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

Judgment delivered on: 06th August, 2015

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BAIL APPL. No. 2252/2014

JANGYA NARAYAN MISHRA

..... Petitioner

Represented by: Mr. Vijay Aggarwal,
Ms. Chaitali Jain, Mr. Mudit
Jain, Ms. Barkha Rastogi and
Mr. Punit Jaiswal, Advs with
petitioner in person.

versus

STATE

..... Respondent

Represented by: Mr. M. N. Dudeja, APP for the
State with Inspector
Manvender Singh, PS Lajpat
Nagar in person.
Mr. Sameer Chandra, Adv for
complainant with
complainant in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the present petition filed under Section 438 of the Code of Criminal Procedure, 1973, petitioner seeks directions thereby directing the concerned Investigating Officer to release the petitioner on bail in the event of his arrest in case bearing FIR No. 628/2014 registered at Police Station Lajpat Nagar, New Delhi, for the offences punishable under Sections 408 of the IPC.

2. Mr. Vijay Aggarwal, learned counsel appearing on behalf of the petitioner submits that as informed by learned Prosecutor, Sections 420 / 467/468/471/120B of the IPC have also been invoked against the petitioner.

3. The allegations in the FIR as narrated by the complainant Mr. Vijender Malhotra, director of M/s Malhotra Fancy Cloth House Pvt Ltd, are that most of their employees were working with them since long. One of them was Nand Kishore @ Nandu working as manager of the showroom for the last 22 years. They had handed over the entire responsibility of the show room to him and he was also looking after the purchase of all the material from Chandni Chowk, Delhi. All the materials purchased were sold, but they could not make payments to the parties in time. Whenever this topic was discussed with Nandu he used to change the topic and they were not suspecting because Nandu was working since long. For the last 1-2 years, payments of parties were being delayed over a period of 8 to 9 months. Therefore, complainant asked Jangya Narayan Mishra/petitioner working in the accounts. The petitioner was also working for the last many years. Complainant used to take stock statement of number of parties from him and accordingly he used to give, which was accepted as correct because complainant did not know how to operate the computer. He was under the impression that details given by him are correct. On the delayed payments, the complainant used to ask the petitioner again and again, but he did not give any satisfactory reply and about two months back he left the job. Thereafter, he appointed new accountant. On 14.08.2014, their manager Nand Kishore asked the complainant that payments of Nisha Prints were pending for the last nine

months and they were making repeated phone calls. The complainant asked to his new accountant to give the bills of Nisha Prints so that a cheque may be prepared. The complainant asked the accountant to check as per the computer that to which party this stock was sold. He replied that the stock was not shown in the computer as sold. Thereafter, complainant was shocked to see that the said stock after receipt was shown to have been sold by their manager Nand Kishore to different parties through gate pass and bills. Nand Kishore left the shop on the pretext that he was going to doctor. On 17.08.2014, Nand Kishore voluntarily admitted the embezzlement in his hand writing without any coercion or pressure. On 18.08.2014, on questioning Nand Kishore again told that he committed the embezzlement of an amount of Rs.50- 70 Lac. On 20.08.2014, Nand Kishore got recovered 17 bags of clothes from a house at Ghaziabad, UP. The video recording of that recovery is available with the complainant and Nand Kishore issued four post dated cheques to them in lieu of the embezzled material. The said Nand Kishore told the complainant that other employees also connived with him in the said offence. Their names were given to complainant, which includes the petitioner as well. In this offence, there are eight accused persons involved including the petitioner.

4. Mr.Vijay Aggarwal, learned counsel appearing on behalf of petitioner, submits that the petitioner left the job of complainant on 24.07.2014 after settlement of all his dues and whatever had been done that was by Nand Kishore and the petitioner is innocent person and has been wrongly implicated in the case. He further submits that the petitioner joined the investigation thrice under the protection of this Court

and whatever the police wanted he had furnished the same. There is no chance of the petitioner absconding from the judicial process. Moreover, there is a delay in lodging the FIR. Firstly, the complainant himself enquired the matter, prepared the CD and only thereafter, the FIR is lodged whereas in the FIR it is stated that there is no delay in lodging the FIR. The complainant concern is a small concern and he used to sit on the establishment, thus was personally watching the business. He had independent auditor. All the co-accused initially absconded whereas the petitioner being innocent adopted the legal course. On each and every date he remained present in the Court and even today. There is no past criminal record of the petitioner. The rest of the co-accused have been released on regular bail. His custodial interrogation is not required, therefore, the present petition may be allowed.

5. To buttress his submissions, learned counsel for petitioner has relied upon the case of ***Ashok Kumar Gupta v State : 141 (2007) DLT 94*** wherein it has been held as under:-

“3. Counsel for the State submits that they have yet to find out the place from where the petitioner had purchased the bitumen and custodial interrogation is necessary only for this purpose.

4. I have heard learned counsel for the parties. I do not agree with the system of custodial interrogation to find out the truth. Surely the law permits interrogation without subjecting him to third degree methods.”

6. Further relied upon the decision of the Supreme Court in ***Siddharam Satlingappa Mhetre v State of Maharashtra : (2011) 1 SCC 694*** wherein it has been held as under:-

“85. It is a matter of common knowledge that a large number of undertrials are languishing in jail for a long time even for allegedly committing very minor offences. This is because section 438 Cr.P.C. has not been allowed its full play. The Constitution Bench in Sibbia's case (supra) clearly mentioned that section 438 CrPC is extraordinary because it was incorporated in the Code of Criminal Procedure, 1973 and before that other provisions for grant of bail were Sections 437 and 439 Cr.P.C. It is not extraordinary in the sense that it should be invoked only in exceptional or rare cases. Some courts of smaller strength have erroneously observed that Section 438 Cr.P.C. should be invoked only in exceptional or rare cases. Those orders are contrary to the law laid down by the judgment of the Constitution Bench in Sibbia's case (supra).

86. According to the report of the National Police Commission, the power of arrest is grossly abused and clearly violates the personal liberty of the people, as enshrined under Article 21 of the Constitution, then the courts need to take serious notice of it. When conviction rate is admittedly less than 10%, then the police should be slow in arresting the accused. The courts considering the bail application should try to maintain fine balance between the societal interest vis-a-vis personal liberty while adhering to the fundamental principle of criminal jurisprudence that the accused that the accused is presumed to be innocent till he is found guilty by the competent court.

110. The Law Commission in July 2002 has severely criticized the police of our country for the arbitrary use of power of arrest which, the Commission said, is the result of the vast discretionary powers conferred upon them by this Code. The Commission expressed concern that there is no internal mechanism within the police department to prevent misuse of law in this manner and the stark reality that complaint lodged in this regard does not bring any result. The Commission intends to

suggest amendments in the Criminal Procedure Code and has invited suggestions from various quarters. Reference is made in this Article to the 41st Report of the Law Commission wherein the Commission saw 'no justification' to require a person to submit to custody, remain in prison for some days and then apply for bail even when there are reasonable grounds for holding that the person accused of an offence is not likely to abscond or otherwise misuse his liberty. Discretionary power to order anticipatory bail is required to be exercised keeping in mind these sentiments and spirit of the judgments of this court in Sibbia's case (supra) and Joginder Kumar v. State of U.P. and Others :(1994) 4 SCC 260.

7. Learned counsel for petitioner submits that arrest of the accused should be in rare cases where it is required otherwise right of bail is prime. The petitioner has already joined investigation on three occasions, therefore, he is no more required for custodial investigation.

8. On the other hand, Mr.M.N.Dudeja, learned Prosecutor for the State submits that Nand Kishore was working with the complainant for the last more than 20 years. He was a man of confidence, but he cheated the complainant with other seven accused persons including the petitioner. The petitioner along with co-accused cheated the complainant for more than Rs.5.00 Crores. This fact was revealed by another accountant; whose statement was recorded by the police under Sections 161 Cr. P.C. and 164 of the Cr PC by the Court.

9. Initially, the FIR was lodged under Section 408 of the IPC. During the investigation, courier receipts by which the goods were sent from the shop to the parties on four challans/bills were found forged and fabricated. Manual bills were prepared to show the sale to various parties and the

goods were sent on the basis of the forged bills and courier receipts. Accordingly, Sections 420/467/468/471/120B of the IPC were added in the case on inclusion of bills / receipts and computer entries.

10. Learned APP further submits that the modus operandi of the accused persons were of two types; firstly they had forged entries of goods purchased from the wholesale market on behalf of the firm into the records, which were actually not received and sold to various persons fraudulently. Secondly, they prepared forged manual bills and gate passes in the name of various firms and sent the goods on the basis of these forged bills out of the firm and then sold to the different persons, collected the money and shared the booty.

11. It is also argued that bank account of the petitioner as well as his wife Smt.Rashmita Mishra were checked during investigation and it is surfaced that from 01.10.2010 total sum of Rs.67,34,907/- was deposited in four accounts provided by the petitioner. An amount of Rs.9,24,350/- which were deposited in account bearing No.601910100021131 of the petitioner in Bank of India, Lajpat Nagar, New Delhi is not added which were deposited from 2006 to 2009. However, the petitioner was getting monthly salary of Rs.22,000/- only.

12. Learned APP further submits that the petitioner in conspiracy with the others deleted the entries of the stock of firm in computer which were actually sold by them on forged bills. He also made false entries of the stock purchased from the market on behalf of the firm in the stock of the firm which were actually never entered in the godown of the firm. In this regard, statement of Vikash Sachdeva and Jyoti were on record that the

Goods Received Challans were deleted and fake entries for goods return and purchases had been made.

13. Learned APP for the State submits that forged manual bill books and the case property are to be recovered at the instance of petitioner; his handwriting and specimen signatures are to be taken for comparison with the forged documents and whereabouts of his associates namely Ganesh and Sunil Tiwari are to be ascertained from him, who are absconding. Therefore, custodial interrogation of petitioner is required.

14. To strengthen his arguments, learned Prosecutor has relied upon the case of ***Maruti Nivrutti Navale v State of Maharashtra & Anr : (2012) 9 SCC 235*** wherein it has been held as under:-

“At the same time, as pointed out by the counsel for the State and the second respondent complainant, considering the seriousness relating to corrections/additions/alterations made in various documents, information furnished to the educational authorities which, according to them, are incorrect, we are of the view that in order to bring out all the material information and documents, custodial interrogation is required, more particularly, to ascertain in respect of the documents which were alleged to have been forged and fabricated. In the said documents and other material which are in the possession of the appellant and the allegation against him that he has made the false representation before the public authority on the basis of those documents for obtaining necessary permission, as pointed out by the State, in order to secure possession of those documents, custodial interrogation is necessary.”

15. In ***Enforcement Officer, TED Bombay v Bher Chand Tikaji Bora & Anr : 1999 SCC (Cri) 1045*** the Supreme Court held as under:-

“From a bare reading of the impugned order it appears that the learned Single Judge is of the view that because the respondent was available for interrogation and the prosecution did not avail of that opportunity there should not be any justification for not granting the anticipatory bail sought for. We have no hesitation to hold that the learned Single Judge has misread the decision of this Court referred to in the impugned order.”

16. Also in ***State v Anil Sharma : 1997 SCC (Cri) 1039*** the Supreme Court held as under:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to a third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

17. In rejoinder, Mr. Vijay Aggarwal, learned counsel for the petitioner, submits that the complainant used to purchase air tickets from the account of the petitioner and complainant himself deposited the amount in his account to save the income tax and for said purposes, the huge amounts

are there in the account of the petitioner. The said money does not belong to the petitioner and complainant himself created the account and used for his own purposes.

18. He further submits that on the direction of this Court petitioner submitted those details and disclosed these facts. The police has not come across these facts during the investigation.

19. It is an admitted case that there are eight accused in the instant case, out of whom two accused are still absconding. The petitioner has been under the protection on verbal assurance of the investigating agency since 14.10.2014. Vide order dated 28.05.2015 this Court granted him interim protection. Despite that petitioner has not disclosed the true facts to the investigating authority. Moreover, forged manual bill books and case property are to be recovered at his instance and his handwriting and specimen signatures are to be obtained for comparison with the forged documents; and whereabouts of his associates are to be established, who are absconding.

20. In view of above discussion, I am not inclined to allow the present petition. Accordingly, the petition is hereby dismissed.

Crl.M.A.No.18165/2014

Dismissed as infructuous.

**SURESH KAIT
(JUDGE)**

AUGUST 06, 2015/M