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

+ BAIL APPLN. 306/2017

DHEERAJ TYAGI

..... Petitioner

Through Mr.Rambir Chauhan, Adv.

versus

STATE (GOVT. OF NCT OF DELHI) & ORS. Respondent

Through Mr.Rahul Mehra, Standing Counsel
(Cri.) with Mr.Ashish Dutta, APP,
DCP Jatin Narwal, DCP (North),
ACP Indravati, Insp. Manoj Kumar,
SHO, PS Burari and Insp.Narender
Kumar.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

% **22.02.2017**

The present application has been filed under Section 438 Cr.P.C. for the grant of anticipatory bail in FIR No.1581/2015, under Section 420/34 IPC, Police Station Burari.

The facts in the instant case are that after the recording of FIR, NBW was issued against the accused on 25.10.2016 and thereafter the accused moved an application for the grant of anticipatory bail which was dismissed by the Court of Session on 23.11.2016. An application for initiation of proceedings under Section 82 Cr.P.C. against the accused was moved on 23.12.2016. Aggrieved by the dismissal of application for the grant of anticipatory bail by the Court of Session, the accused moved the application before this Court on 18.01.2017

which was dismissed by passing a detailed order dated 23.01.2017. Another application for the grant of anticipatory bail was moved by the accused before the Court of Session on 13.02.2017 which was dismissed on 14.02.2017 and now the matter is fixed for proceedings under Section 82 Cr.P.C. for 02.03.2017.

It is shocking that in the facts and circumstances mentioned above, the Investigating Officer instead of arresting the accused and following the due course of law, contrary to the same, sent a notice under Section 41 Cr.P.C. to the accused on 03.02.2017 and thereafter issued another notice under Section 41 Cr.P.C. on 08.02.2017 for appearance on 12.02.2017 which led to creating cause for moving of the fresh application for the grant of anticipatory bail and the same was dismissed by the Court of Session on 14.02.2017 and thereafter the present application has been moved.

Undisputedly, the application for the grant of bail moved before a particular Court i.e. Court of Session once and no second application lies particularly when the bail is already declined by the High Court. Argument advanced by the counsel for the petitioner is that it was the issuance of the notices under Section 41 Cr.P.C. dated 03.02.2017 and 08.02.2017 which led to the filing of the present application. Undisputedly, no second application lies after the matter is seized by the High Court. There cannot be any change of circumstances in the case of anticipatory bail. The only fact is that after the dismissal of the bail application by the Court of Session and subsequently by the High Court, the remedy that lies with the accused is to approach the Hon'ble Supreme Court or to move the application

for the grant of bail under Section 437 Cr.P.C. on appearance before the Court of Magistrate or under Section 439 Cr.P.C. after his arrest. The moment said exercise is carried out by the Court of Session under Section 438 Cr.P.C., the remedy available is to approach the High Court under Section 438 Cr.P.C. which was filed in the present case and the same was dismissed on 23.01.2017. The entire process adopted by the applicant as well as Investigating Officer is contrary to the procedure established by the law and the forum available for seeking the relief of anticipatory bail from the Court. Apparently, this is manipulation on the part of the applicant/accused with the Investigating Officer being hand in glove with him, which needs to be dealt with strictly on the administrative side.

The Commissioner of Delhi Police is directed to look into the matter personally and take appropriate action not qua this case alone but to further prevent in future such manipulation and act of the police officials.

In such a scenario mentioned above, by adopting unprecedented procedure and using these means, the petitioner does not deserve the concession of anticipatory bail.

The application is accordingly dismissed.

Dasti under the signature of Court Master.

P.S.TEJI, J

FEBRUARY 22, 2017
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