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

+ **BAIL APPLN. 2430/2017**

IRSHAD

..... Petitioner

Through: **Mr.Sitab Ali Chaudhary, Advocate**

versus

THE STATE GOVT OF NCT OF DELHI

..... Respondent

Through: **Mr.Sanjeev Sabharwal, APP for the
State with SI R.S.Pandit PS Preet
Vihar**

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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28.11.2017

CRL.M.A.19612/2017

1. Exemption allowed, subject to all just exceptions.
2. The application is disposed of.

BAIL APPLN.2430/2017

1. By way of this application filed under Section 438 Cr.P.C., read with Section 482 Cr.P.C. the petitioner is seeking anticipatory bail in FIR No.260/2017, under Section 384/385/511/120B/34 IPC.
2. Notice. Learned APP as above accepts notice on behalf of the State.
3. Learned counsel for the petitioner has submitted that despite the fact that complainant is police officer, there is a delay in recording the FIR which has been registered at 1605 hrs. in respect of the occurrence that took place at 1140 hrs. It has also been contended that the petitioner was not

even present at the spot and he has been falsely named in the FIR. It has also been contended that the police officers were charging higher amount but giving receipt for a lesser amount and when this was objected to, a false case has been registered to put pressure to withdraw the complaint against the police officers. The entire story of the prosecution as mentioned in the FIR is false with a view to cover up their wrong acts and the petitioner has been named without being involved in the alleged occurrence. It has also been contended that there is no allegation against the petitioner that he had demanded any money from any of the police officers, hence, he may be released on anticipatory bail as he is ready and willing to join investigation.

4. It is submitted that the other co-accused have been released on bail. On being specifically questioned whether they have been released on anticipatory bail or regular bail, learned counsel for the petitioner mentioned that they have been released on regular bail.

5. Learned Trial Court while dismissing the application for anticipatory bail of the present petitioner has noted the contention on behalf of the petitioner as under:

“Arguments on the anticipatory bail application heard. Ld. Counsel for the applicant/accused has argued that accused has been falsely implicated in this case as accused/applicant is a whistle blower and he has exposed many cases of corruption in police department as well as MCD and other departments. The police officials have been falsely implicating the accused and his brother in criminal cases. An case FIR No.276/2006 accused was booked and a case u/s 307/34 IPC wherein he has been acquitted. Similarly, brother of the accused Mohd.Asif was booked in case FIR No.223/17 u/s 384 IPC and he was granted anticipatory bail on 30.05.2017. The applicant/accused has sent number of complaints against police officials due to which the police officials are implicating him in false cases out of vengeance. The police officials entered the

house of the applicant on 16.11.2017 at 2.00 am and looted articles including the case files of the cases filed before Anti Corruption Branch, one bag containing costly clothes, one laptop, memory cards and CDs etc. pertaining to various police officials in the area with a view to destroy the evidence against them. It is also submitted that the applicant is a transporter and the police officials are illegally extorting money from him. The applicant has no role in the present case and he is not required for any investigation.

6. The bail application has been dismissed by the learned Trial Court observing that whether the petitioner was a whistle blower or member of the gang of the extortionists, is subject matter of investigation.

7. Taking into consideration the allegations in the FIR that the helmet being carried by the co-accused was having a spy camera as well a recorder and the driver Sharukh apprehended from the spot disclosed the name of his associates as Ranjit, Shah Mohd. and his brother Irshad, Raju and Meena, in the backdrop that the alleged recording was allegedly used to extort money from the police officials under the threat that complaint would be made against them which will lead to departmental enquiry against the police officials, the matter may require custodial interrogation to ascertain the role and extent of involvement of the present petitioner.

8. 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.”*

9. 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).

10. In view of the above, I do not find it to be a fit case to enlarge him on anticipatory bail.

11. The bail application is dismissed.

CRL.M.A.2113/2017

Dismissed as infructuous.

PRATIBHA RANI, J.

NOVEMBER 28, 2017

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