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

% *Date of Decision: 13.10.2017*

+ **BAIL APPLN. 1614/2017**

SUNIL Petitioner
Through: Mr.Pranay Abhishek, Advocate.

versus

STATE Respondent
Through: Mr.Amit Chadha, APP for State with
ASI Ram Kumar, PS Old Delhi Railway Station,
Delhi.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINO GOEL, J. (Oral)

1. Apprehending his arrest in a case registered vide FIR No. 0267/2015 dated 14.04.2015 under Section 379 IPC, PS RMD Main (ODRS), District Crime & Railways, Delhi, the petitioner seeks anticipatory bail in the event of his arrest under Section 438 of the Code of Criminal Procedure, 1973 (in short 'Cr.PC')
2. Status report has been filed.
3. Learned counsel for the petitioner submits that the petitioner is an innocent person. He has been falsely implicated in this case. He submits that the name of the petitioner has figured only in the

disclosure statement of the co-accused.

4. Per contra, learned APP vehemently opposes the bail application. He submits that huge amounts of jewellery belonging to an innocent passenger was stolen at the Old Delhi Railway Station, who was coming from Dehradun by the Mussoorie Express. While the said train crossed the Shahdara Railway Station, one person offered her help in taking out her luggage near the gate of the coach as Old Delhi Railway Station was approaching near. The victim declined the offer but later she agreed to shift her luggage/suit case in the corridor and in the meantime 7-8 persons assembled near the suit case and she told them that she did not need their help as her brother was coming to receive her at Old Delhi Railway Station. Meanwhile all of them fled from the coach through the adjoining coach. On reaching home, the victim found that several valuable items and gold ornaments were missing from her suit case/luggage. Description of missing items is given in the status report. Immediately, the complainant/victim came to PS Old Delhi Railway Station along with the written complaint.
5. During investigation three persons namely (1) Sandeep Kumar, R/o; Village Orang Nagar, PS Bhiwani Khera, District Bhiwani, Haryana, (2) Ajay @ Tinu and (3) Sunny, both resident of Village Manoharpur, P.S. Jind, District Jind, Haryana were arrested on 13.06.2015 and during their sustained interrogation, they disclosed the name of the petitioner and one Vinod, both resident of Village Orang Nagar, P.S. Bhiwani Khera, District Bhiwani, Haryana, being involved with them in the present theft case. On 30.05.2017, even the non-bailable warrants were issued against the petitioner and Vinod by the learned

MM and on 15.09.2017, they have been declared Proclaimed Offenders.

6. Before considering the claim of the petitioner it would be useful to refer to Section 438 of Cr.PC relating to grant of bail to a person, who is apprehending arrest, which reads as under: -

438. Direction for grant of bail to person apprehending arrest.-

(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to

give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under subsection (1).

7. It makes it clear that in a non-bailable offence, if a person has reason to believe that he may be arrested, he is free to apply to the High Court or the court of Sessions praying that in the event of his arrest, he shall be released on bail. The belief that the applicant may be arrested must be based on reasonable grounds. While considering such request, the court has to take into consideration the nature and gravity of the accusation, antecedents, possibility of applicant to flee from justice etc. Further, normally the court should not exercise its discretion to grant anticipatory bail in disregard of the magnitude and seriousness of the matter. This provision of grant of anticipatory bail reflects that the power exercisable is extraordinary in character, which should be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty. It has been held in **State of Madhya Pradesh Vs. Pradeep Sharma, (2014) 2 SCC 171**, that benefit of anticipatory bail should not be extended to a person, who has been absconding and declared as a Proclaimed Offender.
8. Keeping in view the facts and circumstances of the case particularly the fact that the custodial interrogation of the petitioner is required to recover the gold jewellery of the victim and the fact that he has been declared a Proclaimed Offender by the competent court, there is no

justification for grant of anticipatory bail to the petitioner.

9. The application is dismissed accordingly.

VINOD GOEL, J.

OCTOBER 13, 2017

“shailendra”