

\$~51

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

+ BAIL APPLN. 731/2016

MINTU

..... Petitioner

Through: Mr.Sanjeev Kumar, Advocate

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Ms.Alpana Pandey, APP for the State
with SI Yogesh PS Prashant Vihar

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

%

06.04.2016

CRL.M.A.Nos.5825-26/2016

Exemption allowed, subject to all just exceptions.

Applications stand disposed of.

BAIL APPLN. 731/2016

1. By way of this application filed under Section 438 Cr.P.C., petitioner is seeking anticipatory bail in case FIR No.487/2014 dated 10th May, 2014 registered under Section 379 IPC at PS Prashant Vihar.
2. The case of the petitioner is that FIR No.0043 dated 21st February, 2016 has been registered against him and others at PS Jani, Meerut. In the above FIR the allegations against him and his co-accused are that they were planning some offence and while moving in a stolen car when the police intercepted them, they opened fire on the police.
3. The petitioner alleges that he has been released on bail in case FIR

No.0043/2016 PS Jani, Meerut and now the police wants to arrest him in case FIR No. 487/2014 under Section 379 IPC at PS Prashant Vihar. He being innocent apprehends arrest in a non-bailable offence case. Hence, he may be released on anticipatory bail.

4. The case FIR No.487/2014 pertains to theft of Santro Car bearing registration No.DL-2C AE 1577, Chassis No.296554 and Engine No. 445378, Color-White, Model-2008.

5. The petitioner has been arrested in case FIR No. 0043/2016 at PS Jani, Meerut and at that time he along with co-accused was moving in a stolen car. In respect of theft of car case FIR No. 487/2014 has already been registered at PS Prashant Vihar. Interrogation of the petitioner is required in that case.

6. The bail order dated 4th March, 2016 passed by the learned Additional Session Judge, Meerut in case FIR No.43/2016 records that the car in which the petitioner along with other co-accused was allegedly travelling, was bearing number plate no. UP-15, AJ-5704. The chassis no. and engine no. of the car was put on net for verification and it was found that the correct number of the car is DL-2C AE 1577 and the FIR No.487/2014 dated 10th May, 2015 is registered in connection with theft of aforesaid car from DDA Sports Complex, Sector-9, Rohini, Delhi.

7. In the case reported as ***Adri Dharan Das Vs. State of West Bengal*** 2005 III AD (SC) 73, the Apex Court has laid down the guidelines for considering the prayer for release on anticipatory bail. In para 7 of the report it was held as under:-

“7. The facility which Section 438 of the Code gives is generally referred to as 'anticipatory bail'. This expression which was used by the Law Commission in its 41st Report is neither used in the section nor in its marginal note. But the

expression "anticipatory bail" is a convenient mode of indication that it is possible to apply for bail in anticipation of arrest. Any order of bail can be effective only from the time of arrest of the accused. Wharton's Law Lexicon explains 'bail' as 'to set at liberty a person arrested or imprisoned, on security being taken for his appearance.' Thus bail is basically release from restraint, more particularly the custody of Police. The distinction between an ordinary order of bail and an order under Section 438 of the Code is that whereas the former is granted after arrest, and therefore means release from custody of the Police, the latter is granted in anticipation of arrest and is therefore effective at the very moment of arrest. (See: Gur Baksh Singh v. State of Punjab SC/0215/1980: 1980CriLJ1125). Section 46(1) of the Code, which deals with how arrests are to be made, provides that in making an arrest the Police officer or other person making the same "shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action". The order under Section 438 of the Code is intended to confer conditional immunity from the touch as envisaged by Section 46(1) of the Code or any confinement. The apex Court in Balachand Jain v. State of Madhya Pradesh, SC/0172/1976: [1977]2SCR52 has described the expression 'anticipatory bail' as misnomer. It is well-known that bail is ordinary manifestation of arrest, that the Court thinks first to make an order is that in the event of arrest a person shall be released on bail. Manifestly there is no question of release on bail unless the accused is arrested, and therefore, it is only on an arrest being effected the order becomes operative. The power exercisable under Section 438 is somewhat extraordinary in character and it is only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty then power is to be exercised under Section 438. The power being of important nature it is entrusted only to the higher echelons of judicial forums, i.e. the Court of Session or the High Court. It is the power exercisable in case of an anticipated accusation of non-bailable offence. The object which is sought to be achieved by Section 438 of the Code is that the moment a person is arrested, if he has already

obtained an order from the Court of Session or High Court, he shall be released immediately on bail without being sent to jail.”

8. Taking into consideration that interrogation of the petitioner is required in respect of theft of Santro Car bearing registration No.DL-2C AE 1577 in respect of which FIR was registered about two years back and petitioner was allegedly found moving in the said car along with his co-accused with fake number plate, I do not find it to be a fit case to enlarge the petitioner on anticipatory bail.

9. The application is dismissed.

PRATIBHA RANI, J.

APRIL 06, 2016

‘pg’