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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 71/2016
NIHAL SINGH

..... Petitioner

Through Mr A.K. Mishra and Kishan Singh Chauhan,
Advs.

versus

STATE

..... Respondent

Through Mr Hirein Sharma, Additional Public
Prosecutor for the State alongwith Sub
Inspector Rajiv Singh Police Station
Mehrauli, New Delhi

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

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28.04.2016

Vide this application under Section 438 of Cr.PC, the petitioner seeks anticipatory bail in case FIR No. 3302/2015 under Section 381 IPC registered at Police Station Mehrauli, New Delhi.

The FIR in the instant case was registered on the basis of a complaint made by complainant Ms Juan Wu Wendy wherein she stated that she is a consultant of Chuangyue Construction Pvt. Ltd. On 12.12.2015, she alongwith her driver (petitioner herein) and one another person took cash of Rs.30 lacs for her sub contractor M/s SM Enterprises to handover him at their Hauz Khas office. They were in the Mahindra Scorpio car. They started journey from their office at Rajpur Extension, Chhatarpur around 1 pm. When they reached the red light of Chhatarpur Pahari, near metro pillar No.30, the petitioner stopped the vehicle at red light and said that there is some problem in car and asked to push the car. All three got down from the car to push the car. As car started, he ran away by taking cash bag, hand bag and her mobile phone. When they called on his mobile phone, replied that he is coming after re-filling diesel in the car. When he did not return, they took an auto to find him at nearby petrol pump but he was not there. At that time, they suspected that the petitioner has stolen the money. They returned back to the office by auto and narrated the event to the director of the company. The petitioner came back near office and handed over mobile and hand bag of the complainant to Mr Dipesh but did not return cash bag and went away from

there. Thereafter, he called the complainant and told that he had returned her bag and mobile to Mr Dipesh. Complainant immediately called Mr Dipesh and asked to meet her. Mr Deepesh stated that the petitioner did not return any cash to him but only returned a bag and mobile phone. The complainant called at 100 number at around 3.57 pm about the incident. Police reached at the said place but she went from there in search of the petitioner at his residence. The petitioner later said that he would come on Monday but he did not come. Again on 15.12.2015, they went to his residence at Vishnu Garden, New Delhi but he was not present there. Then the FIR was lodged.

It is submitted by counsel for the petitioner that there is delay in lodging the FIR as the incident occurred on 12.12.2015 whereas the FIR was registered only on 16.12.2015. Moreover, the prosecution relied upon the extra-judicial confession allegedly made by the petitioner to one Ravinder. However, the alleged incident took place on 12.12.2015 then how the petitioner could confess his crime to Ravinder on 08.12.2015. The prosecution also relied upon the recovery of Rs.4 lacs from the house of the petitioner, however, this amount belongs to his father who had received the same on account of his committee. Reliance was also placed on whatsapp messages exchanged between the complainant and the petitioner. The very fact that petitioner himself returned the mobile phone and handbag of the complainant belies his involvement in the case. The complainant conveyed her thanks to the petitioner. Had there been any grievance left she would not have conveyed thanks to the petitioner. Pursuant to the directions given by this Court, he has already joined investigation and is ready and willing to further join the same. As such it is prayed that the petitioner be granted anticipatory bail.

The application is opposed by learned Additional Public Prosecutor for the State on the ground that on the date of incident itself, the complainant had called the police at about 3.57 pm about the incident. However, by the time police reached the spot, she left in search of the petitioner at his residence. The petitioner assured that he would come on Monday but did come again. They went to his residence at Vishnu Garden, New Delhi on 15.12.2015 but he was not present there and then the FIR was registered. A sum of Rs.4 lacs was recovered from the house of the petitioner. His father kept on assuring to produce the petitioner but in vain. As regards the plea that the amount of Rs.4 lacs which has been recovered from the house of the petitioner it was verified that father of the petitioner was a member of a

committee run by one Smt Mukesh Rani and he had taken a sum of Rs.3,91,000/- from the committee on 05.11.2015 but he was given a sum of Rs.3,44,000/- after deducting his two instalments of Rs.47,200/-. The difference of Rs.56,000/- could not be justified by the father of the petitioner nor he could disclose source of this amount. The factum of the complainant carrying Rs.30 lacs with her was also verified and it is reported that M/s Chuangyue Construction Pvt. Ltd. is a sub-contractor company of M/s L&T – SUCG – JV. The complainant is a consultant in Chuangyue Construction Pvt. Ltd. On 11.12.2015 Mr Biranchi Narayan Swain proprietor of M/s SM Enterprises handed over the amount of Rs.30 lacs to the complainant for safe custody and requested to return the same on 12.12.2015 as the salaries of the workers was to be distributed. Statement of Mr Biranchi Narayan Swain in this regard was recorded. The bank statement of account of his company was also taken which reflected the transaction of amount withdrawn in the month of November and December, 2015 amounting to Rs.35 lacs. As regards the extra judicial confession made by the petitioner to one Ravinder, it is submitted that the same was made on 18.11.2015 and not on 08.11.2015. The father of the petitioner moved an application for return of amount of Rs.4 lacs. However, his application was dismissed as it was still to be verified whether this amount belongs to the father of the petitioner or was the proceeds of the crime. The investigation is at its initial juncture; the recovery of amount is required to be effected. The mere fact that the petitioner had handed over mobile phone and handbag of the complainant is not sufficient at this stage to ascertain whether the cash bag was taken by him or not. According to prosecution, custodial interrogation of the petitioner is required for recovery of the amount.

In view of the aforesaid circumstances, it will not be appropriate to grant anticipatory bail to the petitioner at this stage. The application is accordingly dismissed.

The interim protection granted to the petitioner vide order dated 15.02.2016 and continued thereafter stands vacated.

SUNITA GUPTA, J

APRIL 28, 2016/*rd*