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

% Date of decision: 27th May, 2019

+ **BAIL APPLN. 1197/2019**

PAWAN KAMRA

..... Petitioner

Through: Mr. Mukesh Kalia and Mr.
Akshay Kumar Verma, Advs.

versus

STATE

..... Respondent

Through: Mr. Ashish Dutta, APP with
Insp. Arun Chauhan, ACB, Delhi

CORAM:

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J. (ORAL)

1. This order shall govern the disposal of the application filed under Section 438 of the Code of Criminal Procedure, 1973 (Cr.P.C.) read with Section 482 of the Cr.P.C. for the grant of anticipatory bail to the petitioner in FIR No.11/2011 dated 2.12.2011, under Section 13(1)(d) of the Prevention of Corruption Act, 1988 ('PC Act') read with Sections 120-B/420 of the Indian Penal Code, 1860 ('IPC'), registered at Police Station: ACB Civil Lines, Delhi.

2. The case of the prosecution is that the complainant had filed a complaint dated 23.5.2007 addressed to the Central Vigilance Commissioner alleging that property bearing No.31, G.T. Karnal Road, Near Rana Pratap Bagh, Delhi-110033 measuring 5 bighas 14 biswas bearing Khasra No.804/24-26 of Village Sadhara Kalan was

acquired by the Government vide award No.107/86-87. It is further alleged by the complainant that the possession of this land was taken by the government officials on 23.9.1986 but it is still in physical possession of private persons, namely, Mr. Rajan Sood and Mr. Rakesh Sood. It is further alleged that on the basis of the aforesaid complaint a formal FIR was registered on 2.12.2011 by the police under Section 13(1)(d) of the PC Act read with Section 120-B of the IPC. It is further alleged that the police had investigated this case for about 7 years and thereafter, the petitioner was telephonically informed by the investigating agency on 30.8.2018 requiring his presence for the purpose of investigation in the present case. The petitioner joined the investigation on the very next day, i.e. on 31.8.2018, and, thereafter, on 24.9.2018 and further on subsequent dates. It is further alleged that when the petitioner was posted as Tehsildar during the relevant time, he was very well aware of the status of the land that the same has been acquired by LAC, L&B, DDA and a Government award No.107/86-87 was also passed. It is further alleged that the order of the petitioner in the capacity of Tehsildar declaring Mr. Rajan Sood, Mr. Rakesh Sood and Mrs. Raj Kumari Sood as *Gair Marushi* and *Marushi* has been passed only to give undue benefit to the beneficiaries in contravention of settled procedure of law.

3. Status report stands filed wherein it is stated that the petitioner played the mischievous role by declaring Mr. Rakesh Sood, Mr. Rajan Sood and Mrs. Raj Kumari Sood as *Gair Marushi* on 10.12.1996 and subsequently, *Marushi* on 10.4.1997 on the government land. As per

office procedure in practice, status of a land should be verified from LAC Branch and the notifications passed by the Revenue Department should be gone through before passing the orders of *Gair Marushi* and *Marushi*, respectively, but the petitioner deliberately overlooked the said procedure. It is further stated in the status report that the petitioner did not co-operate at all during his examination. Neither he submitted the documents nor he disclosed any other official involved in the process and he succeeded in concealing the relevant documents relating to the visit report dated 9.12.1996, *Gair Marushi* order file dated 10.12.1996 and *Marushi* order file dated 10.4.1997, and gave the benefit of ownership rights despite knowing that the piece of land was not an agricultural land.

4. Learned counsel for the petitioner stated that the petitioner passed the order in question on the basis of the records which were available to him and he could not have known whether the land was acquired or not.

5. Learned counsel for the petitioner further submitted that in case there was any grievance against the order of the petitioner which was passed by him in a quasi-judicial proceedings, the Department could have challenged the same. Even otherwise, the land in question, i.e. the land comprised in Khasra No.804/24-26 (5-14) to the extent of 4 bighas 6 biswas in Village Sadhora Kalan, Delhi, was the subject matter in the W.P.(C) 1034/2015 titled as Rajan Sood & Anr. v. Government of NCT of Delhi & Ors. wherein the Division Bench of this Court vide judgment dated 30.8.2016 held that the acquisition proceedings initiated under the Land Acquisition Act, 1894 in respect

of the subject lands are deemed to have lapsed. Hence, there is no case or cause for the filing of the charge-sheet against the petitioner.

6. However, learned APP for the State has relied upon the status report and submitted that as per the *Girdhwari* Report dated 17.10.1984 and onwards, the “*Rakva of this village is build-up*”. It is clear that the said land was not an agricultural land. The entire process of granting *Gair Marushi* and *Marushi* right to Mr. Sood was illegal, whereas the original owner is Mr. Shiv Kumar Seth. The status was not changed in *Khasra Girdhwari* by the petitioner even after his visit dated 9.12.1996 of the said land. As per office procedure in practice, the status of a land should be verified from LAC Branch and the notifications passed by the Revenue Department should be gone through before passing the orders of *Gair Marushi/Marushi*, respectively. But, the petitioner deliberately overlooked the said procedure. In the year 2018, the whereabouts of the petitioner was obtained from the Revenue Department and it was found that he is presently posted as a Sub-Regional Employment Officer at Directorate of Employment at Pusa. He was summoned to join the investigation but instead of joining investigation, he filed the anticipatory bail before the Sessions Court on 14.9.2018. Thereafter, the Sessions Court granted interim protection to the petitioner and after getting the protection, the petitioner joined the investigation on 24.9.2018. During examination, he did not co-operate at all. Neither did he submit the documents nor did he disclose the name of any other official involved in the process. Thereafter, the Sessions Court was informed about his non co-operating attitude and accordingly, the

Sessions Court dismissed the anticipatory bail application of the petitioner vide order dated 5.11.2018. Learned APP further submitted that the investigation of this case is in progress and evidence is being gathered regarding the role of other revenue officials also. It is also submitted by the learned APP for the State that the judgment dated 30.8.2016 relied upon by the petitioner is of no help since the crime was committed by the petitioner earlier in time. The later developments or the judgment cannot wash out the illegality and crime committed by the petitioner earlier.

7. It is evident from the report that before passing any order of the aforesaid kind, the procedure in practice is that status of land should have been verified from the LAC Branch as well as the notifications passed by the Revenue Department. However, in this case, *prima-facie*, the petitioner neither verified anything from the LAC Branch nor stated to have gone through the notifications.

8. The petitioner had earlier moved an application under Section 438 of the Cr.P.C. before the Sessions Court which was dismissed vide order dated 5.11.2018 and the relevant portion of the order passed by the Sessions Court is as under:

“4.) In this case, applicant being the Tehsildar of the area declared Sudershan Sood, Mrs. Rajkumari Sood and Rajan Sood as Marushi on 10.4.96 on the application filed by them. Thereafter, on 10.4.97 they were declared Gair Marushi by the applicant in his capacity as Assistant Collector Grade-I. According to the prosecution, such declaration of Marushi/Gair Marushi can be done only with respect to the agriculture land under Punjab Tenancy Act 1887, whereas as per the Girdawari report dated 17.10.84, the

Rakba of this village has been shown as built up. Not only that the applicant allegedly has also visited/inspected the property in question before passing the order of Marussi/Gair Marussi, so it cannot be said that he was not aware that area is not an agriculture land.

Apart from this it has also been alleged that the owner of the property was not given the proper opportunity to be heard so that the actual status of the beneficiary could have been revealed.

The averment of the prosecution that before passing such order despite having no information with respect to the acquisition of the land, then also as per the office procedure and practice status of land should have been verified from the LAC branch, appears to be reasonable one. Moreover, Halqa patwari of the area cannot be said to be not aware of such acquisition. Similarly, the factum of declaring Gair Marussi of non agriculture land is also an important aspect of the alleged offence against the applicant.

It has been further averred that the investigation is still going on regarding the aspect as to why the information with respect to the acquisition was not entered in the revenue record, the role of the accused in concealment of such important information in the record is also being verified.

The applicant is stated to have concealed the relevant documents relating to the proceedings of Marushi/Gair Marushi and despite having joined the investigation, not cooperating and refusing straight away.

5.) Therefore, considering the facts and circumstances, the stage of investigation and the role of the applicant, I do not find any ground to grant anticipatory bail U/s 438 CrPC to the applicant. Application is dismissed. Interim protection granted vide order 4.10.2018 is hereby stand vacated. Copy of the order be given dasti.”

9. There is no doubt that the anticipatory bail may be granted when there is material on record to show that prosecution was inherently doubtful or where there is material on record to show that there is a possibility of false implication. However, when the element of criminality is involved; the custodial interrogation is required and/or the other aspects and facts are required to be unfolded in investigation, the applicant is not entitled for anticipatory bail.

10. It is also well-settled law that while considering the question of grant of anticipatory bail, the Court *prima facie* has to look into the nature and gravity of the alleged offence and the role of the accused. The Court is also bound down and must look into, while exercising its power to grant bail, the antecedents of the applicant and also the possibility of the applicant fleeing from justice, apart from other factors and parameters in view of the facts of each and every case.

11. Learned counsel for the petitioner, on the query of the Court, fairly submitted that the petitioner declared Mr. Rakesh Sood, Mr. Rajan Sood and Mrs. Raj Kumari Sood as *Gair Marushi* on 10.12.1996 and subsequently, *Marushi* on 10.4.1997.

12. In the matter of ***Dr. Subhash Kashinath Mahajan v. State of Maharashtra & Anr.***, in Criminal Appeal No.416/2018, decided on 20.3.2018, the Supreme Court has held as under:

“112. The following factors and parameters can be taken into consideration while dealing with the 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 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 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.”

13. The custodial interrogation of the petitioner is required in this case to know the *modus operandi* as well as the total number of persons involved and their whereabouts in the commission of the alleged offence and also to find out that in how many cases such orders were passed by the petitioner and/or the Department during the tenure of the petitioner in that Department.

14. The investigation is stated to be still going on. The petitioner is stated to have not co-operated in the investigation and concealed the documents relating to the proceedings as well as taking into consideration the nature and gravity of the acquisitions, the stage of the investigation and the alleged role of the accused, this Court does not find any merit in the anticipatory bail application of the petitioner. The anticipatory bail application is, accordingly, dismissed.

15. It is clarified that whatever is discussed or observed hereinabove is only a *prima facie* view of this Court, at this stage, and the same shall not tantamount to any expression or opinion on the merits of the case.

CHANDER SHEKHAR, J

MAY 27, 2019/rk