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

\+ BAIL APPLN. 140/2017 & Crl.M.A. No.1315/2017

Date of Decision: 30th January, 2017

RAM NIWAS GUPTA ..... Petitioner

Through Mr.Rakesh Kumar Khanna, Sr. Adv. with Mr.Ashutosh Dubey, Adv. & Mr.Abhishek Chauhan, Adv.

versus

STATE ..... Respondent

Through Mr.Ashish Dutta, APP for the State with Mr.Rishi Pal, DCP, Outer District, Mr.Arvind Kumar, SHO & SI Amit.
Mr.Kirti Uppal, Sr. Adv. with Mr.Sidharth Chopra, Adv. & Mr.Dinesh Jindal, Complainant in person.

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

**P.S. TEJI, J**

1. The present anticipatory bail application under Section 438 of the Code of Criminal Procedure, has been preferred by the applicant in a case arising out of FIR No.1794/14 lodged on 30th September, 2014 under Sections 420/467/468/471/120B of the Indian Penal Code at Police Station Mangolpuri.

2. The facts as emerge from the records, are that the complainant Saroj Jindal lodged an FIR against the applicant Mr.Ram Niwas, his wife Ms.Renu Gupta, his son namely Mr.Ritesh Gupta and Mr.Anand Singh Rawat, stating therein that the applicant along with his wife Ms.Renu Gupta floated a company in the name of M/s Sidha Neelkanth Paper Industries Private Limited and obtained a loan from Andhara Bank, Pitampura Branch, New Delhi and mortgaged the property bearing no.170, Deepali, Pitam Pura, New Delhi. The complainant stated that with the consent of her husband and under the trust of her brother-in-law namely Mr.Ram Niwas Gupta (applicant herein), she created a mortgage over the property bearing no.392, Deepali, Pitam Pura, New Delhi and that the applicant Sh.Ram Niwas Gupta, being the promoter Director and the shareholder of the company, obtained a fresh loan from Andhra Bank to the tune of Rs.15.50 crores which was sanctioned on 27$^{th}$ March, 2010. On the said date itself, the complainant executed the required documents for availing the loan facility and alleged that she was unaware of any enhancement of the loan amount. Upon being served notice under SARFAESI Act by the Andhra Bank, the complainant received the information regarding recalling of the loan facility. It was further alleged by the complainant in the FIR

that on the same date of recalling of the loan, the amount due had been sufficient to clear the dues of the bank for the sale of property bearing no.170, Deepali, Pitampura. Thereafter, for the purpose of recovery of dues, the bank had filed an Original Application No.116/2014 copy whereof was supplied to the complainant Saroj Jidnal on 12th September, 2014. The complainant has alleged that the bank has claimed the amount on the basis of enhancement of loan facility from 27th March, 2010 by granting an ad-hoc facility of Rs.3.00 crores on 20th August, 2010 as well as further executing documents with respect to letter of sanction dated 24th January, 2011 for an amount of Rs.20.00 cores sanctioned by Chief Manager of the Andhara Bank. The complainant has stated that the signatures on the guarantee form from pages 132 to 135 of the original application filed by the Bank, are forged and fabricated and that the complainant Saroj Jindal never executed any such documents. It was alleged that the accused persons including the applicant herein, have caused wrongful loss to the complainant and wrongful gain to themselves. The complainant in the FIR further alleged that the hand writing expert had submitted a report to the effect that the signatures on the documents dated 20th August, 2010 and 24th January, 2011 are not same.

3. Arguments advanced by learned senior counsel for the

applicant is that the FIR the applicant has already joined the investigation. The applicant, seeing the financial condition, associated his younger brother namely Mr.Dinesh Jindal (husband of the complainant Ms.Saroj Jindal) in his company as a result of which Mr.Dinesh Jindal started deriving benefits out of company and the complainant offered her property being 392, Deepali, Pitampura, for mortgage for the purpose of obtaining credit facilities. It was submitted that the property of the applicant i.e. 170, Deepali, Pitampura, was also mortgaged with the said Bank.

4. Learned senior counsel further submits that the complainant Ms.Saroj Jindal herself admitted the factum of the mortgage and that the FIR was lodged by her to escape from the liability of the bank and cheat the company against the outstanding amount of Rs.3,60,50,255/- which stood against the husband of the complainant. The forgery in the documents has been falsified by the bank officials in their affidavit given before the court. It was further submitted that the applicant had already surrendered the physical possession of his property i.e. 170, Deepali, Pitampura and that he had offered to settle the alleged due of the bank at an amount more than the NPA amount. It was next contended that the complainant and her husband Mr.Dinesh Jindal, entered into an agreement to sell dated 5th September, 2012 in order to sell their

property, with Mr.Pramod Kumar Garg acknowledging and apprising the buyer about the mortgage of property being 392, Deepali, Pitampura and that the complainant in the bail application had admitted that prior to the entering into the agreement to sell, the husband of the complainant and the prospective buyer visited the Andhra Bank and, therefore, the allegation in the FIR to the effect that subsequent sanction advices dated 20th August, 2010 & 24th October, 2011 came to their knowledge only after serving of certain documents from Andhra Bank, cannot be believed. It is further contended that even the sanction advice dated 20th August, 2010 was lapsed due to company returning the availed facilities within time and that the sanction advice dated 24th January, 2011 was not implemented meaning thereby that no benefit was derived and that the complainant was not harmed thereby.

5. In support of his submission, learned senior counsel for the applicant relies on the judgment of the Supreme Court in ***Sobran Singh Vs. State of U.P. 2014 (11) SCALE 520; Jagdish Nautiyal Vs. State 2013 [1] JCC 311; Bhadresh Bipinbhai Sheth Vs. State of Gujarat & Anr. (2016) 1 SCC 152*** & ***Arnesh Kumar Vs. State of Bihar & Anr. (2014) 8 SCC 273***.

6. In the case of ***Bhadresh Bipinbhai Sheth (supra)***, it was observed that Section 438 Cr.P.C. gives direction to the Court to

exercise the power in a particular case or not, and once such a discretion is there merely because the accused is charged with a serious offence may not by itself be the reason to refuse the grant of anticipatory bail if the circumstances are otherwise justified.

7. In the case of ***Jagdish Nautiyal (supra)*** and ***Sobran Singh (supra),*** it was observed that the totality of circumstances deserve to be seen before a person is granted or denied the anticipatory bail. In the case of ***Sidharam Satlingappa Mhetre (supra)*** it was observed that Courts should be loath to reject the grant of anticipatory bail inasmuch as it impinges on the personal liberty of a person and unless and until there is an imminent and a great imperative to have a custodial interrogation of an accused, the anticipatory bail does not deserve to be denied.

8. Per contra, learned APP for the State has submitted that the allegations are serious in nature against the applicant inasmuch as crores of rupees were involved in this forgery case. It was further submitted by him that the applicant herein is the director/promoter of the company and was the direct beneficiary on enhancement of credit facility by the bank. Forgery in the documents was revealed during the course of investigation and custodial interrogation of the applicant is required so that the maker of the forged signatures of the complainant could be unearthed.

9. As per the allegations levelled in the present case, the applicant/petitioner is the director of the company which availed credit facility from the bank. It is specifically alleged against the petitioner that he mortgaged the property of the complainant and subsequently the credit facility was enhanced on the basis of documents of the property of the complainant which were subsequently found to be forged one. Due to this reason, the complainant is in loss of her property as well as money as the bank has initiated recovery proceeding by attaching the property of the complainant.

10. In view of the seriousness of the allegations levelled as well as the fact that crores of rupees of the secured creditor i.e. Bank is at stake and the forgery of documents, this court does not find this a fit case for grant of concession of anticipatory bail.

11. In view of the above scenario, the present bail application is dismissed.

12. Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for

decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

13. With aforesaid directions, the present bail application stands disposed of.

**P.S.TEJI, J**

**JANUARY 30, 2017/aa**