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

Date of hearing and Order : November 18, 2016

+ BAIL APPLN. 2338/2016 & CrI.M.A. No.17864/2016 (Interim relief)
SUSHIL KUMAR BHATI & ANR

..... Petitioner

Through: Mr. Pankaj Kumar, Ms. Sarita Bhatia,
Mr. Sandeep Singh, Ms. Nasima, Ms.
Shailja Jha, Advocates

versus

STATE & ANR

..... Respondent

Through: Mr. Panna Lal Sharma, Additional
Public Prosecutor for the State with
Inspector C.B. Singh, Sub-Inspector
Brij Mohan, Police Station M.S. Park,
Delhi

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

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ORDER

P.S.TEJI, J. (Oral)

1. The present application has been filed by the petitioners under Section 438 of the Code of Criminal Procedure, 1973 for the grant of anticipatory bail in FIR No.0123/2016, Police Station M.S. Park, under Sections 498A/406/353/506/377/34 of the Indian Penal Code.

2. The petitioner has filed an application for seeking anticipatory

bail before the court of learned Additional Sessions Judge, which was dismissed vide order dated 16.08.2016.

3. Learned counsel for the petitioner has submitted that after dismissal of the bail application by the trial court on 16.08.2016, he approached this court on 8th November 2016 for seeking anticipatory bail, however the same was withdrawn due to technical fault and thereafter the present application was filed on 10.11.2016, which came up for hearing before this court on 17.11.2016. It is further argued by learned counsel for the petitioner that after registration of the case, the police had issued notice under Section 41 of Cr. P.C. for joining the investigation and the petitioners had joined the investigation twice.

4. Learned counsel for the petitioner has contended that the allegations leveled by the complainant are false, frivolous, obnoxious and are leveled with a malafide intention to misuse the process of law. It is further contended that the allegation and incident pertains to the year 2012 and FIR of the case was registered in the year 2016 and in the nature of allegation no woman would delay in lodging the FIR for four years. It is further contended that there are no specific allegations

against the petitioner and moreover, the applicants have been served the notice under Section 41 of Cr. P.C. and had already joined the investigation, therefore there is no requirement of custodial interrogations.

5. Mr. Panna Lal Sharma, Additional Public Prosecutor appears on behalf of the State.

6. After hearing the submissions made on behalf of the petitioner as well as having gone through the contents of the petition and the impugned order, it is an admitted fact that the FIR of this case was registered on 31.03.2016, and the anticipatory bail application of the petitioner was rejected by the court below vide order dated 16.08.2016.

7. It is also an admitted fact that after registration of the case, the police had issued notice under Section 41 of Cr. P.C. for joining the investigation and the petitioners had also joined the investigation twice, but thereafter, they did not appear before investigation. As a result, the investigating officer had filed an application before the court below for issuance of non-bailable warrants against the

petitioner and on the same date, the trial court, without issuance of any warrants, straightaway issued process to initiate proceedings against the petitioner under Section 82 of Cr. P.C.

8. This court observes that the police itself has proceeded under Section 41 of Cr. P.C. and did not wish to arrest the petitioner in this case. It is only on account of non-joining of investigation, the police moved the trial court for issuance of non-bailable warrants. But the trial court without issuing non-bailable warrants, straightaway proceeded to initiate proceedings under Section 82 of Cr. P.C.

9. After careful scrutiny of the case and the facts and circumstances of the present case, this Court observes that the petitioners have joined the investigation and there is no averment made on behalf of the State that the petitioners are required for custodial interrogation or that the petitioners have tried to tamper with the evidence. However, it is contended on behalf of the State the petitioners are required for the purpose of investigation.

10. In view of the aforesaid facts and circumstances of the present case, petitioners are directed to join the investigation as and when

directed by the investigating officer and in the event of arrest, the petitioners – Sushil Kumar Bhati and Dayanand Bhati be released on bail subject to their furnishing personal bond in the sum of Rs.10,000/- with two sureties of the like amount to the satisfaction of the Arresting Officer.

11. The petitioners are directed not to tamper with the evidence, not to influence the prosecution witnesses and shall not leave the country without prior permission of the Court concerned.

12. Before parting with the above order, it is made clear that anything observed in the present petition shall not have any bearing on the merits of the case during trial.

13. In view of the aforesaid directions, the present bail application is disposed of. Consequentially, CrI.M.A. No.17864/2016 seeking interim relief is rendered infructuous and disposed of as such.

Dasti.

P.S.TEJI, J

NOVEMBER 18, 2016

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