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

+ BAIL APPLN. 1256/2017

HARI KISHAN @ RAJU

.....Appellant

Through: Mr. Ghanshyam Sharma, Advocate.

versus

STATE

....Respondent

Through: Ms. Aashaa Tiwari, Addl.PP for
State.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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05.07.2017

1. By the present application filed under Section 438 of Cr. P.C., the petitioner is seeking grant of anticipatory bail in FIR No. 410/2015 under Section 379 of the Indian Penal Code registered at Police Station Mahendra Park, Delhi.

2. As per the prosecution case, a complaint was made by Kuldeep Sharma alleging that on 18.05.2015 around 4:15 PM when he was returning to Delhi from Hamirpur, Himachal Pradesh with one of his acquaintances in his car, he stopped in front of Jahangir Puri Metro Station when one person approached him and informed him that the coolant of his car had leaked. He got down and checked the car but failed to find any such thing. On being satisfied, he took his seat in the car and his acquaintance went inside the metro station. He saw a boy doing something to the rear tyre of his car and escaped. After driving for around 100 meters, he noticed that the rear tyre

had gone flat. Two dark complexioned boys came from the front of the car and again told him that the coolant of his car was 'boiling', but on again finding that nothing was wrong, he noticed that those two boys mixed up with the traffic after stealing his briefcase containing important items including his .025 bore licensed pistol (All India License) which was loaded with five cartridges and six live cartridges were in the cover along with his medicines, Rs.25,000/- cash and some other documents. Thereafter, on the basis of the dossier, the petitioner i.e. Hari Kishan s/o Hari Shankar was identified as the thief and non-bailable warrants were issued against him.

3. Mr. Ghanshyam Sharma, learned counsel for the petitioner contended that the petitioner has been falsely implicated in this case; that he is an innocent person running a hotel in Paharganj, New Delhi peacefully; that there is material contradiction in the complaint made to the Police as the date of birth of the petitioner is 14.05.1968, which proves that he is around 50 years old but the complainant stated in the FIR that there was a boy of around 25 years of age; that as per the FIR, two dark complexioned boys were involved in the act; that, however, no act can be attributed to the petitioner as he fails to match the description of the boys responsible for the offence given by the complainant.

4. Refuting the contentions of the petitioner, Ms. Aashaa Tiwari, learned APP, who appeared on advance notice, submitted that the petitioner has been identified by the complainant from the dossier. She further argued that the petitioner has previous criminal antecedents and hence, the present anticipatory bail application cannot be allowed.

5. I have heard the learned counsel for the parties and perused the material available on record.

6. In the present case, the FIR was registered on 18.05.2015. No arrest was made till and therefore, the case was closed on 28.02.2016 and was sent as untraced by the Investigating Officer. Thereafter, the dossier of the accused/petitioner was shown to the complainant to identify him after almost two years from the date of the incident. There is no explanation that has come forth as to why the dossier of the accused, which was already available with the Police, was not shown to the complainant at the initial stage of the investigation and accused/petitioner was identified after two years from the date of incident.

7. It is also difficult to fathom that as per the complaint, the age of those involved in the incident was stated to be around 25 years, whereas the date of birth of the petitioner is 14.05.1968, which shows that he is a man of almost 50 years of age. Furthermore, as per the investigation, the accused is involved in many other cases, but in fact, it is found that the accused has been acquitted in all the other cases which were registered against him.

8. Taking into consideration the aforesaid observations and the facts and circumstances of the present case, the petitioner is granted anticipatory bail subject to the following conditions:

- i) That the petitioner shall furnish his personal bond in the sum of Rs.25,000/- with one surety of the like amount subject to the satisfaction of Arresting Officer/SHO concerned; and

- ii) that the petitioner shall cooperate with the investigation and make himself available for interrogation by police officer as and when required.

9. The petition stands disposed of.

SANGITA DHINGRA SEHGAL, J

JULY 05, 2017

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