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

+ **BAIL APPLN. 899/2016**

AMIT JANI

..... Petitioner

Through: Mr.Rajesh Sachdeva, Ms.Shobha
Gupta, Ms.Amrita, Ms.Ragya &
Mr.Ankit, Advocates

versus

THE STATE

..... Respondent

Through: Mr.Amit Ahlawat, APP for the State

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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05.05.2016

1. The petitioner is seeking anticipatory bail in case FIR No.149/2016 registered under Sections 25/54/59 Arms Act at PS Tilak Marg.
2. Status report has been filed.
3. Heard.
4. The anticipatory bail application filed by the petitioner has already been rejected by the learned ASJ on 27.04.2016.
5. Learned counsel for the petitioner has referred to the statement of the complainant Binod Kumar which forms basis of registration of the FIR in question on 14.04.2016. The complainant was on duty as conductor in the DTC Bus No. DL-1PC-8588, Route No.605 from which an unclaimed bag containing fire arms and cartridges along with some other article was allegedly recovered.

6. Learned counsel for the petitioner has referred to the endorsement made on the rukka wherein the seizure memo has been prepared in respect of pistol, cartridges as well one handwritten letter and one scarf of red colour on which Jai Mata Di was printed. It has been argued before this Court that when the complainant did not refer to the handwritten letter and scarf of red colour in the FIR, reference to the same in the endorsement of the rukka shows that it has been planted. It has been further submitted that petitioner is being falsely implicated at the instance of Chander Bhan, co-accused who allegedly disclosed that at the behest of the petitioner the alleged handwritten letter was written by him.

7. Status report filed by the State disclose that on 14th April, 2016 PCR call was received regarding an unclaimed bag lying in DTC Bus No. DL-1PC-8588, Route No.605. The bus was checked and the conductor of the bus produced one unclaimed bag of brown colour. The bag was checked and found containing one country made 7.26 pistol, 4 live cartridge, one red colour flag, and one handwritten letter. PCR call was also received at Vasant Vihar Police Station about two boys transporting a bag containing arms in the aforesaid bus going to Jawaharlal Nehru University and thereafter, the caller switched off his mobile phone.

8. In the status report further progress in the investigation has been reported as under:-

“During the course of investigation, search of PCR caller was made. After that it came to know through ownership of alleged mobile phone that Mr.Sulabh Bhardwaj S/o Shri Rajender Kumar Bhardwaj R/o H.No.10, Ramvati Puram, Tej Vihar, Meerut, UP is the owner of said mobile phone. He was called to Police Station to join the investigation and he was interrogated. During interrogation, initially he stated that someone has borrowed his mobile and called police control room.

Thereafter, on 16.04.16, Mr.Sulabh Bhardwaj came to the police station and he disclosed that he knows one Mr.Amit Jani and he has called him at AIRA XING, Hotel, Paharganj to get him a job in Delhi. On 13.04.16 he came to Delhi and met Mr.Amit Jani, Saurabh Bhardwaj and Mr.Chander Bhan in above said hotel, where, Mr.Amit Jani showed him one pistol, 4 live cartridge, one hand written letter and one red colour scarf on which Jai Mata Di was written and told him to plant all the articles in the bus which goes to JNU. Thereafter, Mr.Amit Jani had made a conspiracy to plant the bag containing all the above mentioned articles in bus on 14.04.16 in bus route No. 615. On the directions of Mr.Amit Jani he along with Mr.Saurabh Aggarwal (real brother of Mr. Amit Jani) and Chander Bhan went to INA Market bus stop by the car of Sh. Saurabh Aggarwal and they planted the bag in Bus No. DL-1PC-8588, Route No.605 and followed the bus upto JNU by car. On the directions of Amit Jani accused Sulabh Bhardwaj has called to police control room and informed about the planted articles in bus. Thereafter, after getting sufficient evidence against Sulabh Bhardwaj and Saurabh Aggarwal, were arrested according to law. 2 days P.C.remand was obtained of accused Saurabh Aggarwal to trace the co-accused Amit Jani and search have been made at his hide outs Delhi as well as Meerut but he could not be traced till date. It is further submitted that other co-accused Sulabh Bhardwaj, Saurabh Aggarwal & Chander Bhan have been arrested and running in J/C.”

9. The prayer for release on anticipatory bail has been opposed on the ground that custodial interrogation of the petitioner is required who is claimed to be master mind and that co-accused are already in custody and regular bail has also been denied to them.

10. The contention on behalf of the petitioner about the handwritten letter not being mentioned by the complainant Binod Kumar in his statement which formed basis of registration of FIR it finds mention in the

endorsement of the IO cannot be considered as a ground to grant anticipatory bail to the petitioner as both these facts are mentioned on the same page and in the endorsement the IO has stated that the bag was handed over by the Conductor Binod Kumar and when he (SI Rajesh Kumar) opened the bag it was found containing one pistol, four live cartridges wrapped in white carry bag along with one handwritten letter and one scarf red colour on which Jai Mata Di printed.

11. The seizure memo was allegedly prepared in this case at the spot before sending the rukka.

12. In the case **Siddharam Satlingappa Mhetre Vs. State of Maharashtra & Others, (2011) 1 SCC 694** it has been held as under:

“111. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualized for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case. As aptly observed in the Constitution Bench decision in Sibbia’s case (supra) that the High Court or the Court of Sessions to exercise their jurisdiction under section 438 Cr.P.C. by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.

112. The following factors and parameters can be taken into consideration while dealing with the 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."*

13. Now the question to be considered is whether the petitioner is entitled to be released on anticipatory bail or not. The three co-accused, namely, Sulabh Bhardwaj, Saurabh Aggarwal & Chander Bhan have been arrested in this case and they have named the petitioner to be the master mind behind transporting this bag in a bus with destination as JNU. The contents of the handwritten letter which was allegedly written by Chander Bhan at the instance of the present petitioner makes the nature of the accusation against

the petitioner quite serious. While exercising the judicial discretion to grant anticipatory bail this Court cannot ignore the difficulties likely to be faced by the investigating agency as it is a case where custodial interrogation may be required.

14. The material referred to in the status report indicate the complicity of the petitioner in the alleged offence. All the three co-accused, namely, Sulabh Bhardwaj, Saurabh Aggarwal & Chander Bhan are already in custody and the petitioner, Amit Jani being disclosed to be the master mind of this incident, fair investigation in such a serious offence cannot be effectively done without a custodial interrogation of the petitioner. Hence, prayer for release on anticipatory bail is declined.

15. The application is dismissed.

16. Any observations made hereinabove for the purpose of dealing with the contentions raised during hearing of the bail application shall not be deemed to be an expression on merits of the case.

PRATIBHA RANI, J.

MAY 05, 2016

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