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

+ BAIL APPLN. 2020/2017 & CrI.M.B. No.1750/2017

DR GAURAV MALIK Petitioner

Through: Mr.Ashesh Lal and Mr.Raghav
Paswatiyar, Advocates.

versus

C B I Respondent

Through: Mr.Anupam S.Sharma, Spl. PP for
CBI with Mr.Prakarsh Airan,
Advocate.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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07.11.2017

1. This is an application moved by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case No.RC-DAI-2016-A-0039 under Sections 420/467/468/471 IPC registered at PS CBI/ACB, New Delhi.
2. In the above noted case, the charge-sheet was filed without arresting the petitioner. The petitioner applied for anticipatory bail and the application was dismissed vide order dated 3rd October, 2017.
3. Learned counsel for the petitioner submits that in view of the dismissal of the application seeking anticipatory bail, there is every apprehension that the petitioner may not be released on bail by the learned Trial Court.
4. Mr.Anupam S.Sharma, learned special PP for CBI submits that during investigation the petitioner was not arrested and charge-sheet was filed without arresting the petitioner. Hence, there was hardly any necessity to seek anticipatory bail as there was no apprehension of arrest.
5. In Criminal Reference No.4/2017 titled as '***Court on its own Motion***

Vs. State', the following reference was made by the learned Chief Metropolitan Magistrate, East District, Karkardooma Courts, Delhi:-

“Whether a Metropolitan Magistrate can examine the discretion exercised by the IO for arresting or non-arresting the accused persons, while considering the charge-sheet at the stage of taking of cognizance and if it is found that the IO has not exercised his discretion lawfully, whether the Court of MM can return the charge-sheet for further investigation on the point of arrest of accused persons.”

6. The Division Bench of this Court while answering the above reference observed that the said question of law has already been settled by the learned Single Judge of this Court in ***‘Court on its own motion Vs. Central Bureau of Investigation’***, 109 (2003) DLT 494: (2004) ILR 1 Delhi 47 and expressed agreement with the view taken by learned Single Judge. In a situation like the present one, the learned Single Judge expressed his view as under:-

“(v) The Court shall on appearance of an accused in non-bailable offence who has neither been arrested by the police/Investigating agency during investigation nor produced in custody as envisaged in Section 170 Cr.P.C. call upon the accused to move a bail application if the accused does not move it on his own and release him on bail as the circumstance of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. Reason is simple. If a person has been at large and free for several years and has not been even arrested during investigation, to send him to jail by refusing bail suddenly, merely because chargesheet has been filed is against the basic principles governing grant or refusal of bail.”

7. The application seeking anticipatory bail is hereby dismissed. The petitioner is at liberty to avail his remedy in terms of above legal position as summarised in *Court on its own motion Vs. Central Bureau of Investigation* (supra).

PRATIBHA RANI, J.

NOVEMBER 07, 2017/‘pg’

BAIL APPLN. 2020/2017

Page 2 of 2