

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

*Reserved on: 14<sup>th</sup> June, 2018*  
*Pronounced on: 19<sup>th</sup> June, 2018*

**+ BAIL APPLN. 1358/2018**

**ROHIT AGGARWAL**

..... Petitioner

Through: Mr. B. S. Joon and Mr. Neeraj  
Balhara, Advocates

versus

**STATE (GOVT. OF NCT OF DELHI**

..... Respondent

Through: Ms. Meenakshi Chauhan, APP along  
with Mr. Rajesh Kumar (S.I), P.S.  
Mehrauli  
Mr. Abhay Sahai, Advocate for  
Complainant

**CORAM:**  
**HON'BLE MR. JUSTICE C.HARI SHANKAR**

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**JUDGMENT**

**C. HARI SHANKAR, J.**

1. The applicant, by means of this application under Section 438 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Cr.P.C.”), seeks bail in apprehension of his arrest, in connection with FIR No 0288, dated 18<sup>th</sup> May, 2018, registered at PS Mehrauli, under Sections 406/420/34 of the Indian Penal Code, 1860 (hereinafter referred to as “the IPC”).

2. The FIR, which was based on a complaint by Ms Shakuntala Devi (hereinafter referred to as “the complainant”), alleged that (i) in December, 2016, the complainant had purchased a flat from Harish Arora, and had asked Harish Arora to arrange a tenant, (ii) in April, 2017, Harish Arora told the complainant that he was renting the flat to the present applicant, who was known to him, (iii) her son Manish Dagar got in touch with the applicant, and informed him that the flat belonged to the complainant, (iv) their friend Vikas Dahiya also contacted the applicant and informed him that the flat belonged to the complainant, and was being rented out to him on her behalf, (v) a few days later, Harish Arora informed her that he had given the flat on rent to the applicant, and that a written rent agreement would be executed shortly, and (vi) later, when Vikas Dahiya visited the flat, he found it occupied by someone else, who professed total ignorance regarding the complainant being the owner of the flat, and said that he would be paying the rent to the applicant, who had rented out the flat to him. As such, the complainant alleged that the applicant, in collusion with the occupant of the flat, were trying to grab the flat illegally, and that they were neither vacating the flat nor paying rent to her. She, in these circumstances, requested the Police authorities to get the flat vacated, and to register a case against the applicant under Sections 420/406/34, IPC.

3. It is an admitted position that investigations, in the case, are at an initial stage. In the meanwhile, Harish Arora has absconded.

4. As against the above version of the complainant, as reproduced in the FIR, the applicant asserts, in the present application, that he had nothing to do with the complainant, her son Manish Dagar or Vikas Dahiya, and that he had, through General Power of Attorney and Agreement to Sell, dated 23<sup>rd</sup> May, 2017, purchased the aforementioned flat from Harish Arora. He claims that the entire payment, for the said purpose, had been made, by him, to Harish Arora, in instalments, between December, 2012 and July, 2017. Consequent thereto, the applicant asserts, Harish Arora gave possession of the flat to the applicant, and executed, as noted hereinabove, GPA, Agreement to Sell, possession letter and affidavit, jointly in the name of the applicant and his wife. Photocopies of the title documents relating to the flat were, it is averred, also provided, to the applicant, by Harish Arora. Having thus legally acquired possession of the flat, the applicant asserts that he, in July, 2017, rented out the flat to Ritesh Joshi. Later, on finding that Harish Arora was defaulting in executing a Sale Deed in his favour, the applicant filed Civil Suit 1149/2017 in which, *vide* order dated 8<sup>th</sup> February, 2018, the learned Additional District Judge (hereinafter referred to as “the learned ADJ”) restrained Harish Arora, his agents, associates, etc., from dispossessing the applicant from the flat, till the next date of hearing. The said interim order, it is pointed out, was continued till the next date of hearing, which is on 9<sup>th</sup> August, 2018. Copies of the said orders, which are on record, and to which Mr. B.S. Joon, learned counsel for the applicant, draws my attention, indicate that service could not be effected on Harish Arora, in the said proceedings, as

summons issued to him were returned with the remark that he was not to be found at his address. The learned ADJ has entered specific observations that Harish Arora was intentionally evading service in those proceedings. Significantly, the complainant is not a party to the said proceedings, and interim protection has, apparently, been extended, to the applicant, by drawing adverse inference against Harish Arora, in view of his evading service in the proceedings.

5. The applicant, therefore, asserts, in his application, that he was a lawful owner of the flat, and had lawfully let it out to Ritesh Joshi, and that the complainant had had the FIR registered, against him with the oblique motive of grabbing the flat. Pointing out that he has already joined investigations, and that his antecedents were clean and unblemished, the applicant prays for interim protection of bail, in the event of his possible arrest.

6. It may be mentioned, here, that the applicant had moved the learned ASJ, by way of Bail Application No 667/2018, for anticipatory bail, and that the said application stands rejected, by the learned ASJ, *vide* order dated 26<sup>th</sup> May, 2018, merely noting that “the charges are serious in nature and the investigation is at the crucial stage”.

7. Status report was requisitioned from the Police authorities, and has been filed. According to the status report, while it is true that the GPA and Agreements to Sell, purportedly executed between Harish

Arora and the complainant, as well as between Harish Arora and the applicant, were all duly notarised, the signature of Harish Arora, on the GPA stated to have been executed between him and the complainant appeared, at a plain glance, to be forged. Reliance has also been placed, in this regard, on the statement, under Section 161 of the Cr.P.C., of Dharmender Singh, the driver of Harish Arora and a witness to the GPA between Harish Arora and the complainant, which also alleges that the signature of Harish Arora, on the documents cited by the applicant in his defence, appeared not to be genuine. The Status Report further alleges that the documents between Harish Arora and the applicant were five months later, in point of time, than the documents between Harish Arora and the complainant, and that, after having been made aware, by Manish Dagar and Vikas Dahiya, of the fact that the flat belonged to the complainant, the applicant, taking advantage of the absence/untraceability of Harish Arora, let out the flat to Ritesh Joshi. Inasmuch as the title of the applicant was founded on the GPA, dated 23<sup>rd</sup> May, 2017, stated to have been executed between Harish Arora and him, and the signature of Harish Arora, on the said document, appeared to be fabricated, the Status Report exhorts this court to dismiss the present application, filed by the applicant, and not to allow him to be enlarged on bail, in the event of his arrest, at this juncture. It is also stated, in the Status Report, that, consequent on the above details which emerged during investigation, Sections 448/506/468/471/120-B, IPC, have also been added in the case. The prosecution submits, finally, in the Status Report, that Harish Arora is already untraceable and that, if the applicant were to

be enlarged on bail immediately on arrest, he would also be likely to abscond, while the case is still at an initial stage. It is claimed that the custodial interrogation of the applicant would be necessary, to obtain the original GPA as well as to unearth the details of the evident conspiracy between Harish Arora and the applicant. It is also pointed out that the specimen signature of the applicant would be required, for comparison with the signature occurring in the GPA executed in his favour.

8. The judgement of Dalveer Bhandari, J, in *Siddharam Satlingappa Mhatre vs State of Maharashtra, (2011) 1 SCC 694*, speaking for himself and K. S. Radhakrishnan, J., which is regarded as a watershed decision in “anticipatory bail jurisprudence”, sets out the following ten definitive tests, to guide courts while deciding applications for bail in apprehension of arrest, under Section 438 of the Cr.P.C. (in para 112 of the report):

- “(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 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 the accused is implicated with the help of Sections 34 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;

(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. *Siddharam Satlingappa Mhatre (supra)*, it may be noted, has been approvingly relied upon, by a three Judge bench of the Supreme Court, as recently as in *Sushila Aggarwal vs State, 2018 SCC Online SC 531*, pronounced on 15<sup>th</sup> May, 2018.

10. While instructive guidelines, regarding grant of anticipatory bail, as already extracted hereinabove, were postulated, in ***Siddharam Satlingappa Mhatre (supra)***, the Supreme Court has been cautious, on numerous occasions, to underscore the position that generalisations, regarding situations which would, or would not, justify grant of anticipatory bail, were impossible, and could be perilously damaging in nature. The following passages, from ***Gurbaksh Singh Sibbia vs State of Punjab, (1980) 2 SCC 565***, which is well-regarded as the *locus classicus* on the concept of anticipatory bail, are eloquently expressive, in this regard:

“12. ... The provisions of Sections 437 and 439 furnished a convenient model for the legislature to copy while enacting Section 438. If it has not done so and has departed from a pattern which could easily be adopted with the necessary modifications, it would be wrong to refuse to give to the departure its full effect by assuming that it was not intended to serve any particular or specific purpose. The departure, in our opinion, was made advisedly and purposefully: Advisedly, at least in part, because of the 41st Report of the Law Commission which, while pointing out the necessity of introducing a provision in the Code enabling the High Court and the Court of Session to grant anticipatory bail, said in para 39.9 that it had “considered carefully the question of laying down in the statute certain conditions under which alone anticipatory bail could be granted” but *had come to the conclusion that the question of granting such bail should be left “to the discretion of the court” and ought not to be fettered by the statutory provision itself, since the discretion was being conferred upon superior courts which were expected to exercise it judicially. The legislature conferred a wide discretion on the High Court and the Court of Session to grant anticipatory bail because it evidently felt, firstly, that it would be difficult to enumerate the conditions under which anticipatory bail should or should not be granted and secondly, because the intention was to allow the higher courts in the echelon a somewhat free hand in the grant of relief in*

*the nature of anticipatory bail.* That is why, departing from the terms of Sections 437 and 439, Section 438(1) uses the language that the High Court or the Court of Session “may, if it thinks fit” direct that the applicant be released on bail. Sub-section (2) of Section 438 is a further and clearer manifestation of the same legislative intent to confer a wide discretionary power to grant anticipatory bail. It provides that the High Court or the Court of Session, while issuing a direction for the grant of anticipatory bail, “may include such conditions in such directions in the light of the facts of the particular case, as it may think fit”, including the conditions which are set out in clauses (i) to (iv) of sub-section (2). The proof of legislative intent can best be found in the language which the legislature uses. Ambiguities can undoubtedly be resolved by resort to extraneous aids but words, as wide and explicit as have been used in Section 438, must be given their full effect, especially when to refuse to do so will result in undue impairment of the freedom of the individual and the presumption of innocence. It has to be borne in mind that anticipatory bail is sought when there is a mere apprehension of arrest on the accusation that the applicant has committed a non-bailable offence. A person who has yet to lose his freedom by being arrested asks for freedom in the event of arrest. That is the stage at which it is imperative to protect his freedom, insofar as one may, and to give full play to the presumption that he is innocent. In fact, the stage at which anticipatory bail is generally sought brings about its striking dissimilarity with the situation in which a person who is arrested for the commission of a non-bailable offence asks for bail. In the latter situation, adequate data is available to the court, or can be called for by it, in the light of which it can grant or refuse relief and while granting it, modify it by the imposition of all or any of the conditions mentioned in Section 437.

13. This is not to say that anticipatory bail, if granted, must be granted without the imposition of any conditions. That will be plainly contrary to the very terms of Section 438. Though sub-section (1) of that section says that the court “may, if it thinks fit” issue the necessary direction for bail, sub-section (2) confers on the court the power to include such conditions in the direction as it may think fit in the light of the

facts of the particular case, including the conditions mentioned in clauses (i) to (iv) of that sub-section. The controversy therefore is not whether the court has the power to impose conditions while granting anticipatory bail. It clearly and expressly has that power. The true question is whether by a process of construction, the amplitude of judicial discretion which is given to the High Court and the Court of Session, to impose such conditions as they may think fit while granting anticipatory bail, should be cut down by reading into the statute conditions which are not to be found therein, like those evolved by the High Court or canvassed by the learned Additional Solicitor General. Our answer, clearly and emphatically, is in the negative. The High Court and the Court of Session to whom the application for anticipatory bail is made ought to be left free in the exercise of their judicial discretion to grant bail if they consider it fit so to do on the particular facts and circumstances of the case and on such conditions as the case may warrant. Similarly, they must be left free to refuse bail if the circumstances of the case so warrant, on considerations similar to those mentioned in Section 437 or which are generally considered to be relevant under Section 439 of the Code.

14. *Generalisations on matters which rest on discretion and the attempt to discover formulae of universal application when facts are bound to differ from case to case frustrate the very purpose of conferring discretion. No two cases are alike on facts and therefore, courts have to be allowed a little free play in the joints if the conferment of discretionary power is to be meaningful.* There is no risk involved in entrusting a wide discretion to the Court of Session and the High Court in granting anticipatory bail because, firstly, these are higher courts manned by experienced persons, secondly, their orders are not final but are open to appellate or revisional scrutiny and above all because, discretion has always to be exercised by courts judicially and not according to whim, caprice or fancy. On the other hand, *there is a risk in foreclosing categories of cases in which anticipatory bail may be allowed because life throws up unforeseen possibilities and offers new challenges. Judicial discretion has to be free enough to be able to take these possibilities in its stride and to meet these challenges.* While dealing with the necessity for preserving

judicial discretion unhampered by rules of general application  
Earl Loreburn, L.C. said in *Hyman v. Rose* [1912 AC 623] :

“I desire in the first instance to point out that the discretion given by the section is very wide. . . . Now it seems to me that when the Act is so expressed to provide a wide discretion, ... it is not advisable to lay down any rigid rules for guiding that discretion. I do not doubt that the rules enunciated by the Master of the Rolls in the present case are useful maxims in general, and that in general they reflect the point of view from which judges would regard an application for relief. But I think it ought to be distinctly understood that there may be cases in which any or all of them may be disregarded. If it were otherwise, the free discretion given by the statute would be fettered by limitations which have nowhere been enacted. It is one thing to decide what is the true meaning of the language contained in an Act of Parliament. It is quite a different thing to place conditions upon a free discretion entrusted by statute to the court where the conditions are not based upon statutory enactment at all. It is not safe, I think, to say that the court must and will always insist upon certain things when the Act does not require them, and the facts of some unforeseen case may make the court wish it had kept a free hand.”

15. Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions. And *it will be strange if, by employing judicial artifices and techniques, we cut down the discretion so wisely conferred upon the courts, by devising a formula which will confine the power to grant anticipatory bail within a strait-jacket. While laying down cast-iron rules in a matter like granting anticipatory bail, as the High Court has done, it is apt to be overlooked that even judges can have but an imperfect awareness of the needs of new situations. Life is never static and every situation has to be assessed in the context of emerging concerns as and when it arises. Therefore, even if we were to frame a ‘Code for the grant of anticipatory bail’, which really is the business of the legislature, it can at best furnish broad guide-lines and*

*cannot compel blind adherence. In which case to grant bail and in which to refuse it is, in the very nature of things, a matter of discretion. But apart from the fact that the question is inherently of a kind which calls for the use of discretion from case to case, the legislature has, in terms express, relegated the decision of that question to the discretion of the court, by providing that it may grant bail "if it thinks fit". The concern of the courts generally is to preserve their discretion without meaning to abuse it. It will be strange if we exhibit concern to stultify the discretion conferred upon the courts by law."*

(Emphasis supplied)

11. Adjudication of petitions seeking anticipatory bail is always a precipitous exercise, involving, as it does, striking of a delicate balance between the sanctified right, of the citizen, to his freedom – stated, by some thinkers, to be more precious than the right to life itself – and the necessity of ensuring that investigation and trial, into a possibly serious offence, is not derailed by unjustified judicial interdiction. The nature of the allegation, the stage at which the proceedings stand, the antecedents of all parties, especially the accused, the possible prejudice that could result, were the accused to be promised freedom even during the course of investigation, the possibility of the accused fleeing (which, in turn, would require the court to factor in the domicile and roots, in society, of the accused), are all elements which would play their individual, as well as cumulative, roles, in determining whether the accused deserves, during the course of investigation, and before its completion, to be guaranteed freedom.

12. The allegations against the applicant, in the present case, are undoubtedly somewhat serious. What started off as, possibly, a purely civil dispute, has assumed murkier outlines, with the allegations against the applicant now including forgery, grabbing of the property of another and infusing, into such property, a third party, so as to defeat the rights of the rightful owner. To the provisions earlier invoked in the FIR, as pointed out in the Status Report, Sections 448/506/468/471/120-B, IPC, stand added. It is not disputed that the documents, on the basis of which the applicant claims title and possession to the flat, are posterior, in point of time, by as many as five months, to the documents between Harish Arora and the complainant. Even if one were to ignore, for the time being, the deposition, under Section 161 of the Cr.P.C., of Dharmender, to the effect that the signature of Harish Arora, on the GPAs produced by the applicant, was forged, the Status Report also records a *prima facie* opinion, on comparison of the said signature with the original signature of Harish Arora, that they appeared discrepant. Harish Arora, for his part, is absconding, which also indicates, to transliterate a well-known phrase from the vernacular, that there is “something black among the pulses”. Due credence is also required to be accorded, at this incipient stage, to the assertion that, prior to the alleged execution of GPA and Agreement to Sell, between Harish Arora and the applicant, Manish Dagar and Vikas Dahiya had already apprised the applicant about the fact that the flat belonged to the complainant, and that it was being let out, to him, on rent, on her behalf.

13. If these allegations are true, the case against the applicant is undoubtedly grave, involving, as it does, fraudulent grabbing of the property of another person, and may justify his incarceration for an extended period of time. At this stage, when the assimilation of evidence is as yet incomplete, this court finds merit in the submission, of the prosecution, that, especially in the absence of Harish Arora, the custodial interrogation of the applicant may be necessary in order to elicit the truth. There is, unfortunately, nothing, in the present application filed by the applicant, to justify any confidence, by this Court, in the applicant, on the unlikelihood of his vanishing, were he to be guaranteed bail consequent on arrest. All that is stated is a bald averment, in para 13 of the application, that he has “clean antecedents”. Given the untraceability of Harish Arora, this Court is convinced that grant of anticipatory bail, to the applicant, at this juncture and at this stage, has the pernicious potentiality of derailing the investigative process.

14. This Court also finds the reliance, by Mr Joon, on the proceedings before they learned ADJ, in Civil Suit 1149/2017, and the interim orders passed, in the said proceedings, in his favour, to be misplaced, insofar as the present application is concerned. A reading of the orders, dated 8<sup>th</sup> February, 2018 and 22<sup>nd</sup> May, 2018, passed by the learned ADJ, reveal that interim protection has been extended, to the applicant, against dispossession, in the said proceedings, only because Harish Arora was evading service, thereby inviting adverse

inference against himself. The complainant was not a party to the said proceedings, and the learned ADJ had, therefore, no occasion to address the question of ownership of the premises, or the dispute arising with respect thereto. In any event, the interim protection, from dispossession, extended to the applicant, by the said orders, cannot amount to an expression of opinion, even tentative, regarding the right and title, of the applicant, to the said property, vis-à-vis the competing right of the complainant thereto.

15. For all these reasons, the present application, seeking bail in anticipation of arrest, is dismissed.

16. All observations contained in this order, it is clarified, are intended only for the purposes of deciding the applicant's application for anticipatory bail, and do not amount to expression of an opinion, even tentative, on the merits of the case.

**C. HARI SHANKAR  
(VACATION JUDGE)**

**JUNE 19, 2018**  
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