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

Judgment delivered on: 28th September, 2015

+ **BAIL APPLN. 1783/2015**

RAKESH MATHUR Petitioner

Represented by: Mr.P.K.Sharma and
Ms.Richa Diwan, Advs.

versus

STATE OF NCT OF DELHI Respondent

Represented by: Mr.Mukesh Kumar, APP for
the State with SI Rizwan
Khan, PS Seelampur, Delhi
in person.
Mr.Javed Khan, Adv for
complainant.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the present petition, petitioner seeks direction thereby release him on bail in the event of arrest in case FIR No.538/2015 registered at police station Seelampur, Delhi for the offences punishable under Sections 406/420/468/471/506/34 of the IPC.

2. Mr.Sharma, learned counsel appearing on behalf of petitioner submits that petitioner is not involved in the alleged transaction, neither he sold the property nor he signed as a witness. Moreover, no amount received by petitioner. However, when his brother Mukesh Kumar, co-accused was in illegal detention, the petitioner issued cheques of Rs.4.00 Lac each in the name of Bhoora, i.e. brother of complainant. He is not involved in the case and the police has wrongly implicated him with the

connivance of complainant, who is a gangster of the area and under threat they want to extort money from the petitioner as well as his brother and under their constant pressure, he issued the abovesaid cheques.

3. Learned counsel has relied upon the decision of this Court in ***Samrat Singh Nirula & Ors vs State of NCT of Delhi : 2015 (220) DLT 583*** wherein para No.27 reads as under:-

“27. In the following judgments, the law of anticipatory bail has been discussed:-

i) In the case of Ravindra Saxena v. State of Rajasthan, reported in (2009) 1 SCC 684, it is held that anticipatory bail cannot be denied merely because allegations of cheating and forgery have been made. Further held that High Court could not ignore appellant's plea that dispute between him and complainant regarding sale of specific flats, was purely of civil nature and complainant had already filed suit for specific performance.

ii) In the case of [Muraleedharan v. State of Kerala](#), AIR 2001 SC 1699, it was held that if pre-arrest bail is granted to appellant merely on grounds that investigating agency would not be able to collect any material to connect appellant with crime except confessional statement of co-accused then there is misuse of discretion by Sessions Judge under [Section 438 Cr.P.C.](#)

iii) In the case of [Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors.](#), reported in (2011) 1 SCC 694, it was held:

"109. A good deal of misunderstanding with regard to the ambit and scope of [Section 438 CrPC](#) could have been avoided in case the Constitution Bench decision of this Court in Sibbia case [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] was correctly understood, appreciated and applied. This Court in Sibbia case [(1980) 2 SCC 565: 1980 SCC (Cri) 465] laid down the following principles with regard to anticipatory bail:

(a) *Section 438(1)* is to be interpreted in the light of *Article 21* of the Constitution of India.

(b) Filing of FIR is not a condition precedent to exercise of power under *Section 438*.

(c) Order under *Section 438* would not affect the right of police to conduct investigation.

(d) Conditions mentioned in *Section 437* cannot be read into *Section 438*.

(e) Although the power to release on anticipatory bail can be described as of an "extraordinary" character this would "not justify the conclusion that the power must be exercised in exceptional cases only". Powers are discretionary to be exercised in the light of the circumstances of each case.

(f) Initial order can be passed without notice to the Public Prosecutor. Thereafter, notice must be issued forthwith and question ought to be re-examined after hearing. Such ad interim order must conform to requirements of the section and suitable conditions should be imposed on the applicant.

110. The Law Commission in July 2002 has severely criticised 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 case [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] and Joginder Kumar v. State of U.P. [(1994) 4 SCC 260 : 1994 SCC (Cri) 1172] Relevant consideration for exercise of the power "

111. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case. As aptly observed in the Constitution Bench decision in Sibbia case [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] that the High Court or the Court of Session has to exercise their jurisdiction under [Section 438](#) CrPC by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly

in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record."

4. Learned counsel further submitted that none of the circumstances as observed by the Apex Court in the aforesaid case, are attracted to petitioner, hence he is entitled for anticipatory bail in this case.

5. While summing up, learned counsel has also relied upon the

decision of this Court rendered on 06.08.2007 in ***Daya Rani Sharma vs State Bail Application No.414/2007*** wherein it has been held as under:--

“8. Having considered the rival submissions, the following facts stand out:-

(a) Petitioner litigated with S.Chakravorty in the year 1989 in her own name and obtained a decree against S.Chakravorty pertaining to 35 sq.yds. of land comprised in plot No.6.

(b) Petitioner and the complainant are involved in civil litigation in respect of plot No.6.

(c) One Dayawanti died on 2.7.1974. Her particulars are recorded as Dayawanti Sharma w/o Bail Appln. No.414/2007 Pg.No.3 of 5 B.K.Sharma.

(d) According to the petitioner, Dayawanti was her elder sister and was married to B.K.Sharma.

(e) Vide sale deed dated 3.5.1972 registered on 10.5.1972 as document No.9400, additional book No.1, volume No.1744, pages 119 to 123, two plots each admeasuring 200 sq.yds. comprised in part of land constituting khasra No.303 and 304 Village Nasirpur have been sold to the petitioner. Seller being late Tek Chand, father of the complainant.

9. Prima facie, dispute between the complainant and the petitioner is a civil dispute. Whether by and under the disputed sale deed one plot was sold or two were sold can easily be determined with reference to the original sale deed and the registration particulars thereof available in the office of the Sub-Registrar where the sale deed has been registered.”

6. The aforesaid case FIR was registered on the complaint of one Mobin that on 26.11.2013 co-accused Mukesh Kumar, who is real brother of petitioner executed the documents of one property No.A-34, New Zafrabad, Delhi in the name of complainant. Thereafter, complainant made enquiry and found that the said property is in the name of DDA. Thereafter, complainant demanded his money back. However, on

23.01.2014, co-accused Mukesh Kumar, Jai Kumar had executed agreement to sell of property bearing No.C-1/47, Yamuna Vihar, Delhi in favour of complainant – Mobin. But, later on he came to know that co-accused Jai Kumar is not the owner of the property. Thereafter, he asked to the accused persons to return the money. Accordingly, the co-accused Mukesh Kumar and petitioner had issued cheques in favour of brother of complainant Bhoora, but the cheques were dishonoured on their presentation due to non-availability of sufficient funds in the bank account. Thereafter, both the aforesaid accused persons were asked to return the amount, then the petitioner and his brother Mukesh Kumar refused to return the money and threatened to keep slince, otherwise to face the dire consequences.

7. The allegations against the petitioner and co-accused Mukesh Kumar are that they prepared the forged document in the name of one lady Guddo w/o Sh Yameen with other co-accused namely Kapil and others. Thereafter, brother of Smt.Guddo namely Shabuddin @ Kaluwa was interrogated. During interrogation, he stated that co-accused Mukesh and others prepared the forged document in the name of his sister Smt.Guddo and they have further sold out the property bearing No.C-1/47, Yamuna Vihar, Delhi to one Hazi Saleem on 10.10.2014. Thereafter, raids were conducted to arrest the petitioner and his brother, however they could not be nabbed.

8. It is pertinent to mention here that the anticipatory bail application of co-accused Mukesh Kumar, brother of petitioner herein was rejected by this Court vide order dated 02.09.2015 in Bail Application No.1829/2015. Admittedly, the petitioner had issued two cheques of Rs.4.00 Lac each in

the name of Bhoora, i.e. brother of the complainant, which were dishonoured. Thus, the petitioner has direct link in the present offence. Therefore, his custodial interrogation is warranted.

9. Therefore, I am not inclined to grant him the anticipatory bail at this stage of investigation.

10. In view of above, bail application stands rejected.

11. Order *dasti*.

**SURESH KAIT
(JUDGE)**

SEPTEMBER 28, 2015

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