

\$~2

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

+ BAIL APPLN. 123/2016

SUMIT @ SUNNY WALIA

..... Petitioner

Through: Mr.Joginder Tuli, Ms.Pooja Arora,
Ms.Joshini Tuli & Ms.Babita Rana,
Advocates

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr.Kewal Singh Ahuja, APP for the
State with SI Mukesh Kumar PS
Bindapur

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **01.02.2016**

1. By way of this application filed under Section 438 Cr.P.C., petitioner is seeking anticipatory bail in case FIR No.1595/2015 registered under Sections 406 IPC at PS Bindapur.
2. On behalf of petitioner it has been submitted that petitioner has joined and cooperated in the investigation. It is further submitted that petitioner is ready to get the motorcycle recovered.
3. FIR No.1595/2015 was registered against the petitioner on 17.11.2015 on the basis of statement made by Amarjeet Gur to the effect that his motorcycle No.DL 8S BH 8967 Harley Sportster XL 1200 X Black Colour was taken by the petitioner for 2-3 days, but he failed to return for about a month. Whenever the complainant requested for return of the motorcycle he was threatened by the petitioner who has allegedly refused to return the motorcycle saying that the complainant was free to do whatever he wanted

to do but his motorcycle will not be returned.

4. Status report has been filed by the State to the following effect:-

“During the course of investigation HC Surrender No.266/SW, HC Mahesh No.322/SW and Ct.Ravinder No.1059/SW had gone to the house of petitioner Sumit Walia on 4.1.16 where his servant Sandeep was found present at the gate of street to his farmhouse who told the police that Sumit Walia was not present at home. In the meantime Sumit Walia came there in a car and on seeing the police party he escaped from there without stopping. Soon after the servant received a call from Sumit Walia on his mobile phone and after receiving the call he made a call to police on 100 regarding quarrel. Thereafter HC Surrender pasted a copy of notice u/s 160 CrPC for 5.1.16 in the name of Sumit Walia at the gate of his farmhouse. Thereafter on arrival of PCR van went to PS Mehrauli and informed the local police about the investigation of case. A copy of notice u/s 160 CrPC in the name of Sunny Walia was also served upon his servant Sandeep.

Sumit Walia did not join investigation on 5.1.16 and filed anticipatory bail application on 6.1.16 before the Hon'ble Court of Sh.Virender Bhatt, ASJ, Dwarka Court, New Delhi and the same was dismissed on 13.1.2016.

On 13.1.2016 NBW against accused Sumit Walia @ Sunny Walia have been issued by the concerned Court for 20.1.16 as he is evading arrest. After that proceeding u/s 82 CrPC was issued by the Hon'ble Court of Sh.Vikram, Ld.MM, Dwarka Court, New Delhi which has been completed on 08.3.16.

It is also worth mentioning here that the petitioner is a habitual criminal who has been found involved in 10 cases of heinous nature. (Copy of previous involvement report attached).

5. Lists of the cases showing involvement of the petitioner in 10 cases has also been annexed with the status report.

6. Learned APP for the State has submitted that though the petitioner has joined the investigation but failed to cooperate. He has further submitted that

motorcycle No.DL 8S BH 8967 Harley Sportster XL 1200 X Black Colour was very expensive and had not been recovered till date. Learned APP for the State has referred to the contradictory statements given by the petitioner at different stages. Learned APP for the State has referred to Annexure P-1, which is the copy of the order dated 13th January, 2016 passed by learned ASJ, whereby the prayer of the petitioner for release on anticipatory bail has been declined. In the said order, the contentions of the petitioner/applicant recorded by learned ASJ is to the following effect:-

“It is the contention of the applicant, as canvassed by his counsel, that he had returned the motorcycle to the complainant in the month of October, 2015. However, learned APP submits that there are whatsapp messages sent by the applicant to the complainant in the month of December, 2015 stating that he would return the motorcycle to him very soon. She further submits that investigating officer has got certain telephonic conversation exchanged between the applicant and the complainant wherein also the applicant has admitted that the motorcycle is in his custody and he is going to return the same to the complainant.”

7. Learned APP for the State has also referred to the para No.2.9 & 2.10 of the bail application wherein the plea taken by the petitioner is to the following effect:-

“2.9. That the petitioner went to PS Bindapur to join the investigation as per the instructions passed by learned ASJ, Dwarka Courts, Delhi at 4 PM where the petitioner had mentioned that he had given the said motorcycle to one of the complainant's and his common friend and was ready to get it recovered.

2.10. That the petitioner has already joined the investigation and ready to cooperate and get the motorcycle recovered from the common friend and in this connection he had told the complainant on 13th January, 2016 and as well as the IO of the case. But the IO is adamant in arresting the petitioner in the

FIR registered under Section 406 IPC, whereas the ingredients of FIR maximum attracts FIR under Section 403 IPC 'Dishonest Misappropriation of Moveable Property'.”

8. Learned APP for the State has further referred to the interrogation of the petitioner by the IO on 7th January, 2016 when he joined the investigation and another version has been given by him before the IO. During interrogation by IO he stated that in August, 2015 he had taken motorcycle No.DL 8S BH 8967 Harley Sportster XL 1200 X Black Colour from Amarjeet Gur and thereafter it is lying parked at his DLF farm house. The motorcycle was taken on friendly basis. While replying to the question that after receiving the complaint he was asked to return the motorcycle, the petitioner has replied that he had never said anything about return of the motorcycle. When he was again questioned as to when he has returned the motorcycle the answer given by the petitioner is that after 25-30 days he had returned the motorcycle of the complainant to some person whose name or mobile number he does not remember. Learned APP has submitted that the petitioner is a habitual offender. When he admits receiving the motorcycle from the complainant how he could have returned to an unknown person whose name or even mobile number is not known to him.

9. In the case of ***Siddharam Satlingappa Mhetre vs. State of Maharashtra & Ors. AIR 2011 SC 312***, the Apex Court had laid down the following factors and parameters to be considered while considering the application for grant of 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 the 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 accused is implicated with the help of Sections 34 and 149 of the Indian Penal Code, 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."*

10. When the case of the petitioner is examined in the light of above principles, I do not find it to be a fit case to grant anticipatory bail to the applicant as his custodial interrogation may be required to recover the case property which was allegedly taken by him from the complainant but failed to return on demand.

11. The application is dismissed.

PRATIBHA RANI, J.

FEBRUARY 01, 2016/‘pg’