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

+ **BAIL APPLN. 825/2015**

MIKKI @ SHALLENDER SINGH

..... Petitioner

Through: Mr.S.D.Singh, Ms.Bharti Tyagi,
Mr.Rahul Kumar, Ms.Shweta Sinha
and Mr.Aman Khullar, Advocates.

versus

STATE OF NCT DELHI

..... Respondent

Through: Mr.Sudershan Joon, APP for the State
with ACP Sandeep Lamba, PS Gokal
Puri.
Mr.Mohd. Shariq, Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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17.02.2016

1. By way of this application moved under Section 438 Cr.P.C., the petitioner is seeking anticipatory bail in case FIR No.900/2014 under Section 3 of Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act, 1989, PS Gokal Puri, Delhi.
2. Notice of the bail application was issued to the State. After hearing the parties on 25.05.2015, this Court directed the petitioner to join the investigation. It was further directed that in the meanwhile the petitioner shall not be arrested in this case. The interim protection granted to the petitioner against arrest has been extended from time to time and continues till date.

3. On behalf of State, it has been submitted that the petitioner is seeking anticipatory bail in a case registered under Section 3 of Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act and in view of bar created by Section 18 of Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act, anticipatory bail cannot be granted in such a case.

4. Learned APP for the State further submits that chargesheet in this case has already been filed and matter is listed before learned Trial Court on 2nd April, 2016.

5. On behalf of the petitioner, Mr.S.D.Singh, Advocate has submitted that the bar created by Section 18 of SC/ST Act is not absolute but is circumscribed as held by the Division Bench of this Court in case Dr.R.K.Sangwan & Anr. Vs.State, 2009 (112) DRJ 473 (DB).

6. Learned counsel for the petitioner has further submitted that petitioner has never abused his liberty and from the material available on record whether provisions of SC/ST Act are attracted or not, can be considered by the learned Trial Court.

7. Learned counsel for the petitioner further submits that though the petitioner has not received the summons from the learned Trial Court, the protection may be continued in this case to enable the petitioner to approach learned Trial Court to seek bail and in case of dismissal of bail application by the learned Trial Court, to give him a reasonable time to approach this Court for seeking his remedy.

8. In the instant case, the petitioner had been enjoying protection till date and by this time, chargesheet has been filed. He is seeking anticipatory bail in a case registered under Section 3 of Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act.

9. In the case of Mukesh Kumar Saini & Ors. V. State (Delhi Administration), 94 (2010) DLT 241, it was held that there was no dispute with regard to the proposition that anticipatory bail cannot be availed by the persons who have committed the offences under the S.C. & S.T. Act. It was further held that merely because the section of the Act was mentioned in the FIR, that by itself cannot be a ground for declining pre-arrest bail. The judicial scrutiny of the documents was permissible to evaluate whether the material relied upon by the prosecution revealed the existence of basic ingredients of the offence or not.

10. The statutory provision of Section 438 Cr.P.C. has been the subject matter of consideration in various decisions, both of the High Courts as well as the Apex Court. Reference can be made of *Siddharam Satlingappa Mhetre –vs- State of Maharashtra*, AIR 2011 SC 312 and *Gurbaksh Singh Sibbia & Ors. –vs- State of Punjab*, (1980) 2 SCC 565. The Apex Court, as a matter of principle, has observed that merely because the charge-sheet has been filed in the Court, this should not be a ground for not entertaining the anticipatory bail application of the petitioner. But, merely because the charge-sheet has been filed against an accused, it does not mean that he be either denied the bail or granted the bail during the course of the entire trial. The purpose of the observation that anticipatory bail should be only for a limited period by the Apex Court is that the provision of anticipatory bail is extraordinary in nature and, therefore, it should be granted for a limited period.

11. In Salauddin Abdul Samad Shaikh Vs. State of Maharashtra, (1996) 1 SCC 667, the Hon'ble Supreme Court has held as under:

“When the Court of Session or the High Court is granting

anticipatory bail, it is granted at a stage when the investigation is incomplete and, therefore, it is not informed about the nature of evidence against the alleged offender. It is, therefore, necessary that such anticipatory bail orders should be of a limited duration only and ordinarily on the expiry of that duration or extended duration, the court granting anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the charge-sheet is submitted.”

It was further held in that judgment as under:

“Ordinarily the court granting anticipatory bail should not substitute itself for the original court which is expected to deal with the offence. It is that court which has then to consider whether, having regard to the material placed before it, the accused person is entitled to bail.”

12. As the charge-sheet has been filed, therefore, in my view, it will be inappropriate to grant the anticipatory bail for the entire period during the course of trial. Moreover, the grant of anticipatory bail to the accused for the entire period of trial could be against the very concept of Section 438 of the Cr.P.C. This is on account of the fact that the provision of anticipatory bail is applicable at the stage of pre-arrest of an accused or the grant of bail to an accused in anticipation of his arrest. In the instant case, the charge-sheet having already been filed and the accused already having been protected against the arrest for almost a year, I feel that there is hardly any occasion for the Investigating Officer to arrest the petitioner now or even if there is a threat of arrest, this can be allayed by relegating him to go to the Court concerned and apply for regular bail and in the meantime, protect him till the disposal of the trial.

13. The interim protection granted to the petitioner is extended for two

weeks to enable the petitioners to approach the concerned Court to file bail application as charge-sheet has already been filed in this case.

14. In case of dismissal of the bail application of the petitioner by the concerned Court, the petitioner shall not be immediately sent to judicial custody and will be given seven days time to avail the appropriate remedy under the law.

15. Bail application stands disposed of with above directions.

As prayed, copy of the order be given dasti to learned counsel for the parties under the signature of Court Master.

PRATIBHA RANI, J.

FEBRUARY 17, 2016

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