

\$~16

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

+ **BAIL APPLN. 63/2015**

NEERAJ PAHARIA

..... Petitioner

Through: **Mr.Ajit Singh Arora, Adv.**

versus

STATE (NCT OF DELHI)

..... Respondent

Through: **Ms.Kusum Dhalla, APP for the State
Ms.Shivani Rastogi and Mr.Alok
Bhachawat, Advocates**

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

%

18.03.2016

1. By way of this application filed under Section 438 Cr.P.C., petitioner is seeking anticipatory bail in FIR No. 650/2014 dated 5.7.2014 under Sections 408/34 IPC.
2. Learned APP on behalf of the State submits that the charge sheet in this case has already been filed before the learned trial Court and the matter is listed before the learned trial Court for 30th April, 2016.
3. Learned counsel for the petitioner submits that the protection granted to the petitioner by this Court vide order dated 14.1.2015 may be extended for a reasonable period to enable the petitioner to approach the learned trial Court to seek bail in the above noted case.
4. The order dated 14.1.2015 reads as under:

“CRL.M.A. 525/2015 (Exemption)

*Exemption is allowed subject to all just exceptions.
Application stands disposed of.*

BAIL APPLN. 63/2015

Issue notice. Mr Pramod Saxena, learned APP accepts notice on behalf of the respondent-State and prays for time to file status report.

Let the status report be filed on or before the next date of hearing.

Renotify on 25.02.2015.

In the meantime, in the event of the arrest of the applicant-petitioner he shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- (Twenty Five Thousand) with two sureties of the like amount to the satisfaction of the Arresting Officer/Station House Incharge subject to the further conditions that:

(i) the applicant-petitioner shall make himself available for interrogation by a police officer as and when required;

(ii) the applicant-petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person so as to dissuade them from disclosing such facts to the Court or to any police officer.

Dasti”

5. The statutory provision of Section 438 Cr.P.C. has been the subject matter of consideration in various decisions, both of the High Courts as well as the Apex Court. Reference can be made of *Siddharam Satlingappa Mhetre –vs- State of Maharashtra*, AIR 2011 SC 312 and *Gurbaksh Singh Sibbia & Ors. –vs- State of Punjab*, (1980) 2 SCC 565. The Apex Court, as

a matter of principle, has observed that merely because the charge-sheet has been filed in the Court, this should not be a ground for not entertaining the anticipatory bail application of the petitioner. But, merely because the charge-sheet has been filed against an accused, it does not mean that he be either denied the bail or granted the bail during the course of the entire trial. The purpose of the observation that anticipatory bail should be only for a limited period by the Apex Court is that the provision of anticipatory bail is extraordinary in nature and, therefore, it should be granted for a limited period.

6. In Salauddin Abdul Samad Shaikh Vs. State of Maharashtra, (1996) 1 SCC 667, the Hon'ble Supreme Court has held as under:

“When the Court of Session or the High Court is granting anticipatory bail, it is granted at a stage when the investigation is incomplete and, therefore, it is not informed about the nature of evidence against the alleged offender. It is, therefore, necessary that such anticipatory bail orders should be of a limited duration only and ordinarily on the expiry of that duration or extended duration, the court granting anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the charge-sheet is submitted.”

It was further held:

“Ordinarily the court granting anticipatory bail should not substitute itself for the original court which is expected to deal with the offence. It is that court which has then to consider whether, having regard to the material placed before it, the accused person is entitled to bail.”

7. As the charge-sheet has been filed, therefore, in my view, it will be inappropriate to grant the anticipatory bail for the entire period during the

course of trial. Moreover, the grant of anticipatory bail to the accused for the entire period of trial could be against the very concept of Section 438 of the Cr.P.C. This is on account of the fact that the provision of anticipatory bail is applicable at the stage of pre-arrest of an accused or the grant of bail to an accused in anticipation of his arrest. In the instant case, the charge-sheet having already been filed and the accused already having been protected against the arrest for almost a year, I feel that there is hardly any occasion for the Investigating Officer to arrest the petitioner now or even if there is a threat of arrest, this can be allayed by relegating him to go to the Court concerned and apply for regular bail and in the meantime, protect him till the disposal of the trial.

8. In the given facts and circumstances, the interim protection granted to the petitioner vide order dated 14.1.2015 is extended till 30th April, 2016 to enable the petitioner to approach the concerned Court to file bail application as charge-sheet has already been filed in this case.

9. The petitioner is directed to apply for bail before the concerned Court within a period of one week and learned trial Court will make every effort to expeditiously dispose of the bail application.

10. Bail application stands disposed of with above directions.

Copy of the order be given dasti.

PRATIBHA RANI, J.

MARCH 18, 2016

'hkaur'