.***

4. The learned counsel for the applicant has submitted that the second application has been moved on the ground that the first

application was rejected without hearing submissions from the applicant's side as the learned counsel could not appear due to advocate's strike. The learned counsel for the applicant has submitted that for attracting the bar of Section 82 Cr.P.C. the proclamation issued under Section 82 Cr.P.C. should be published in the manner prescribed under sub Section (2) of Section 82 Cr.P.C. and the Court should write a statement regarding issuance of proclamation and its due publication in the manner prescribed in Clause (i) of sub Section (2) which shall be conclusive evidence that the requirement of Section 82 Cr.P.C. have been complied with.

5. There is nothing on record to indicate that the aforesaid steps mentioned in sub section (2) and (3) of Section 82 Cr.P.C. have been taken in the present case. Therefore, I am of the view that the proclamation issued under Section 82 (1) Cr.P.C. had not been published in the manner provided under sub Section (3) of Section 82 Cr.P.C. No further statement was signed by the Court as provided in sub Section (3) of Section 82 Cr.P.C. There is no bar against the application for anticipatory bail being considered by this Court on its merits, hence, I proceed to examine the merits of the present case.

6. The aforesaid case has been registered on the basis of an F.I.R. lodged on 10.08.2022 against 19 named persons, including the applicant, and some unknown public servants and private persons, stating that a written complaint dated 01.07.2022 had been received from the Assistant Commissioner, Directorate General of Vigilance, Indirect Taxes and Customs of Lucknow Zonal Unit regarding smuggling of contraband goods of foreign origin like gold (5501.99 grams), reputed foreign brand cigarettes (434400 sticks) and saffron (30 kgs.).

7. The allegation against the applicant is that he was carrying 400 gms. foreign origin gold worth Rs.15,48,000/- and the same was seized under Section 110 of the Customs Act, 1962.

8. On the same set of allegations, the Directorate of Revenue Intelligence has filed a complaint against the applicant. Section 135(1) of the Customs Act, 1962 provides that in such cases, the accused shall be punishable with imprisonment for a term which may extend to three years or with fine or with both and Section 104 of the Customs Act, 1962, provides that the offence will be non-cognizable and bailable.

9. The C.B.I. has registered F.I.R. on the basis of allegations, which are already the subject matter of a complaint filed by the Directorate of Revenue Intelligence. The C.B.I. inter alia alleges commission of offence under the Prevention of Corruption Act, 1988 and the applicant is not a public servant.

10. A co-accused Ajeet Tiwari, from whom 22,000 sticks of imported cigarettes were recovered has been granted anticipatory bail by means of an order dated 24.07.2023 passed by this court in Criminal Misc. Anticipatory Bail Application No. 664 of 2023. Another co-accused Khalid Anwar @ Anwar Khalid, from whom also 400 grams gold is said to have been recovered has been granted anticipatory bail by this court by means of an order dated 06.09.2023, passed in Criminal Misc. Anticipatory Bail Application No.1981 of 2023.

11. The allegation against the applicant is also of recovery of 400 grams gold which is the same as the allegation against the accused Khalid Anwar @ Anwar Khalid, who has already been granted anticipatory bail by this court.

12. The learned counsel for the C.B.I. has opposed the prayer

for bail but he could not dispute the aforesaid aspects of the matter.

13. Having considered the aforesaid facts and circumstances of the case and keeping in view the fact that the alleged recovery was made on 19.12.2019 but the F.I.R has been lodged on 10.08.2022 and there is no explanation for the delay in lodging the F.I.R.; that the substantive offence allegedly committed by the applicant is non-cognizable, bailable and carries a maximum punishment of imprisonment up to 3 years; that although the C.B.I. has alleged commission of offences under the Prevention of Corruption Act, 1988, the applicant is not a public servant; that the applicant has no other criminal history and that a co-accused person Ajeet Kumar and Khalid Anwar have already been granted bail and without making any observations which may affect the outcome of the case, I am of the view that the aforesaid facts are sufficient for making out a case for granting anticipatory bail to the applicant.

14. In view of the above, the anticipatory bail application of the applicant is **allowed**. In the event of arrest / appearance of the **applicant-Sagir Ali** before the learned Trial Court in the aforesaid case crime, he shall be released on bail on his furnishing personal bond and two solvent sureties, each in the like amount, to the satisfaction of Officer/Court concerned on the following conditions and subject to any other conditions that may be fixed by the Trial Court: -

(i). That the applicant shall appear before the Investigating Officer/Trial Court on each date fixed, unless personal presence is exempted;

(ii). That the applicant shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the

facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence;

(iii). That the applicant shall not pressurize/ intimidate the prosecution witness.

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**(Subhash Vidyarthi, J.)**

**Order Date :- 17.11.2023**

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