

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on : May 24, 2016

+ BAIL APPLN. 861/2016
VIMAL KUMAR CHAUDHARY Petitioner
Through: Mr.Ashok K. Singh, Advocate with
Ms.Vimita Singh, Advocate.

versus

STATE OF NCT OF DELHI Respondent
Through: Mr.Amit Chadha, Additional Public
Prosecutor for the State.
Mr.B.P. Singh, with Ms.Pushp
Gupta, & Mr.Shakti Singh, Advocates
for the Complainant.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI
JUDGMENT
P.S.TEJI, J.

1. By this petition filed under Section 438 read with Section 482 of Cr. P.C., the petitioner seeks anticipatory bail in a case registered as FIR No. 0477/2015 under Section 406/420/120B of Indian Penal Code, at Police Station Krishna Nagar, Delhi.

2. The present case is registered at the instance of Dr. Rajender Dewan (complainant herein), who alleged that the petitioner, his wife and daughter approached him at his clinic. It is alleged that the petitioner had good influential relationship in various Ministries and he assured the complainant to provide one quota seat (Central Pool of

Allocation) of MBBS to his son in Vardhman Mahavir Medical College (VMMC) at Delhi. In consideration thereof, it is alleged that the complainant had taken Rs.29 lacs from the complainant for admission of his son in VMMC. Since the complainant did not get admission of his son in medical college in quota seat (Central Pool of Allocation), he demanded his money back, which the petitioner did not return.

3. Investigation started and after recording the statement of the complainant, a notice was sent to the Principal Administrative Officer, Vardhman Mahavir Medical College, Safdarjang, New Delhi to ascertain the procedure of admission in MBBS course and other enquiries regarding the complaint. In reply to that notice, the College has informed that there are six seats of Central Pool of allocation in VMMC and there is no management quota in the said college. It is also informed that no fees/donation is being charged for admission through management quota, as there is no management quota therein.

4. In compliance of order of the Trial Court, notice was sent to Ministry of Health & Family Welfare, Nirman Bhawan, Delhi to know the procedure/authenticity of Central Pool of Allocation in VMMC. In response to the notice, it is informed that the seats collected in the Central Pool from the State Government, institutions are in turn allocated to the State/UTs who are not having Medical/Dental College of their own and to certain other Ministries/Department like Ministry of External Affairs, Defence, Home Affairs, Human Resource

Development and Cabinet Secretariat etc. to meet their obligation. It is also informed that the selection is made on the basis of marks obtained by the student in the Entrance Test conducted by the beneficiary State/UT. If the beneficiary State/UT is not conducting any entrance examination, the selection is made on the basis of marks obtained by the students in All India Pre-medical entrance test (AIPMT) conducted by CBSE.

5. The complainant also produced recorded telephonic conversations between the complainant and the petitioner which shows the payment of Rs.29 lacs to the applicant for securing MBBS seat. For further investigation, the police moved an application before the concerned Court for obtaining voice sample of the petitioner but the petitioner had refused to give his voice sample. The petitioner was asked to join the investigation and provide the bank details and other informations for investigation but he did not join the investigation nor did he provide any information/documents as sought for. During investigation, a NCR No.2/2016 regarding giving life threat to the complainant under Section 506 of IPC is also registered against the petitioner in Police Station Krishna Nagar, Delhi.

6. Mr. Ashok K. Singh, learned counsel for the petitioner contended that the petitioner has already joined the investigation during pendency of the anticipatory bail application before the District & Session Judge, Karkardooma Court, Delhi and he never misused or interfered in investigation. It is further contended that the petitioner

had also submitted all the requisite documents, i.e., banking and financial statements/PAN and Passport etc., as demanded by the Investigating Officer. However, the said bail application has been dismissed vide order dated 12.04.2016.

7. Learned counsel for the petitioner further contended that the prosecution is believing the false and frivolous complaint of the complainant and FIR has been registered against him in an arbitrary manner and that too without making any preliminary investigation as to the correctness of legality of the allegations leveled in the FIR. The contents of the FIR as stated by the complainant have been rebutted by the petitioner and submitted his own version by contending that there were good family relations between the petitioner and the complainant and in the month of October 2013, the complainant approached the petitioner and borrowed Rs.3.5 lacs, from the petitioner and to agreed to the same within one year. It is submitted that when in February 2015, the petitioner asked the complainant to return the friendly loan of Rs.3.5 lac, he started delaying the repayment of loan on one pretext or the other. When the petitioner gave one week time to complainant for return of his money, and in default thereof legal action was stated to be taken against him, the complainant threatened the petitioner that he would ruin the life of the petitioner, his wife and his minor daughter by putting the them behind the bar. However, no legal action has been taken against the complainant.

8. Learned counsel for the petitioner further contended that after

receiving a notice under Section 41/91 of Cr. P.C. from the Investigating Officer, the petitioner had joined the investigation and answered the entire query and submitted all the documents, but the learned Additional Sessions Judge has dismissed his application for anticipatory bail while making adverse remark that the petitioner did not join the investigation, which is not warranted.

9. It is further contended by the petitioner that there is no evidence produced before the Investigating Officer regarding financial transaction of Rs.29 lacs. It is urged that even if the allegations made in the complaint are accepted to be true, the complainant should also be booked under anti-corruption law as he was found to be involved in bribing government officials/medical college in securing MBBS seat for his son. It is further submitted that it is settled and basic cardinal principle of law of contract that for a valid contract, object must be lawful and no contract can be enforceable through court of law, to attain an unlawful object. It is contended that the learned Additional Sessions Judge has dismissed his anticipatory bail application by relying on the complaint filed by the complainant bearing NCR No.2/16 dated 29.03.2016 without verifying its contents and allegations. Lastly, it is contended that the petitioner is innocent and has not committed the offence as alleged in the FIR in question.

10. Mr. Amit Chadha, Additional Public Prosecutor for the State vehemently opposed the aforesaid contentions made on behalf of the petitioner and submitted that the petitioner is required for

investigation, as the amount of Rs.29 lacs is to be recovered from him and there is every possibility of petitioner tampering with the evidence and to give threat to the complainant. In support of his contention, learned Additional Public Prosecutor for the State informed that the complainant had lodged an NCR No.2/2016 dated 29.03.2016 under Section 506 of IPC at Police Station Krishna Nagar, Delhi regarding the life threat given by the petitioner herein. Moreover, the petitioner has refused to give his voice sample to verify the telephonic conversations between the complainant and the petitioner in respect of the payment of Rs.29 lacs given to the petitioner for securing the MBBS seat. Apart from the aforesaid, it is submitted that the petitioner has neither joined the investigation nor provided any documents or the information sought from him. The custody of the petitioner is also required to unearth the conspiracy hatched by the petitioner and to know whether the petitioner has earlier committed any such criminal act. Therefore, in the present facts and circumstances of the case, the petitioner be not granted anticipatory bail in the present case.

11. I have heard the submissions and counter submissions made on behalf of both the sides. This Court observes that the petitioner has narrated his own version of the incident, which in any case, can be adjudged during trial of the case. This Court also observes that the learned Additional Sessions Judge has rejected the bail to the petitioner on the ground that the petitioner is not co-operating in the proper investigation of the case and during the hearing of the bail

application before the learned Additional Sessions Judge, the complainant had informed that the petitioner alongwith 5-6 musclemen, armed with pistols and iron rods came to the clinic of the complainant and extended life threats to eliminate him and his family, if the present case is not withdrawn by the complainant. This Court also observes that a complaint under Section 506 of IPC is registered at Police Station Krishna Nagar, vide NCR No.2/16 dated 29.03.2016 against the petitioner.

12. Considering the aforesaid facts and circumstances of the present case and the fact that the investigation is at the preliminary stage, in the considered opinion of this Court, this is not a fit case to grant anticipatory bail to the petitioner at this stage. So far as his version of incident is concerned, the same can only be looked into during trial. Therefore, in the light of the facts and circumstances of the case and considering the gravity of offence and the fact that the petitioner is alleged to have been misappropriated a sum of Rs.29 lacs, which needs to be recovered from him, this Court is not inclined to grant anticipatory bail to the petitioner at this stage.

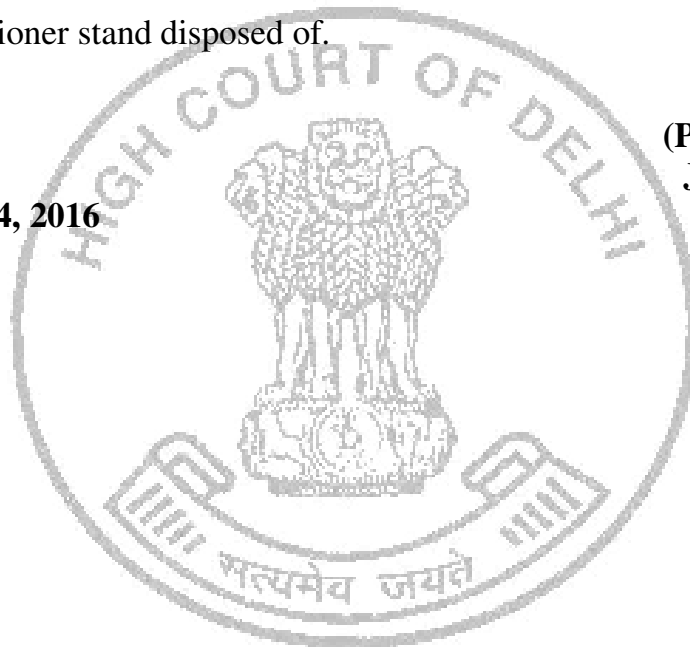
13. Resultantly, in the considered opinion of this Court, the facts emerging from the record culminates into dismissal of the present anticipatory bail application. Accordingly, the present bail application filed by the petitioner is dismissed at this stage.

14. Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated

hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

15. With aforesaid direction, the present bail application, filed by the petitioner stand disposed of.

MAY 24, 2016
pkb



(P.S.TEJI)
JUDGE