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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 1940/2017

Order reserved on : 24th October, 2017
Order pronounced on : 3rd November, 2017

KARTIK SOLANKI

.....Petitioner

Through: Mr. K.K. Sharma, Senior Advocate with
Ms.Sonia Sharma, Mr Rajesh Kaushik
and Mr. Sameer Chandra, Advocates.

Versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Akshai Malik, APP for the State.

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 (hereinafter referred "Cr.PC."), the petitioner seeks **grant of Anticipatory Bail** in FIR No. 390/2017 under Sections 419/457/380/392/411/120-B/34 of the Indian Penal Code, 1860 (hereinafter referred as "IPC") registered at Police Station Bhalswa Dairy, New Delhi. Status report is on record.
2. The case of the Prosecution is that the petitioner gave secret information to Ct. Manohar Lal working in Delhi Police about the illegal storage of Sandalwood in a Godown at Gali No. 8 Swaroop Nagar Extension Delhi and to verify the secret information both went to the spot where Ct. Ajay special cell

and HC Deepak Special Cell reached on 27.06.2017 at about 6:00 PM and left after verifying that the storage of Sandalwood is legal. The petitioner and Manohar Lal got lured with the huge quantity of Sandalwood and contacted Sub Inspector Gaurav from the mobile phone of the petitioner, as it would mean a lot of money. SI Gaurav sent another SI in uniform to execute the plan. In the meantime the petitioner left to meet his aunt and Jitender, who was acquainted with Ct. Manohar came to the spot and forwarded their location to SI Gaurav. Soon after, SI Anuj came to the spot and SI Gaurav's friend Naresh also reached the spot with his tempo. Thereafter, Naresh, Ct. Manohar Lal, SI Anuj and Jitender entered the godown and SI Anuj who was in the police uniform controlled the guard of the godown, Naresh directed the tempo driver to bring his vehicle inside the godown, while Manohar, Jitender and Naresh broke the lock of the room where the Sandalwood was stored with a hammer and an iron rod. Thereafter, they loaded 30 sacks of Sandalwood in the vehicle. Jitender took out the SIM from the Chowkidar's mobile phone and thereafter they all left the spot with Sandalwood laden vehicles and on the instructions of SI Gaurav they hid 14 sacks of Sandalwood in a safe place and sent over the remainder to him. After sometime SI Gaurav called confirming that he had received the Sandalwood.

3. The following day Bhagwan Sharma who was the Contractor went to the godown and was informed about the whole incident by Chowkidar Maniram, after which he informed the owner of the Godown of the same and FIR No. 390/2017 was subsequently lodged.
4. Mr. K.K. Sharma, the learned counsel for the petitioner contended that the petitioner has been falsely and maliciously implicated by the complainant in connivance with the local police; that the petitioner is not even named in the F.I.R.; that there is an unexplained delay of one day in the registration of the F.I.R.; that the petitioner was present at his house at the time of the incident as narrated by the complainant and this can be proved by the CCTV footage of the camera outside the house of the petitioner and through his mobile location; that nothing has been recovered either from the possession of the accused or at his instance; that Sections 34 and 120-B of the Indian Penal Code cannot be used together as the alleged incident could have been committed either after hatching the conspiracy or by forming the common intention at the spot of crime; that the petitioner is being perceived as an accused solely on the basis of an inadmissible piece of evidence that is the disclosure statement of the co-accused; that the case of the police does not inspire any confidence as tons of sandalwood could not have been robbed without any planning for its storage

or selling the same; that the motive of stealing is unsubstantiated; that the fact that there is no license with the owner/smuggler of sandalwood to keep and sell the sandalwood in Delhi has not been acknowledged by the Investigating Officer with the ulterior motive to falsely implicate the petitioner who were discharging their duty by trying to unearth the racket of sandalwood smuggling.

5. Per Contra, Mr. Akshai Malik, APP for the state opposed the bail application and contended that the petitioner is not liable to be granted Anticipatory Bail as he has been involved in the commission of a serious offence. He further stated that the accused may evade the process of law, threaten the complainant and may also tamper with the evidences being collected during investigation.
6. I have heard the learned counsel for the parties at length and perused the material on record.
7. 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.’’

8. It has been revealed from the investigation that the petitioner has been actively involved in the commission of the crime. It has been further revealed through the Call Detail Records that on the day of the incident the petitioner was present at the scene of crime from 6:00 PM to 10:00 PM. Further, the CDRs revealed that the petitioner received/made more than 80 calls to the co-accused persons between 27.06.2017 and 28.06.2017 and they continued to remain in constant touch even after the incident. Recovery of remaining robbed property is yet to be made. Moreover, despite specific allegations from the Court of the Addl. Sessions Judge petitioner did not cooperate in the investigation and thus the chance of the petitioner escaping the procedure of law, tampering with the evidence or threatening the complainant and witnesses exists.
9. 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.

10. Accordingly, the present application filed by the petitioner is dismissed.
11. 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.

NOVEMBER 03, 2017

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