

\$~23.

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

+ **BAIL APPLN. 227/2016**

SANJEEVE KUMAR SHARMA & ANR

..... Petitioners

Through: Mr. Vijay Mehta, Advocate.

versus

STATE

..... Respondent

Through: Ms. Radhika Kolluru, APP for the
State.

Mr. Rakesh C. Agrawal, Advocate for
the complainant.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

28.07.2016

%

1. The applicants have preferred the present bail application under Section 438 Cr.P.C. to seek anticipatory bail in case FIR No.17/2016 dated 13.01.2016 registered under Section 380/ 448 IPC at Police Station – Jagatpuri.

2. The case of the complainant is that the complainant was a tenant of the applicants in respect of a shop where he was running an electrical repair shop. The complainant was repairing refrigerators, air-conditioners, washing machines, etc. According to the complainant, he closed the shop on 31.12.2015 by pulling down the shutter and locking the same. When he

returned on 01.01.2016, he found that the locks were open. When he opened the shutter, there was a freshly constructed wall behind the shutter. He could not enter his shop. All his equipments and goods as well as cash of Rs.1 Lakh stated to be lying in the shop had vanished. He lodged his complaint resulting in registration of FIR against the applicants.

3. The anticipatory bail application of the applicants was dismissed by the learned ASJ on 20.01.2016 primarily on the ground that the stolen articles belonging to the complainant had yet to be recovered and, therefore, their custodial interrogation is necessary.

4. Learned counsel for the applicants submits that after grant of interim protection by this Court, the applicants have joined the investigation. He submits that no recovery has been made from the applicants.

5. The application is opposed by the State as well as by the complainant, who is present with his counsel.

6. At this stage, I may observe that according to the applicants, the complainant had vacated the shop voluntarily on 16.12.2015 and had removed all his belongings. The status report filed by the State, however, tells a different story. Since, according to the complainant, he was using the shop for running the business till 31.12.2015, several customers of the complainant who had got their electrical wares repaired from the complainant were examined. The said customers showed their original repair bills. The original keys of the shutter installed on the shop were also recovered from the possession of the complainant. In their statements, the customers stated that they had got electrical wares such as washing machine,

fridge, etc. repaired between 20.12.2015 to 31.12.2015.

7. The submission of learned counsel for the applicants is that there was a delay of 13 days in lodging of the FIR. Though, it is claimed that the shop was found to have been forcibly occupied by the applicants on or before 01.01.2016, the FIR was registered only on 13.01.2016. To this, the submission of learned counsel for the complainant is that he had approached the police with his complaint at the earliest, however, his complaint was not taken and FIR registered. He had to run from pillar to post to get his FIR registered. He submits that the complainant has proof of visits to several police officers to get FIR registered and it was only when directions were issued from the higher-ups that the FIR came to be registered on 13.01.2016.

8. Learned counsel for the petitioners next submits that the FIR itself records that the statements of the neighbours were recorded and according to them, the complainant had vacated the premises voluntarily and that he had taken away his articles from the shop. The FIR, however, is silent with regard to the identity of the said persons. As opposed to that, in the status report filed by the State the specific names of the customers who had got electrical equipments repaired between 20.12.2015 to 31.12.2015 have been set out and their bills have also been taken into custody.

9. At this stage, the learned APP points out that the written-statements given by the neighbours have been provided to the police to say that the complainant had vacated the premises voluntarily and removed his goods from the shop in question.

10. Be that as it may, in my view, since it is claimed that the articles,

equipments, etc. of the complainant are missing and he had not vacated the shop, the custodial interrogation of the petitioners would be necessary to unearth further relevant facts.

11. Accordingly, the present bail application is dismissed.

JULY 28, 2016
B.S. Rohella

VIPIN SANGHI, J