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

*Judgment delivered on: 15<sup>th</sup> October, 2015*

+ **BAIL APPLN. 2222/2015**

CHANDER PRAKASH SONI

..... Petitioner

Represented by: Mr.Vivek Kumar Bishnoi,  
Advocate.

Versus

STATE GOVT OF NCT OF DELHI

..... Respondent

Represented by: Ms.Meenakshi Chauhan, Addl.  
Public Prosecutor for the State.

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KAIT**

**SURESH KAIT, J. (Oral)**

**Crl. M.A. 15299/2015 (for exemption)**

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

**BAIL APPLN. 2222/2015**

1. Vide the present petition, the petitioner seeks directions thereby to release him on anticipatory bail in case bearing FIR No.300/2015 registered at Police Station Greater Kailash, New Delhi, for the offences punishable under Sections 380/454/34/120-B IPC.

2. Learned counsel appearing on behalf of the petitioner submits that the petitioner has been falsely implicated in this case on the disclosure statement of co-accused, which cannot be used against the petitioner.

Moreover, the petitioner has not received any of the jewellery items, which fact had already been stated by him during investigation. He submits that pursuant to order dated 21.09.2015, the petitioner joined the investigation and he was called twice or thrice, however, nothing was recovered from the petitioner.

3. Learned counsel further submits that if the present petition is dismissed, the petitioner will have to undergo third degree in the hands of the police, which is not permissible under the law.

4. To strengthen his arguments, learned counsel for the petitioner has relied upon the judgment of **Ashok Kumar Gupta Vs. State, 2008 (1) Crimes 151 (Del.)**, wherein this Court held as under:-

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

*3. 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.”*

5. Also relied upon the case of **Siddharam Satlingappa Mhetre Vs. State of Maharashtra & Ors., 2011 CRL. L.J. 3905**, wherein the Apex Court held as under:-

*“93. 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 Code of Criminal Procedure has not been allowed its full play. The Constitution Bench in Sibbia's case (supra) clearly mentioned that Section 438 Code of Criminal Procedure 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 Code of Criminal Procedure 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 Code of Criminal Procedure 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). 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-à-vis personal liberty while adhering to the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is found guilty by the competent court.*

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*120. 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 Ors. (1994) 4 SCC 260."*

6. In the incident in question, the jewellery amounting to Rs.28 Lac was stolen by the accused persons. As submitted that all the accused persons hail from *Babaria* Community of Ajmer. They normally come to Delhi for committing crimes and sell the booty somewhere else. In the present case, accused persons after stolen the jewellery from Delhi, sold the same to the petitioner at Ajmer. They identified the shop of the petitioner as well as the petitioner from his photographs affixed on the Pass Book taken from his residence.

7. In the present case, there are total six accused including the petitioner herein. Out of them, three have been arrested and two are absconding. The accused who were arrested have stated in their disclosure statements that they sold the jewellery to the petitioner at Ajmer. Accordingly, the said accused persons were taken to Ajmer at the jewellery shop of the petitioner. However, the petitioner was not there and the said accused persons identified the petitioner from his photograph pasted on his Pass Book and submitted that they sold the jewellery to the

petitioner.

8. Since the accused persons rightly identified the petitioner and the petitioner has not cooperated in the investigation as jewellery is yet to be recovered, therefore, the custodial interrogation of the petitioner is required.

9. In view of the above noted facts, I do not find any ground to entertain this petition. The same is dismissed accordingly.

**SURESH KAIT  
(JUDGE)**

**OCTOBER 15, 2015**

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