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

+ **BAIL APPLN. 2054/2017**

RAM BILASH PASWAN

..... Petitioner

Through: **Mr.Rajesh Bhatia, Advocate**

versus

STATE NCT OF DELHI

..... Respondent

Through: **Ms.Kusum Dhalla, APP for the State
with SI Devender Malik PS Ranjeet
Nagar**

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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13.10.2017

CRL.M.A.16791/2017

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

BAIL APPLN. 2054/2017

1. By way of this application filed under Section 438 read with Section 482 Cr.P.C., the petitioner is seeking anticipatory bail in case FIR No. 257/17 under Sections 323/344/374/506/34 IPC read with Section 16/17 Bonded Labour System (Abolition) Act and Section 75/79 of JJ Act, registered at PS Ranjeet Nagar, Delhi.

2. Notice. Ms.Kusum Dhalla, APP for the State accepts notice and furnishes the status report.

3. The prayer of the petitioner for release on anticipatory bail has been

declined by the learned ASJ in view of the nature and gravity of the offence.

4. Learned counsel for the petitioner has submitted that from the statement of the various victims at the most it could be said to be a case of non-payment of wages for which the petitioner is ready to abide by any terms and conditions imposed on him. It has also been contended that the co-accused Anita, who is his wife, has already been enlarged on bail. He has been running a placement agency for past 5 years but at no point of time was there any complaint against him by any person in respect of non-payment of wages or any other ground. Learned counsel for the petitioner has contended that the case FIR No.257/17 PS Ranjeet Nagar has been registered under Sections 323/344/374/506/34 IPC read with Section 16/17 Bonded Labour System (Abolition) Act and Section 75/79 of JJ Act out of which only offences under Section 75/79 JJ Act are non-bailable.

5. It has also been submitted that the provisions of JJ Act are not applicable as the alleged employees/victims were found to be major and in these circumstances he may be released on anticipatory bail subject to such terms and conditions as deemed fit.

6. The prayer for release on anticipatory bail has been strongly opposed by the learned APP for the State contending that Section 354 and 370 IPC have also been added in this case which are non-bailable. The petitioner is running a racket and several other bonded labourers are yet to be recovered for which his custodial interrogation is required. It is mentioned in the status report that after the registration of case, three more females, one male and five minor children have been rescued from Delhi, Haryana and Himachal Pradesh and in their statement under Section 164 Cr.P.C. they have alleged that they were subjected to mental and physical cruelty. The petitioner is still

in the same business of trafficking of persons including minors and several other missing persons are yet to be rescued. Hence prayer for anticipatory bail may be declined.

7. I have considered the rival contentions.

8. It is not disputed on behalf of the petitioner that he is running a placement agency and the case FIR No.257/17 has been registered against him on the complaint made by the SDM Patel Nagar pursuant to a joint rescue operation of the children/bonded labour. The said operation was conducted by the teams of Revenue, Police, Labour and Health Department with NGOs and officers of Assam Bhawan (Delhi) and Jharkhand Bhawan (Delhi). During the aforesaid operation several victims were rescued. They were also produced for getting their statement recorded under Section 164 Cr.P.C. wherein several allegations of being subjected to cruelty as well non-payment of wages have been made.

9. In the case reported as ***Jai Prakash Singh Vs. State of Bihar & Anr.*** AIR 2012 SC 1676, the Apex Court while placing reliance on its earlier decision reported as ***Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors.***, AIR 2011 SC 312 has laid down certain factors and parameters to be considered while considering application for anticipatory bail :

“i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

ii. 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;

- iii. *The possibility of the applicant to flee from justice;*
- iv. *The possibility of the accused's likelihood to repeat similar or the other offences.*
- v. *Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.*
- vi. *Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.*
- vii. *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 accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over-implication in the cases is a matter of common knowledge and concern;*
- viii. *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 the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*
- ix. *The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
- x. *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.”*

10. The power exercisable under Section 438 of The Code of Criminal Procedure is somewhat extraordinary in character and it is 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 then power is to be

exercised under Section 438. (*Rel. Adri Dharan Das vs. State of West Bengal* (2005) 4 SCC 303).

11. The petitioner cannot claim parity with his wife/co-accused for the reason that she has been granted regular bail and the reasons for admitting her on bail have been given by the learned MM as under:-

‘Thus, in my considered opinion, at this stage, there is no material on record against accused Anita for the alleged offence u/s 75/79 of Juvenile Justice (Care & Protection of Children) Act, 2015. All the remaining offences alleged against the accused Anita are bailable. Accused Anita is accordingly admitted to bail on furnishing of PB & SB in sum of ₹20,000/- each. Bail bonds not furnished.’

12. Taking into consideration the nature of the accusations levelled against the petitioner and that custodial interrogation is required by the Investigating Agency to rescue other children/bonded labour, I do not find it to be a fit case to release him on anticipatory bail.

13. The bail application is dismissed.

PRATIBHA RANI, J.

OCTOBER 13, 2017
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