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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 08th October, 2018

+ BAIL APPLN. 2366/2018 and Crl. M.A. 33830/2018

ASHU KHAN

..... Petitioner

Through: Mr. Lokesh Kumar Mishra and
Mr. Himanshu Sharma, Advs.

versus

STATE (GOVT OF NCT OF DELHI) Respondent

Through: Mr. Ashish Dutta, APP for
State with SI Pradeep Kumar,
PS – Model Town, Delhi
Mr. Kanwar Kochhar, Adv. for
complainant

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner had earlier moved bail application bearing No. 2465/2016 which was withdrawn on 03.07.2018 on the basis of submissions made by the counsel then engaged that he had been instructed to do so. At the time of withdrawal of the said bail application, the petitioner had also informed the Court that he would like to appear before the investigating officer and, thereafter, if need be, apply for regular bail in the event of he being arrested.
2. After three months, the present application has been moved again for release on anticipatory bail under Section 438 Cr.P.C. Similar application was earlier moved (bearing No. 2582/2018) before

the Court of Sessions, which was described as sixth such application, it having been dismissed by Sessions Court on 01.10.2018.

3. Status report is filed by the State. It reveals that the petitioner has been evading joining investigation till date and process under Section 82 Cr.P.C. has consequently been issued against him.
4. The counsel present for the petitioner at this stage started arguing that the petitioner is an illiterate person who was surprised on being told that his previous application has been withdrawn on 03.07.2018 by the earlier counsel, his explanation being that he had not given any such instructions to the counsel.
5. On being asked to show the pleadings in above regard, the counsel present submits that he has not made any averments to such effect in the present application. If such were the instructions *vis-a-vis* the past conduct, pleadings were definitely required to be made. If such were the scenario *vis-a-vis* the conduct of the counsel previously engaged, there was also a need to seek explanation from him. No complaint admittedly has been lodged till date against the previous counsel for making submissions 'without instructions' as is orally submitted. Since there are no pleadings to such effect, it is clear that the counsel present is trying to invent theories in order to mislead the Court.
6. Having regard to the allegations in the case forming subject matter of investigation through FIR no.242/2016 of police station Model Town involving offences punishable under Sections 420, 406

34 of the Indian Penal Code, 1860 (IPC), it is seen that the first informant is stated to have been cheated by the petitioner and his associates on the false representation of making available to him certain motor vehicles (in damaged condition), inducing him to part with money, the promised vehicles not having been made available. When persuaded, the appellant handed over certain cheques through co-accused Avinash Jain which were later disowned. It was claimed by the petitioner that he had passed on money to the complainant through RTGS, the documents respecting which, upon investigation, were found to be forged and fabricated.

7. The allegations in the case at hand are quite serious. The petitioner is shown to have criminal antecedents, he also being involved in a number of other cases including FIR no.525/14 under Sections 406, 420, 34 IPC, P.S. Burari, FIR no.336/11 under Section 420 IPC PS Burari, FIR no.283/11 under Section 419, 420, 376, 120B IPC, PS Burari.
8. In the given facts and circumstances, no case is made out for release of the petitioner on anticipatory bail.
9. The petition and the application filed therewith are dismissed.

R.K.GAUBA, J.

October 08, 2018
PB/yg