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

\+ **Date of Decision: 11.08.2016**

% **BAIL APPLN. 1630/2016 & Crl. M.A. No.12415/2016**

ABHISHEK VERMA & ANR ..... Petitioners

Through: Mr. R.N. Mittal, Senior Advocate along with Mr. Arvind K Gupta, Mr.Anshul Garg, Ms. Alpana Malik and Mr. Abhishek Goyal, Advocates.

versus

STATE ..... Respondent

Through: Mr. Rajat Katyal, APP along with SI Rajiv Kumar, for the State.
Mr. K.K. Aggarwal and Ms. Gayatri Aggarwal, Advocates for the complainant.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. This application has been preferred by the petitioners Abhishek Verma and Manoj Verma under Section 438 Cr.P.C. to seek anticipatory bail apprehending arrest in FIR No.185/2016 registered under Section 420/ 406/ 506/ 120B IPC at Police Station Mansarovar Park. Petitioner No.1 is the son of petitioner No.2.

2. As per the case of the prosecution, the complainant, who is a jeweller by profession, has complained that he met petitioner No.2 Manoj Verma at the place of his brother-in-law (saadu) Sudhir Verma on 20.11.2015. Manoj Verma represented to the complainant that though he had plenty of work, but he does not have money and gold to do the business. He represented to the complainant that if the complainant invests in the business of the accused, then he would be able to do some work and that he would give an equal share to the complainant. Manoj Verma asked the complainant to visit his house. The complainant then visited the house of Manoj Verma, where his son, wife and daughter met him. They talked about their miserable condition and persuaded the complainant to work with Manoj Verma.

3. According to the complainant, Manoj Verma also exploited his religious nature. He swore in the name of Gauri Shankar Mandir at Chandni Chowk. Thus, the complainant developed blind faith in the accused and he gave the accused his money, silver and gold. Thereafter, they became greedy and hatched a plan to defraud the complainant. They also introduced the complainant to their gang members, namely, Pankaj Verma and Karan Sharma. They represented to the complainant that Pankaj Verma and Karan Sharma would take gold, silver and money from the complainant and would give him the accounts on monthly basis, and that the complainant would save approximately 1-2 Lakhs on monthly basis, and his daughter would get married in a good home. The complainant stated that he used to visit the factory where Manoj Verma, his son Pankaj Verma and Karan Sharma used to met him. They represented that the work is going on at a good pace.

4. The complainant states that on 20th December, when he went to the

factory, these four persons were sitting with bullets and revolver kept on the table. There were about 200 bullets. On the complainant's enquiry, they stated that if he requires illegal bullets with revolver, they could provide the same. On this, the complainant became frightened and asked the accused to settle his account of gold, silver and money. They replied by stating "*Pandit Ji Abhi Bazar Se Hisab Nahi Aaya*". They stated that they would settle the complainant's account in 10-5 days. He states that, thereafter, he went to the accused time and again but they did not settle his account.

5. On 08.01.2016 at about 09:00 a.m. in the morning, he went to the factory premises where the accused Manoj Verma was sitting. The complainant also sat there. Thereafter, Abhishek Verma, S/o Manoj Verma came there with 7-8 persons. Pankaj Verma and Karan Sharma were along among them. While talking to the complainant, they started fighting with him. They caught held of the complainant. Manoj Verma held the complainant by his hands and legs, and his son started beating him on his head. Somehow the complainant called 100 number. The complainant's son Kunj Krishna was also present there. Due to presence of his son, the complainant did not say anything. His son started crying. Somehow his son managed to escape and went to call Narender Choudhary. With Narender Choudhary, Rahul Choudhary came. In the meantime, Pankaj Verma and Manoj Verma called other persons. Shashi Verma came, who stated that he is the President of Jewellers Market. S.K. Verma – who is the maternal uncle of Manoj Verma, and is also an accountant/ CA, also came. He told the complainant that he will settle the complainant's account and that there was no need to go to the police. In between, the police personnel came and

his son went out but did not inform anything to them, and they went away.

6. The FIR also alleges that the complainant was called to the factory of Shashi Verma and S.K. Verma, CA - maternal uncle of Manoj Verma at 1/2605, Ram Nagar, behind Koora Ghar. These persons asked the complainant to settle his account with the four accused, and not to go to the police. Shashi Verma, in his own handwriting, wrote a settlement dated 08.01.2006. Manoj Verma, Abhishek Verma, Pankaj Verma and Karan Sharma stated that the said money would be paid by them.

7. On 08.02.2016, the complainant went to take his money, on which the accused gave a life threat to him and stated that the children of the complainant would be killed. He also went to Shashi Verma, who called Manoj Verma at his shop and enquired from him as to why the complainant's money was not being paid. Manoj Verma told Shashi Verma that he would pay in 10-15 days and he would also pay interest. However, Manoj Verma, Abhishek Verma, Pankaj Verma and Karan Sharma have befooled Shashi Verma, Ram Avtar Verma, etc.

8. The complainant further alleges that on 06th June, he went with his sister-in-law (saali) and brother-in-law (saadu) and called up Shashi Verma, but he did not appear and used filthy language. When they met Manoj Verma, he started abusing the complainant and others and issued threats. On the basis of the aforesaid complaint, the FIR in question came to be registered against four persons Manoj Verma, Pankaj Verma, Abhishek Verma and Karan Sharma.

9. Anticipatory bail applications moved by the petitioners before the

learned ASJ have been dismissed on several occasions, including on 25.06.2016 and 12.07.2016. The order dated 25.06.2016 passed by the learned ASJ shows that on that occasion, the petitioners had contended that they were not obliged to make any payment to the complainant or return gold or silver articles to the complainant as they had been falsely implicated in the case. While dismissing the bail application vide order dated 25.06.2016, the learned ASJ took into account the fact that the complainant had provided documentary proof of purchase of gold and silver articles which were supplied to the petitioners. The said bills had been got verified by the I.O. from the jewellery shops. Moreover, the I.O. had recorded the statement of Shashi Verma, Pradan of the Jewellers Association and other public witnesses, including regarding the compromise between the parties. The complainant's case, therefore, stood corroborated.

10. On the second occasion, the application seeking anticipatory bail preferred by the petitioners was dismissed on 12.07.2016. On this occasion, the learned ASJ observed that the petitioners had soften their stand and now they had accepted about receiving certain jewelleries from the complainant. They had offered to make certain payments to the complainant. The learned ASJ found variance in the stand taken by the petitioners/ accused. The learned ASJ relied upon ***Vivek Gaur v. Naresh Kumar Karotia***, 2012 (1) JCC 450, wherein the Court had deprecated the practice of the accused filing successive applications to seek anticipatory bail, merely because they had not secured the relief in the earlier attempt.

11. The submission of Mr. Mittal, learned senior counsel for the petitioner is that the present petition may be treated as one on behalf of the petitioner

no.1 alone. He submits that a perusal of the FIR and the so-called settlement would show that the role attributed to the petitioner no.1 is minimal. He submits that even according to the complainant, it was petitioner no.2, the father of petitioner no.1 who allegedly cheated the complainant. Merely because both the petitioners are doing business together and are related as son and father, is no reason to implicate the petitioner or deny him anticipatory bail. He has referred to the allegations made by the complainant in the FIR to submit that, at all places, it is the name of petitioner no.2 Manoj Verma which is mentioned as the person who has induced and defrauded the complainant, and not petitioner no.1 Abhishek Verma. Even the alleged settlement, talks about payment to be made by petitioner no.2 and even the said alleged settlement is signed by petitioner no.2 alone and not by petitioner no.1.

12. Mr. Mittal submits that a perusal of the FIR shows that it was a case of business investment made by the complainant, in the business of the petitioners, and hence it involved risks. The compliant itself shows that the investment was made by the complainant so as to earn profits. Merely because the petitioners' business may have run into losses, and the petitioners may have not been able to repay the invested amount and provide a return thereon, is no reason to taint the conduct of the petitioners with criminality.

13. Mr. Mittal has placed reliance on ***Siddharam Satlingappa Mhetre v. State of Maharashtra & Ors.***, (2011) 1 SCC 694 in support of his submissions. He submits that the petitioners are ready and willing to join the investigation and cooperation in every way. He submits that the

petitioners have deep roots in the society and there is no likelihood of them absconding. Arrest of the petitioners, and in particular petitioner no.1, would lead to abnormally, humiliation and disgrace. He submits that arrest cannot be exploited as a measure of recovery from the accused.

14. On the other hand, the submission of learned APP, as well as learned counsel for the complainant, is that the petitioners are both equally involved in the crime. They have been both changing their stands from time to time. Their first stand was of false implication; the second stand was that value of the jewellery was different from what is being claimed by the complainant, and; the third stand – now taken – is that the settlement dated 08.01.2015 had been entered into by petitioner no.2 under coercion exercised by the jewelers association.

15. Reference is also made to the specific acts attributed to the petitioner no.1 in the FIR. It is pointed out that though, initially, it was Manoj Veram who induced the complainant into investing his monies, gold and silver in the business of the petitioners, in the second meeting held at the residence of the petitioners, inter alia, petitioner no.1 also induced the complainant to make investment in the business of the petitioners. The FIR/ complaint also show that the delivery of the valuables by the complainant was to both the accused. The FIR further discloses that not only petitioner no.2, even petitioner no.1, Pankaj Verma and Karan Sharma used to meet the complainant at the factory of the petitioners and used to represent that the work is going on at a good pace. On 20th December as well, all these persons were present when the complainant demanded return of his jewellery and money.

16. On 08.01.2016, the petitioner no.1 allegedly came with 7-8 persons, including Pankaj Verma and Karan Sharma. Specific role has been attributed to petitioner no.1 and petitioner no.2 with regard to the beating of the complainant in the presence of his son. It is also pointed out that S.K. Verma, C.A. – who has made a statement in favour of the complainant is, in fact, the maternal uncle of Manoj Verma. It was in his presence that the petitioners undertook to return the silver, gold and money to the complainant.

17. Having heard learned counsels, perused the FIR and considered the decision in ***Siddharam Satlingappa Mhetre*** (supra), I am of the view that neither of the petitioners is entitled to any protection at this stage of the investigation. Repeated applications for anticipatory bail made by the petitioners have been dismissed by the learned ASJ. It is clear that the petitioners are changing and shifting their stand from time to time. As held by the Supreme Court in ***Siddharam Satlingappa Mhetre*** (supra), no inflexible guideline and straight jacket formula can be provided for grant, or refusal, of anticipatory bail. The grant or refusal of anticipatory bail necessarily depends on the facts and circumstances of each case. The judicial discretion has to be exercised by the High Court, or Court of Sessions, wisely and carefully. Some of the factors and parameters which would be taken into consideration while dealing with an application for anticipatory bail have been set out in ***Siddharam Satlingappa Mhetre*** (supra) as follows:

> "*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 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 the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication 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".

18. The Supreme Court clarified that the aforesaid are only some of the

factors, and by no means they are exhaustive. They are only illustrative in nature because it is difficult to visualize the facts and circumstances in which a person may pray for anticipator bail. Arrest has to be last option, and it has to be restricted to those exceptional cases where arresting an accused is imperative in the facts and circumstances of the case.

19. In the facts of the present case, the nature and gravity of accusations against both the accused is serious. The exact role attributed to each of the accused/ petitioners is clearly set out in the FIR itself. The petitioners have not yet surrendered and they have exhibited propensity to flee from justice. Apart from claiming that the complainant had made a business investment which has run into losses, there is nothing disclosed by the petitioners in their bail application as to when and how they claimed that the alleged investment made by the complainant had gone bad on account of business losses. In fact, the stand taken by the petitioners from time to time is, firstly, that no such investment was made; secondly, that the value of the jewellery was lesser than what is claimed by the complainant, and; thirdly that the settlement dated 08.01.2016 was a result of coercion exercised upon petitioner no.2

20. The investigation is at the preliminary stage and the jewellery of the complainant delivered to the petitioners is yet to be recovered. Thus, their custodial interrogation, in my view, is necessary. The allegations against the petitioners are that they have threatened the complainant with dire consequences if he demands the jewellery and money. Thus, the possibility of the complainant and other witnesses being threatened and the investigation being scuttled cannot be ruled out.

21. For all the aforesaid reasons, I find no merit in the present petition. Dismissed.

VIPIN SANGHI, J.

AUGUST 11, 2016
B.S. Rohella/sr