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

\+ BAIL APPLN. 2591/2015

ANIL BHATIA ..... Petitioner

Through: Counsel for the petitioner. (Appearance not given)

versus

STATE ..... Respondent

Through: Ms.Alpana Pandey, APP for the State
Mr.S.P. Mehta, Adv. for complainant

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

<u>O R D E R</u>

% **29.03.2016**

1. The petitioner Anil Kumar Bhatia is seeking anticipatory bail in the FIR No. 1159/2014, under Section 420 IPC, PS Rajouri Garden on the basis of direction given by Learned MM in exercise of powers under Section 156(3) Cr.P.C. in the Complaint Case filed by Hemant Handa.

2. The petitioner is seeking anticipatory bail mainly on the ground that he was partner in the business with Handa Financial Services and the complainant Hemant Handa had various business transactions with him. It was a case of reconciliation of accounts as there were several payments, advances and business dealings with the complainant. The complaint case has been filed by Hemant Handa on the basis of the forged and fabricated documents which are unregistered. The petitioner has also claimed that it is a case of civil dispute and there was complete trust between the petitioner and the complainant till 2013 as he had given various blank cheques and

documents to the complainant. He had sought anticipatory bail claiming that the documents forming basis of the registration of FIR are forged and fabricated by the complainant.

3. Notice of the bail application was issued to the State.

4. Vide order dated 2.12.2015, this Court directed that no coercive steps shall be taken against the petitioner and thereafter the petitioner had been enjoying the protection. When the anticipatory bail was to be heard on merits, on one pretext or the other learned counsel for the petitioner had been seeking adjournments. Yesterday when the matter came up for hearing, learned counsel for the petitioner submitted that he had been engaged only yesterday and sought short adjournment. Today the matter has been again taken up and after initial reluctance learned counsel for the petitioner has argued on the bail application.

5. I have heard learned counsel for the petitioner and learned APP for the State.

6. The detailed status report filed in this case reveals that the petitioner who was in need of money offered to mortgage Second Floor of his above said property admeasuring 378 Sq. Yards with roof rights for a consideration of ₹27 lacs and a mortgage deed dated 12.1.2012 was executed. Further the accused again approached him with an offer for sale and purchase of the said Mortgaged Second Floor for a consideration of ₹1.5 Crores to which the complainant agreed and an agreement to sell and purchase dated 8.1.2012 was executed between them after payment of ₹30 lacs more. In the month of April 2012, complainant further paid a sum of ₹51 Lacs on the request of accused. The complainant further alleged that in the agreement to sell and purchase it was specifically mentioned that the property is free from all sort

of encumbrances. The complainant kept on requesting the accused to execute the sale deed but the accused deliberately started avoiding him. Later the complainant came to know that the said property is lying mortgaged with Punjab National Bank.

7. Report from FSL has been received as per which the questioned signatures marked Q1 to Q11 agree in model & design with the admitted signatures marked A1 to A4 indicating that red enclosed questioned signatures marked Q1 to Q11 and the standard signatures marked S1 to S6 & A1 to A4 were written by one & the same person.

8. Learned counsel for the petitioner has submitted that it was a case of business dealing between the complainant and the petitioner which can be ascertained from the bank statement and the ledger maintained by him with effect from 2011 till date. He has already joined the investigation. Further the said property could not have been sold to the petitioner for a sum of ₹1.8 crore as the same is worth ₹7-10 crores. Learned counsel for the petitioner submitted that the complainant cannot use the process of criminal Court for recovery of the said amount. Since the petitioner has already joined and cooperated in the investigation, he may be released on anticipatory bail as custodial interrogation is not required.

9. On perusal of the contents of the complainant FIR it appears to be a case of transaction by the parties in a manner not permissible under the law of the land.

10. It appears that while paying unaccounted black money, the complainant was getting the documents executed from the petitioner, may be to secure the amount given by him. Huge cash payment has been made for getting the documents in respect of immovable property executed but not

registered, speaks the manner in which parties have been dealing with unaccounted money. No doubt the criminal courts cannot be used to get the recovery effected under the threat of coercive action but at the same time the petitioner also cannot be allowed to enjoy the fruits of the money received by him against alleged execution of certain documents which as per FSL report bear his signature.

11. In ***Siddharam Satlingappa Mhetri Vs. State of Maharashtra & Ors. AIR 2011 SC 312*** the Hon'ble Supreme Court took into consideration the factors and parameters to be considered 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.

12. This is a case falling in the category of economic offences. The manner in which transactions have been conducted by the parties are not permissible under law. In ***State of Gujarat v. Mohanlal Jitamalji Porwal and Anr. AIR 1987 SC 1321***, the Hon'ble Supreme Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under:

"The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest."

13. In ***Lalit Goel v. Commissioner of Central Excise 2007 (3) JCC 2282***, this Court, while dealing with bail application in a case of Customs

Act, observed that the economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. Noticing ever growing materialistic outlook setting unscrupulous elements on a prowl to maximize material gains by unlawful means, this Court even suggested appropriate legislative measure and judicial intervention to safeguard the interest of the State and public at large.

14. Learned counsel for the petitioner has been asked if the petitioner is ready to deposit the amount with the Registrar General in the form of FDR involved in this alleged transaction in respect of the property for which agreement for the sale was entered into with the complainant though it was mortgaged with the Punjab National Bank, learned counsel for the petitioner has informed that he has taken instructions and petitioner is not having the necessary funds.

15. When the case of the petitioner is examined in the light of above parameters, I am of the opinion that petitioner does not deserve to be released on anticipatory bail which discretion needs to be exercised only in the exceptional circumstances.

16. The application seeking anticipatory bail is dismissed.

17. Before parting with the order, it is necessary to note here that learned MM should have considered the directions issued by this Court in the case of ***Subhkaran Luharuka s/o Late K.P.Luharuka and Shree Ram Mills LTd. vs. State (Govt. of NCT of Delhi) and Utility Premises Pvt. Ltd. MANU/DE/1646/2010***. The relevant paragraphs of the report are extracted as under:-

> *'52A. For the guidance of subordinate courts, the procedure to be followed while dealing with an application under Section 156(3) of*

the Code is summarized as under:-

(i) Whenever a Magistrate is called upon to pass orders under Section 156(3) of the Code, at the outset, the Magistrate should ensure that before coming to the Court, the Complainant did approach the police officer in charge of the Police Station having jurisdiction over the area for recording the information available with him disclosing the commission of a cognizable offence by the person/persons arrayed as an accused in the Complainant. It should also be examined what action was taken by the SHO, or even by the senior officer of the Police, when approached by the Complainant under Section 156(3) of the Code.

(ii) The Magistrate should then form his own opinion whether the facts mentioned in the complaint disclose commission of cognizable offences by the accused persons arrayed in the Complaint which can be tried in his jurisdiction. He should also satisfy himself about the need for investigation by the Police in the matter. A preliminary enquiry as this is permissible even by an SHO and if no such enquiry has been done by the SHO, then it is all the more necessary for the Magistrate to consider all these factors. For that purpose, the Magistrate must apply his mind and such application of mind should be reflected in the Order passed by him.

Upon a preliminary satisfaction, unless there are exceptional circumstances to be recorded in writing`, a status report by the police is to be called for before passing final orders.

iii) The Magistrate, when approached with a Complaint under Section 200 of the Code, should invariably proceed under Chapter XV by taking cognizance of the Complaint, recording evidence and then deciding the question of issuance of process to the accused. In that case also, the Magistrate is fully entitled to postpone the process if it is felt that there is a necessity to call for a police report under Section 202 of the Code.

(iv) Of course, it is open to the Magistrate to proceed under Chapter XII of the Code when an application under Section 156(3) of the Code is also filed along with a Complaint under Section 200 of the Code if the Magistrate decides not to take cognizance of the Complaint.

However, in that case, the Magistrate, before passing any order to proceed under Chapter XII, should not only satisfy himself about the pre-requisites as aforesaid, but, additionally, he should also be satisfied that it is necessary to direct Police investigation in the matter for collection of evidence which is neither in the possession of the complainant nor can be produced by the witnesses on being summoned by the Court at the instance of complainant, and the matter is such which calls for investigation by a State agency. The Magistrate must pass an order giving cogent reasons as to why he intends to proceed under Chapter XII instead of Chapter XV of the Code.'

18. Learned MM ought to have considered that the complainant had been entering into transaction with the petitioner in a manner which gave rise to the impression that parties were dealing with each other in a manner not permissible under the law.

19. In view of the directions given by this Court in Subhkaran Luharuka's case (supra) before issuing direction for registration of FIR, Learned Magistrate should have recorded his satisfaction that the evidence to be collected in the matter was neither in the position of the complainant nor could be produced by the witnesses on being summoned by the Court and that the nature of the matter was such which called for investigation by the State agency by giving cogent reasons for issuing direction for registration of FIR.

20. As already noted, it was a case where the transaction was between two persons on cash payment and execution of documents in respect of second floor of the property No. E-11, Rajouri Garden, New Delhi earlier through mortgage and later on by way of sale. Hence, police was not required to collect the evidence in the matter rather registration of FIR has been used as a tool to put pressure on the opponent which practice cannot be

appreciated specially when it is in violation of the direction issued by this Court on judicial side.

21. The FIR shows that it has been registered as per direction by Sh. Dhirender Rana, MM dated 12th October, 2014.

22. The order dated 12th October, 2014 whereby direction was given by Learned MM in exercise of powers under Section 156(3) Cr.P.C. for registration of FIR, is not annexed with the file. But the facts disclose that in view of the guidelines laid down in Subhkaran Luharuka's case (supra), direction to register FIR should not have been issued.

23. The learned MM needs to be counselled by the inspecting committee in this regard. Registry is directed to place the copy of this order before the Inspecting Committee of Sh.Dhirender Rana, Metropolitan Magistrate for the year 2014.

PRATIBHA RANI, J.

MARCH 29, 2016
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