35

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 26th May, 2016

BAIL APPLN. 1112/2016 & CRL.M.A. 8753/2016

ARJUN SHARMA ..... Petitioner

Through: Mr S.K.Rai, Advocate.

versus

STATE OF NCT OF DELHI ..... Respondent

Through: Ms Radhika Kolluru, APP.

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present application under Section 438 of the Code of Criminal Procedure, 1973(in short 'CrPC'), seeks pre-arrest bail in FIR No.39/2016 under Sections 489B/489C IPC and Section 120B (added later on) registered at Police Station- Crime Branch (West).

2. As per the case of the prosecution, counterfeit currency has been recovered from the co-accused of the applicant and they have disclosed that they received the said counterfeit currency through the applicant herein.

3. Mr Rai, learned counsel appearing on behalf of the applicant, has invited my attention to a decision of the Hon'ble Supreme Court of India in ***Jayendra Saraswathi Swamigal v. State of Tamil Nadu:*** **2005 (1) JCC 118**, and in particular paragraph 10 thereof, to urge that in view of Section 30 of the Evidence Act, disclosure statement of a co-accused is a very weak type of evidence which can at best be taken into consideration to lend assurance to the prosecution case; and that the proper way for the prosecution to proceed is, first to marshal the evidence against the accused excluding the disclosure statement altogether from consideration and thereafter see whether it is believed that the conviction could safely be based on it.

4. Mr Rai, learned counsel, would then urge, by inviting my attention to paragraph 14 of the said report, that the mobile telephone number from which the applicant is alleged to have spoken to the co-accused is not in his name and he has nothing to do with it. Mr Rai, would further urge that the applicant is a Government servant and if this court were not to enlarge him on pre-arrest bail, it would have civil consequences for the latter. Mr Rai, would then urge that Article 21 of the Constitution of India stipulates that no person can be deprived of his life or personal liberty except in accordance with the procedure established by law. Mr Rai, would lastly submit that the offences as alleged against the applicant are not made out from a plain reading of the subject FIR and that he has been falsely implicated at the behest of the IO in the subject FIR, in order to coerce the applicant to reveal the whereabouts of Munna, who is a co-accused in the subject FIR. In this behalf it has been stated that the charges framed against the applicant in FIR No.46/2013 under Sections 489B/479C/120B IPC (titled as *State v. Arjun Sharma)* are the consequence of a personal vendetta that the IO in the subject FIR has against him, since the IO in the subject FIR was a part of the Prashant Vihar Police Station, which caused the charge-sheet to be filed in the earlier case against the applicant.

5. On the contrary, Ms Radhika Kolluru, learned APP appearing on behalf of the Police, invites my attention to the disclosure statement of Harish Kumar to urge that the co-accused has clearly implicated the present applicant and specifically elaborated on the modus operandi used by him to distribute and traffic fake Indian currency. Ms Kolluru would then invite my attention to the circumstance that charges have already been framed against the applicant in the earlier FIR No.46/2013 registered against him under Sections 489B/489C/120B IPC (titled as *State v. Arjun Sharma)* for similar offences.

6. It is also urged on behalf of the police that it is relevant to note that the present FIR has been registered against the applicant while he was on bail pending trial in the previous case (FIR No.46/2013).

7. The trial court after hearing learned counsel appearing on behalf of the applicant has expressed as follows:-

> "As per case of prosecution, counterfeit currency has been recovered from the co-accused and they have disclosed that they received the said counterfeit currency through the applicant. The allegations are serious in nature and custodial interrogation may be necessary for unearthing the truth behind the allegations. In my opinion, a prejudice is likely to be caused to the investigating agency if the applicant is given the benefit of anticipatory bail. Possibility of the applicant tampering the evidence can also not be ruled out. It is also reported by the IO that the applicant is involved in another matter of similar nature vide FIR No.46/13 u/s 489B/489C/120B IPC P.S Crime Branch."

8. Coming to the submissions made on behalf of the applicant and the decisions relied upon by the counsel appearing on behalf of the applicant, it is observed that although there can be no quarrel with the enunciation of the law as expressed, in my view, the sequitur of the ratio of the decision of the Hon'ble Supreme Court in ***Jayendra Saraswathi Swamigal (supra)*** is not attracted in the facts of the present case, inasmuch as, the applicant is already being tried for an identical offence in FIR No.46/2013 (titled as *State v. Arjun Sharma).* Furthermore, although the mobile telephone number (SIM Card) from which the applicant is alleged to have spoken to the co-accused including Munna, who is absconding, is not registered in his name, it has been brought to my notice that the person in whose name the said SIM card has been issued has clearly stated that someone has impersonated her.

9. It is trite to say that the court is required to consider the nature and gravity of accusations; the antecedents of the applicant; and the possibility of the applicant's likelihood to repeat similar or other offences while considering his application for pre-arrest bail. (***Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors*** reported as **(2011) 1 SCC 694;** ***Bhadresh Bipinbhai Shah vs. State of Gujarat*** reported as **(2016) 1 SCC 152).**

10. It is observed that the applicant has been charged under sections 489B and 489C in another FIR being FIR No. 46/2013, and has committed the offence as alleged in the subject FIR while he was on bail in the other FIR. In view of the foregoing, it is observed that the applicant does not have clean antecedents and has a demonstrated propensity to commit similar or other offences if enlarged on bail. Furthermore, the circulation of fake Indian currency notes, which is rampant in the recent times, is a cause of grave concern as it represents a serious threat to the Indian economy. Therefore, in view of the nature and gravity of the allegations against the applicant, his custodial interrogation is warranted to uncover the conspiracy behind the plague of distribution and trafficking of counterfeit currency.

11. In view of the above, the application is dismissed and disposed of accordingly.

SIDDHARTH MRIDUL, J

MAY 26, 2016
mk