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

Pronounced on:05th May, 2017

\+ BAIL APPLN. 2371/2014 and Crl. M.A. 1451/2015, 1845/2015, 1846/2015 and 792/2016

SOMNATH BOBAL ..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Mohit Monga, Mr. Bakshish Singh and Ms. Surya Rajappan, Advocates

versus

STATE (NCT OF DELHI) ..... Respondent

Through: Mr.Amit Chadha, APP with Inspector Anil, EOW for the State

Mr. Gaurav Gupta, Advocate with Mr. Pinu Sebastian, AR for complainant bank

\+ BAIL APPLN. 2372/2014 and Crl. M.A. Nos.1443/2015, 1832/2015, 1833/2015, 2275/2015 and 801/2016

HEMANT KUMAR BOBAL ..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Mohit Monga, Mr. Bakshish Singh and Ms. Surya Rajappan, Advocates

versus

STATE (NCT OF DELHI) ..... Respondent

Through: Mr.Amit Chadha, APP with Inspector Anil, EOW for the State

Mr. Gaurav Gupta, Advocate with Mr. Pinu Sebastian, AR for complainant bank

\+ BAIL APPLN. 2478/2014 and Crl. M.A. Nos.1453/2015, 1848/2015, 1849/2015, 799/2016

SANGEETA BOBAL ..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Mohit Monga, Mr. Bakshish Singh and Ms. Surya Rajappan, Advocates

versus

STATE ..... Respondent

Through: Mr.Amit Chadha, APP with Inspector Anil, EOW for the State

Mr. Gaurav Gupta, Advocate with Mr. Pinu Sebastian, AR for complainant bank

\+ BAIL APPLN. 2479/2014 and Crl. M.A. Nos.1440/2015, 1837/2015, 1838/2015 and 796/2016

NARESH KUMAR ..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Mohit Monga, Mr. Bakshish Singh and Ms. Surya Rajappan, Advocates

versus

STATE ..... Respondent

Through: Mr.Amit Chadha, APP with Inspector Anil, EOW for the State

Mr. Gaurav Gupta, Advocate with Mr. Pinu Sebastian, AR for complainant bank

\+ BAIL APPLN. 2480/2014 and Crl. M.A. Nos.1441/2015, 1839/2015, 1840/2015 and 797/2016

VISHAL BOBAL ..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Mohit Monga, Mr. Bakshish Singh and Ms. Surya Rajappan, Advocates

versus

STATE(NCT OF DELHI) ..... Respondent

Through: Mr.Amit Chadha, APP with Inspector Anil, EOW for the State

Mr. Gaurav Gupta, Advocate with Mr. Pinu Sebastian, AR for complainant bank

\+ BAIL APPLN. 2481/2014 and Crl. M.A. Nos.1445/2015, 1834/2015, 1835/2015 and 793/2016

RAJA BOBAL ..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Mohit Monga, Mr. Bakshish Singh and Ms. Surya Rajappan, Advocates

versus

STATE (NCT OF DELHI) ..... Respondent

Through: Mr.Amit Chadha, APP with Inspector Anil, EOW for the State

Mr. Gaurav Gupta, Advocate with Mr. Pinu Sebastian, AR for complainant bank

\+ BAIL APPLN. 2482/2014 and Crl. M.A. 1442/2015, 1843/2015, 1844/2015 and 794/2016

SUMAN BOBAL ..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Mohit Monga, Mr. Bakshish Singh and Ms. Surya Rajappan, Advocates

Versus

STATE (NCT OF DELHI) ..... Respondent

Through: Mr.Amit Chadha, APP with Inspector Anil, EOW for the State

Mr. Gaurav Gupta, Advocate with Mr. Pinu Sebastian, AR for complainant bank

\+ BAIL APPLN. 2484/2014

SACHIN TANEJA ..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Mohit Monga, Mr. Bakshish Singh and Ms. Surya Rajappan, Advocates

versus

STATE (NCT OF DELHI) ..... Respondent

Through: Mr.Amit Chadha, APP with Inspector Anil, EOW for the State

Mr. Gaurav Gupta, Advocate with Mr. Pinu Sebastian, AR for complainant bank

\+ BAIL APPLN. 2485/2014 and Crl. M.A. Nos.1457/2015, 1458/2015, 1841/2015, 1842/2015 and 798/2016

YUGAL KISHORE ..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Mohit Monga, Mr. Bakshish Singh and Ms. Surya Rajappan, Advocates

versus

STATE ..... Respondent

Through: Mr.Amit Chadha, APP with Inspector Anil, EOW for the State

Mr. Gaurav Gupta, Advocate with Mr. Pinu Sebastian, AR for complainant bank

\+ BAIL APPLN. 2486/2014 and Crl. M.A. Nos.1446/2015, 1828/2015, 1829/2015, 795/2016

PRIYA TANEJA ..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Mohit Monga, Mr. Bakshish Singh and Ms. Surya Rajappan, Advocates

versus

STATE (NCT OF DELHI) ..... Respondent

Through: Mr.Amit Chadha, APP with Inspector Anil, EOW for the State

Mr. Gaurav Gupta, Advocate with Mr. Pinu Sebastian, AR for complainant bank

\+ BAIL APPLN. 2536/2014 and Crl. M.A. Nos.1444/2015, 1456/2015, 1855/2015, 1856/2015 and 800/2016

SARIKA ..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Mohit Monga, Mr. Bakshish Singh and Ms. Surya Rajappan, Advocates

versus

STATE ..... Respondent

Through: Mr.Amit Chadha, APP with Inspector Anil, EOW for the State
Mr. Gaurav Gupta, Advocate with Mr. Pinu Sebastian, AR for complainant bank

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. These proceedings arise out of applications moved for grant of anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 (Cr. PC), in the context of first information report (FIR) no.10/2014 of police station Economic Offences Wing (C&R) of Delhi Police ("EOW", for short) involving offences punishable under Sections 409, 420, 120B of Indian Penal Code, 1860, (IPC), all moved in October / November, 2014, applicants being Somnath Bobal (Bail Application no.2371/2014), Hemant Kumar Bobal (Bail Application no.2372/2014), Sangeeta Bobal (Bail Application no.2478/2014), Naresh Kumar (Bail Application no.2479/2014), Vishal Bobal (Bail Application no. 2480/2014), Raja Bobal (Bail

Application no.2481/2014), Suman Bobal (Bail Application no.2482/2014), Sachin Taneja (Bail Application no.2484/2014), Yugal Kishore (Bail Application no.2485/2014), Priya Taneja (Bail Application no.2486/2014) and Sarika (Bail Application no.2536/2014), concededly close relatives or associates to each other, each an accused person whose complicity is the subject matter of investigation.

2. These applications were disposed of by a learned single judge earlier by a common order passed on 16.01.2015, *inter alia*, on the basis of Memorandum of Understanding (MOU) dated 16.01.2015 that had been executed by the applicants (collectively described in the MOU as the "first party") on one hand and Dhanlaxmi Bank Ltd. (described in the MOU as the "second party") on whose behalf the complaint (FIR) was lodged with EOW, on the other, in the wake of opportunity granted by the court by various adjournments to allow amicable resolution of the dispute. The applicants, having been granted the relief of anticipatory bail in the event of they being arrested, were obliged under the MOU to deposit with the Dhanlaxmi Bank (the complainant) the money that had been received by each of them in terms of the transactions which are the subject matter of the dispute conditional, of course, upon the complainant returning their respective properties (jewellery articles) which had been pledged. These proceedings, however, came to be revived on applications (Crl. M.A. 1451/2015, 1443/2015, 1453/2015, 1440/2015, 1441/2015, 1445/2015, 1442/2015, 1439/2015, 1457/2015, 1446/2015 and 1456/2015) being moved by the accused persons seeking

modification / clarification of the order dated 16.01.2015 primarily by a direction to the investigating officer to restore all the pledged jewellery to the applicants and for delay in payment of the money by the applicants to the complainant to be condoned. Later, the complainant also moved (Crl. M.A. 1845/2015, 1832/2015, 1848/2015, 1837/2015, 1839/2015, 1834/2015, 1843/2015, 1852/2015, 1841/2015, 1828/2015 and 1855/2015) praying for cancellation of the bail order granted on 16.01.2015 alleging breach of the terms and conditions of the MOU.

3. All the above mentioned applications, alongwith some further applications moved in due course of the proceedings that followed, eventually came up for consideration before the court on 27.09.2016 when the following order was passed :-

> "*Some of the aforesaid applications have been filed by the petitioners to seek clarification, while the complainant bank has filed some applications for cancellation of the bail granted to the petitioners vide order dated 16.01.2015 on the ground that the MOU has not been adhered to by the petitioners.*
>
> *Mr. Mittal, learned senior counsel representing all the petitioners in the aforesaid cases states that the MOU is not workable.*
>
> *This position is also evident from the record since the petitioners are now raking up the issue that the jewellery offered for return is not the same as that allegedly pledged by the petitioners. It is clear to the Court, and is also conceded by the petitioners and learned counsel for the complainant bank and the learned APP, that the MOU is not*

workable. Accordingly, the order dated 16.01.2015 premised on the MOU is recalled.

List these bail applications for hearing on merit on 27.10.2016. The petitioners may file additional grounds in support of their respective applications. Further status report be filed by the State before the next date.

The order granting anticipatory bail to the petitioners shall continue till the next date."

4. When these proceedings were heard further for sometime on 17.04.2017, the submission of the parties with directions issued in their wake were recorded thus :-

Heard for some time.

The learned senior counsel appearing for the applicants (accused persons) submits he would need to seek instructions from his clients as to their readiness and willingness to deposit money in terms of MOU on the basis of which release on anticipatory bail was granted by the earlier order, the cancellation whereof is sought by the State primarily on the ground that the terms were not abided by. It appears that the position taken by the applicants (accused persons) in the proceedings in the wake of such order granting release on anticipatory bail is that the Bank was offering to return jewellery items which are not same as were pledged for the subject transactions.

During the course of hearing, it was submitted on behalf of the applicant Somnath Bobal (Bail Appl.2371/2014) that the money in terms of the MOU was duly deposited and the jewellery items in question have already been released by the Bank. Though the Additional Public Prosecutor appearing for the State did not refute this, midway the *hearing it was sought to be clarified by the counsel for the complainant Bank that what was released is not the subject-matter/case property of the FIR No.10/2014, Police Station EOW, but jewellery pertaining to other transactions. It appears that there is some confusion as to the status of the jewellery, which is the subject-matter/case property of the case at hand.*

The investigating police officer shall file an up-to-date status report on the next date which shall also indicate the facts pertaining to the charge-sheet already filed against some of the co-accused persons (employees of the complainant Bank).

Be listed for further hearing on 26.04.2017.

5. It may be mentioned here that on 26.04.2017, the applicants submitted through counsel that they are not ready or willing to deposit the money in terms of the MOU on the basis of which release on anticipatory bail was granted in their favour by the earlier order.

6. A fresh updated status report was submitted on 24.04.2017, copy whereof was made available to the learned counsel for the applicants.

7. The learned senior counsel arguing for the applicants and learned additional public prosecutor for the respondent / State, as also the counsel appearing for the complainant bank have been heard at length. The record including the case diary produced by the investigating police officer have been perused.

8. It needs to be mentioned at the outset that the complainant bank had filed two complaints around the same time, one leading to registration of FIR 10/2014 of police station EOW to which the

present proceedings relate and the other resulting in the FIR no.11/2014 of police station EOW. The police file shows that the complaint dated 03.01.2014 submitted by Mr. C.M. Murlidharan, Dy. G.M. of the complainant bank alleging fraudulent transactions by the applicants herein was endorsed by Inspector Anil Kumar of EOW at 8.05 p.m. on 04.02.2014 and resulted in daily diary entry no.29A of 2014 followed by registration of FIR 10/2014 but at the level of the duty officer of EOW, an error occurred wherein the other complaint which formed the basis of FIR 11/2014 came to be incorporated also as the subject matter of FIR no.10/2014. This error, upon coming to light, was brought to the notice of the concerned Metropolitan Magistrate by an application of the investigating officer endorsed by Deputy Commissioner of Police (EOW) and the assistant public prosecutor for the State and placed before the court of the Metropolitan Magistrate. The Metropolitan Magistrate, by his order recorded on the said application, directed the above mentioned complaint dated 03.01.2014 to be read as FIR 10/2014 of police station EOW. It may be added here that the subject matter of the other complaint (FIR no.11/2014) is almost identical though it pertains to different set of individuals including one Mr. Vijay Manchanda. From the submissions made at the hearing, it is clear that the factum of correction of the contents of the FIR no.10/2014 is within the knowledge of the applicants.

9. The case of the complainant bank, simply put, is that in the course of its business it had launched a scheme wherein it would extend loan facility against deposit of gold ornaments. The terms of

the scheme, as per the documents collected during investigation, included insistence that the gold jewellery to be pledged at the time of taking loan must be of 22 carat purity, the application to be allowed after proper valuation by the bank panel appraiser, sanction of loan being within the joint authority of the Branch Manager and the Branch Operation Manager. The terms, it also needs to be noted, enjoined upon the bank officials to grant the advance on the basis of net weight of the gold ornaments (i.e. excluding the diamond or precious stones etc.) by keeping a margin, advanceable rate per gram for gold loan to be decided by the corporate office of the bank on daily basis. The gold ornaments pledged by the persons taking loan under the scheme were to be kept in a vault to be jointly controlled by the bank and the customer / pawner as well as the appraiser.

10. The case of the complainant bank, in the FIR, is that applicant Somnath Bobal with some of his relatives and associates had taken gold loans on a large scale from Karol Bagh and Connaught Place branches of the bank from April 2013 onwards, such transactions involving 15 individuals as pawners (including the applicants) against 77 gold loan accounts with outstanding balance as on 31.12.2013 being Rs.22,35,38,427.33. It was alleged that Mr. Rajat Sharma was the Branch Head of the Karol Bagh branch till March 2013 and was transferred to Connaught Place branch from April 2013. He was aided or assisted by various officials of the bank including Mr. Ashish Kumar Singh, Branch Manager, Ms. Shivani, Branch Operation Manager, Yogesh Kumar, Branch Operations Manager, Mr. Sumit Goel, Branch Operations Manager, Mr. Ajay Kumar Jain, Teller,

Mr. Atul Kumar, Manager (Advances).

11. It is alleged by the complainant in the FIR that surprise inspection of the Karol Bagh branch in September 2013 had brought out that loans had been advanced to the applicants and certain other associates of applicant Somnath Bobal against spurious ornaments of lesser net weight or gold content having been pledged in a clandestine manner fraudulently with aid and assistance of the above mentioned officials of the bank and two appraisers Harpreet Singh and Mr. Rakesh Bobal whose services had been availed at the time of the applications being processed. The complainant attributed complicity between the bank officials, the appraisers and the applications setting out facts in the FIR in this context.

12. When these applications came up for hearing, it was submitted on behalf of the investigating agency that Forensic Science Laboratory (FSL) had been asked to re-evaluate the jewellery in question and that reports of FSL had been received. The police indicated at the very outset that the angle of larger conspiracy required a probe. On 27.11.2014, an offer was made on behalf of the applicants to clear the outstanding in their loan accounts in suitably acceptable manner. The complainant, through counsel indicated the said offer to be of some interest to it.

13. Against the above backdrop, by order dated 27.11.2014, the learned judge, then in *seisin* of these matters, granted interim protection to the applications with directions to the State not to take *"any further steps"* till next date of hearing. On 05.12.2014, the parties were heard further *"with a view to finalising the terms towards*

settling the matter". Eventually, on 16.01.2015, the applicants, on one hand, and the complainant, on the other, informed the learned single Judge hearing these applications that they had entered into the MOU on the said date, it having been placed on record in original (pages 119 to 138 of the paper book of Bail Application no.2371/2014). The learned single Judge allowed the anticipatory bail applications by the order passed on 16.01.2015, it reading as under :-

> *"These petitions seeking anticipatory bail were moved by the petitioners separately concerning the same FIR No. 10/2014 registered at Police Station Economic Offences Wing (C and R) under Sections 409/420/120B IPC.*
>
> *These matters were heard in some detail on a number of dates and various suggestions were given by either side for an overall settlement between the parties. Counsel for the parties, including counsel for the complainant, who have been present throughout, state that their clients have reached an amicable settlement in the matter and have executed a Memorandum of Understanding (MOU) on 16th January, 2015 setting down all the terms and conditions thereof. The said MOU (in original) has been handed over at Bar to this Court. The same is taken on record and is placed in Bail Application No.2371/2014. A copy of the same be placed on the records of the remaining matters. Both, counsel for the petitioners as well as the complainant, approbate the said settlement and also undertake to this Court to remain bound by the terms and conditions of the MOU.*
>
> *Mr. O.P.Saxena, APP for the State submits that looking to the overall circumstances, it is best if the matter is amicably resolved and, consequently, he has no objection to the*

terms of the aforesaid MOU being complied with by both the parties, which also requires return of the seized jewellery articles to the Bank.

Keeping in view the fact that the complainant and the petitioners have arrived at a settlement on mutually acceptable terms and also keeping in view the no objection given by APP for the State, to my mind, these are fit cases for grant of anticipatory bail to the petitioners. Consequently, and in the event of their arrest, petitioners shall be released on bail on furnishing a personal bond in the sum of Rs.15,000/- each to the satisfaction of the Arresting Officer.

Both the counsel state that once the settlement has worked itself out, a fresh petition will be filed for quashing of FIR against the petitioners.

Investigating Officer, who is present in Court, is directed to return the seized jewellery articles to the petitioner from the Bank.

The petitions and the applications stand disposed off."

14. As already mentioned, the MOU did not work out. The applicants did not return the money outstanding against their names to the bank and the bank did not return their jewellery items (excluding that of applicant Somnath Bobal), the return of the jewellery also not being possible since the concerned applicants had objections to the identity of the jewellery. Thus, by afore-quoted order dated 27.09.2016, the anticipatory bail order granted on 16.01.2015 in favour of the applicants was recalled and the matter has been heard

afresh.

15. The status report and the police record shows that applicant Somnath Bobal had pledged eleven ornaments with the complainant bank on 27.07.2013 against which he was granted loan of Rs.3,32,920/- upon gold ornaments of the value of Rs.4,94,336/- being pledged by him. The copy of the application (at page 26 of the paper book of Bail application no.2371/2014) indicates that the loan facility had been granted at the rate of Rs.1650/- per gram. It is conceded by the complainant that the said jewellery items were of appropriate purity and that after the loan had been repaid, the said jewellery stood released / returned to applicant Somnath Bobal.

16. The involvement of applicant Somnath Bobal, however, is founded on the allegations that he was the mastermind behind the criminal conspiracy in which he had later joined the other ten applicants each of whom are his close relatives or associates, one of the prime ones being his nephew Hemant Kumar Bobal (applicant in Bail application no.2372/2014). The allegations of criminal conspiracy which the police seek opportunity to investigate arise also from the facts that the applicant Somnath Bobal had received certain monies by transfer from the accounts of other similarly placed borrowers (including the other applicants) from the complainant bank, such amounts received by transfer into his loan accounts being to the extent of Rs.1.26 Crores. Similarly, applicant Hemant Kumar Bobal is shown by the statements of accounts submitted by the complainant bank to have received from other applicants and certain others money more than Rs.2 Crores into his loan accounts.

17. It appears that the applicant Somnath Bobal has cleared most of the outstanding loans taken by him from the complainant bank with the help of such borrowings (as above) from the others but, as pointed out by the additional public prosecutor, the record indicates that the amounts collected by him by transfers into his loan accounts were almost identical to his outstanding liabilities, such amounts having actually been the proceeds of the loans taken by the respective transferors into their accounts against similar pledging of gold jewellery of suspect quality.

18. The prime allegation against the applicants is that they had pledged jewellery which did not subscribe to the requirement of 22 carat gold and thus loans were taken on the basis of false declarations in a fraudulent manner. In this respect, the complainant and the investigating agency rely on the valuation by Mr. Vijay Goel, Government approved valuer, as per his report dated 21.04.2014. The effect of the said report is that the gold content of the ornaments pledged by the applicants was about 15% gross weight of the jewellery pledged with the bank, the value being about 27% of the amount availed as gold loan. A detailed statement in this regard has been submitted in the status report.

19. On the other hand, the applicants have argued that the reports of FSL belie the correctness of evaluation by Mr. Vijay Goel, Government approved valuer. Reference was made to the FSL reports, copies of which were made available to the applicants during the course of these proceedings. The learned senior counsel pointed out that the FSL, having examined the case property by use of Energy

Dispersive X-ray Spectrometer, has found the jewellery items in question to be containing gold, silver and copper as major constituents. The percentage of the major constituents of the jewellery has been assessed and indicted in the relevant reports. It does appear that in some of the jewellery items gold percentage reaches the extent of over 80%. But, it also needs to be noted that the jewellery items include several with gold content in the range of 50-60%, in some it going as low as 34.60%.

20. It was pointed out during the arguments that the applicant Hemant Kumar Bobal, nephew of applicant Somnath Bobal, who had obtained over Rs.2 Crores from the associates into his loan account has claimed during investigation to have pledged the jewellery which he had purchased during the period 17.04.2012 to 20.03.2013 by various retail invoices from Jainson Trades of Chandni Chowk, copies whereof were submitted (at pages 70-86 of the paper book of Bail Application No.2372/2014). In contrast, it must be noted, his income tax returns for the years 2011-2012 to 2013-2014 indicate his income to be less than or near Rs.3 Lakhs only. There is total mismatch between level of income and the value of jewellery shown purchased, every such transaction being in cash. The source of procurement and consequently quality of products purchased is thus wholly suspect.

21. The learned senior counsel for the applicants argued that the applicants deserve relief on parity referring, in this context, to anticipatory bail order granted in favour of Sukhraj Kaur, on bail application no.902/2015 by order dated 17.09.2015.

22. In the considered view of this court, the said order cannot be of

any assistance to the applicants. Noticeably, the relief was granted in favour of the said other accused, *inter alia*, on the basis of MOU, which was the foundation of the grant of release on anticipatory bail in favour of the applicants by order dated 16.01.2015, which has already been "recalled". The case against the applicants stands entirely on different footing.

23. In the above facts and circumstances, it cannot be said that the allegations against the applicants are unfounded. The FSL reports only confirm that the jewellery pledged by the applicants did not conform to the declarations made as to the requisite purity. These cases do smack of deep rooted conspiracy. The court was informed that the bank officials who were involved are already facing trial on the basis of charge-sheet that was submitted by the investigating agency, investigation against the applicants having not progressed at the desired pace, courtesy these proceedings.

24. Against this backdrop, it is really surprising, rather a cause for concern, that the complainant and the State had agreed by or after the Memorandum of Understanding dated 16.01.2015, to return the jewellery in question to the applicants, though on the condition that they would discharge the outstanding loan liability. It does appear that the complainant bank has all along been concerned about its money. But then, it had to be remembered that the jewellery items would be important, rather most crucial, piece of evidence against the persons who are brought to trial. Its own employees, having been found *prima facie* guilty of breach of trust, are facing trial on the criminal charge. If the jewellery items were to be returned, the case would suffer

irreparable damage.

25. Mercifully, the MOU on which the court had earlier put its seal of approval, with virtually no opposition from the State, did not work out. The jewellery, as case property, is stated to be still available as evidence to the investigating agency.

26. It is clear that the applicants have not allowed the investigation to proceed further. In these circumstances, release on anticipatory bail would thwart the investigation even more.

27. Thus, the bail applications for anticipatory bail are dismissed.

28. This also disposes of all the other pending applications.

(R.K. GAUBA)
JUDGE

MAY 05, 2017
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