

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

BAIL APPLN. 1422/2017

Order reserved on : 14th September, 2017
Order pronounced on : 30th October, 2017

SHIKHA RAGHAV

.....Petitioner

Through: Mr. Puneet Goel, Advocate.

Versus

THE STATE

.....Respondent

Through: Mr. Mukesh Kumar, APP for State with
SI Virendra Kumar, PS Roop Nagar
Delhi.
Mr. Anand Verdhan Maitrega, Advocate
with complainant in person.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. By way of the present petition filed under Section 438 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.'), the petitioner seeks **grant of anticipatory bail** in FIR No. 359/2016 under Sections 406/420/120-B of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') registered at Police Station, Roop Nagar, New Delhi.
2. The present case is registered on the complaint of one Santosh Bhardwaj who stated that Abhay, Pawan and Shikha/present petitioner have cheated Rs 60 lakhs from her. She alleged that the persons so named in the FIR were well known to her as they all were a part of the Ram Leela Committee, of which the complainant

is the advisor; that after demonetization as there were long queues for depositing the demonetized currency, Abhay, Pawan and Shikha/petitioner gave assurance to the complainant for getting the money deposited in her account without any hassle; that on the said assurance the complainant alongwith others handed over a total sum of Rs 60 Lakhs to Abhay, Pawan and Shikha/petitioner on 11.11.2016 near Nangia Park; that on the next day the petitioner and other co-accused Pawan informed the complainant that co-accused Abhay ran away with the money however they assured that they would return the money to the complainant at the earliest; that the petitioner also gave an undertaking in her own handwriting that she would return the money to the complainant from Abhay and on failing to do so she would mortgage her house; that thereafter all three co-accused persons including the petitioner have been absconding and hence the present complainant had been lodged.

3. The first anticipatory bail application filed by the petitioner before the Additional Sessions Judge was dismissed vide order dated 23.11.2016 on consideration of the fact that the investigation was at a preliminary stage and digital evidence in the shape of CCTV footage and call records were yet to be recovered. Second anticipatory bail application was moved before this Court by the petitioner and the same was dismissed vide order dated 19.12.2016, on consideration of serious allegations against the petitioner. Subsequently the petitioner moved a third anticipatory bail application before the Additional Sessions Judge which was also

dismissed vide order dated 05.07.2017. Hence the present bail application.

4. Mr. Puneet Goel, learned Counsel for the petitioner contended that the petitioner has been falsely implicated in the present case as the actual transaction had taken place between the complainant and other co-accused Abhay and the petitioner was completely unaware of the same; that it was only on 13.11.2016 that the complainant informed the petitioner about the transaction which took place with Abhay on 12.11.2016 and that Abhay had run away with the money; that the petitioner was induced to go to the police station, Bharat Nagar on 14.11.2016 where her statements were recorded by the police officials under serious threats which can be verified from CCTV footage of PS, Bharat Nagar; that the petitioner lodged a written complaint of criminal intimidation and threatening on 16.11.2016 at about 09:20 a.m. and subsequently thereafter on the same date the complainant lodged a false complaint against the petitioner and two other persons; that the complainant herself has criminal antecedents as she has been involved in numerous criminal activities and several complaints have been lodged against her which have also been reported in the newspaper 'The Hindu' dated 21.10.2004, which has been placed on record; that the alleged place of incident is under CCTV coverage however the Investigation Officer has not placed the CCTV footage intentionally which can otherwise demolish the case of the prosecution; that the petitioner is ready and willing to join

investigation and therefore under the said circumstances anticipatory bail be granted to the petitioner.

5. On the other hand, learned APP for the State opposed the bail application of the petitioner and submitted that in view of the serious allegations against the petitioner there appears to be a direct involvement of the petitioner in the commission of the alleged offence; that earlier three bail applications of the petitioner have already been dismissed wherein all the facts have been considered and since then there has been factually no change in the circumstances; that proceedings under Section 82 Cr.P.C. have been completed in all respects and now the proceedings under Section 83 Cr.P.C. have been initiated against the petitioner and other co-accused persons and hence the question of granting anticipatory bail to the petitioner does not arise in the facts and circumstances of the present case.
6. I have heard the leaned counsel for the parties and perused the material placed on record.
7. At the outset it is observed that in a handwritten note dated 14.11.2016 under the signature of the petitioner, the petitioner has promised to refund the entire sum of money to the complainant. Further as per the Status Report, the mobile phone locations of the petitioner and co-accused Abhay on 11.11.2016, shows that they were near Nagia Park i.e. the alleged place of incident.
8. During investigation, one Nitin/ brother of co-accused Abhay was interrogated wherein he disclosed that Abhay had come to his house and had given him Rs 5 Lakhs and also told him that he

obtained Rs 60 lakhs along with his associates by cheating a lady namely Santosh Bhardwaj. Cheated amount of Rs 47500/- has also been recovered in old currency at the instance of Nitin from his house.

9. Hence the observations so far made clearly reflect the involvement of the petitioner in the alleged offence.
10. Furthermore it is observed that NBWs issued against all the accused persons including the petitioner were returned un-executed as all the accused persons are deliberately evading arrest. Proceedings under Section 82 Cr.P.C. thereafter initiated against them are also complete. Now proceedings under Section 83 Cr.P.C. have been initiated against all the accused persons.
11. This is the fourth anticipatory bail application filed by the petitioner as the previous three applications, two before the Additional Sessions Judge and one before this Court have already been dismissed. So far there has not been any material change in the circumstances and the investigation is at a preliminary stage. Also there is a great likelihood of petitioner hampering the investigation process.
12. Reference may be made to the judgement of the Apex Court in ***Bhadresh Bipinbhai Sheth v. State Of Gujrat*** reported in ***(2016) 1 SCC*** wherein the principles for grant or refusal of anticipatory bail have been laid down, which are reproduced here as under:-

"(x) We shall also reproduce para 112 of the judgment wherein the Court delineated the following factors and parameters that need to be taken into

consideration while dealing with anticipatory bail:

(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(c) The possibility of the applicant to flee from justice;

(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because overimplication in the cases is a matter of common knowledge and concern;

(h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant

of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.’’

13. Keeping in view the principles laid down by the Apex Court, the aforementioned facts and circumstances of the present case, the allegations against the petitioners and gravity of offence, this Court does not deem it fit to grant discretionary relief of anticipatory bail to the petitioner. Accordingly, the petition for anticipatory bail stands dismissed.
14. Before parting with above order, it is made clear that anything observed in the present petition shall not have any bearing on the merits of the case during trial.

SANGITA DHINGRA SEHGAL, J.

OCTOBER 30, 2017

/gr//