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

+ BAIL APPLN. 497/2017

RAHUL @ GAURAV @ CHINKA

..... Petitioner

Through Mr.Pujya Kumar Singh, Adv. with
Md. Suaib, Adv.

versus

STATE

..... Respondent

Through Mr.Amit Chadha, APP for State with
Mr.Vikramjit Singh, SHO and ASI Suresh Kumar,
P.S. Prasad Nagar.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

ORDER

% **12.07.2017**

Apprehending his arrest, the petitioner has invoked the jurisdiction of this Court under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in the case registered against him vide FIR No.0013/2017 dated 12th January, 2017 under Sections 379/34 IPC, Police Station Prasad Nagar, Delhi.

The said FIR was registered on the statement of one Gaurav Sharma and as per the allocations, the complainant/victim had gone to Raigerpura to purchase wine on 14th December, 2016. At about 9:30 pm when he was buying wine somebody took out his mobile phone from his right hand side back pocket of the pant and as he turned back he saw one person handing over his mobile phone to another person (petitioner herein). He caught hold of that boy but the boy to whom the mobile phone was handed over fled away from the site and the person who took out the mobile phone from his

pocket was apprehended by the public and his name was disclosed to be one Rohit @ Sittu, son of Jagdish. A phone call was made on PCR No.100 and the apprehended person was handed over to the police.

Learned counsel for the petitioner submits that the FIR was lodged after one month of the incident i.e. on 12th January, 2017. He also submits that there is no evidence of the involvement of the petitioner in the matter and the police wanted to arrest him only on the disclosure statement of the arrested person namely Rohit @ Sittu. He further submits that pursuant to the direction of this Court dated 24th March, 2017, the petitioner has joined the investigation. He submits that bail order may be made absolute.

Status report has been filed. It is submitted by the learned APP for the State that there was dispute with regard to the age of the arrested person namely Rohit @ Sittu. The age of Rohit was stated to be 15 years at that time but the accused could not produce any document with regard to his age and he was considered to be a juvenile and after requisite proceedings Rohit @ Seetu was handed over to his father and produced before the Juvenile Justice Board, Kingsway Camp on 15th December, 2016. School record regarding birth of Rohit @ Sittu was obtained from Nigam Pratibha Vidyalay, Pyare Lal Road, Dev Nagar, Karol Bagh, Delhi, and was produced before Juvenile Justice Board on 12th January, 2017. As per the school record, the date of birth of Rohit @ Sittu is 6th July, 1998 and on the date of commission of the offence i.e. 14th December, 2016, he had already crossed age of 18 years. By order dated 12th January, 2017 Rohit @ Sittu was declared as major and as such on receiving the report, FIR was registered under Section 379/34 IPC immediately.

Learned APP for the state has drawn the attention of the Court to the

order dated 2nd March, 2017 passed in Bail Application No.365/2017 by which the said application under Section 438 Cr.PC was dismissed by this Court. The said order shows that after making some submissions, the counsel for the petitioner had requested for withdrawal of the application and accordingly bail application was dismissed as withdrawn.

This fact was never brought to the notice of the Court at the time of passing of order dated 24th March, 2017.

It is submitted by the learned APP through the IO that during the investigation the petitioner has disclosed that he had disposed of the mobile phone for Rs.2000/- but did not disclose the name of the person/particulars to whom he had sold the mobile phone. He further submits that the custodial interrogation of the petitioner is required to find out the person to whom the mobile phone has been sold by the petitioner and to recover the stolen mobile phone. In view of these circumstances, the petitioner is not entitled to anticipatory bail.

The application is dismissed.

VINOD GOEL, J.

JULY 12, 2017/jitender