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

% **Judgment delivered on: 18.10.2019**

+ **BAIL APPLN. 2433/2018**

Mukesh Gupta @ Mukesh Kumar Gupta Petitioner

Through: Mr.Praveen Garg, Advocate
versus

THE STATE OF DELHI Respondent

Through: Mr G.M.Farooqui,
APP for State alongwith
SI Tasbir, PS NIA.
Mr. Manav Guptaq, Ms. Esha
Dutta, Mr. Sahil Garg, Advs.
for R-2.

CORAM:

HON'BLE MR. JUSTICE BRIJESH SETHI

J U D G M E N T

BRIJESH SETHI, J (ORAL

1. Vide this order, I shall dispose of an anticipatory bail application filed on behalf of the petitioner Mukesh Goel @ Mukesh Kumar Gupta under section 438 Cr.P.C. in FIR No. 541/18 u/s. 380 IPC, PS Narela, Delhi.

2. Ld. Counsel for the petitioner has prayed for anticipatory bail on the ground that petitioner is innocent and is being falsely

implicated in the present FIR. The petitioner had taken on rent the ground floor of the premises no. A-136, DSIIDC, Narela Industrial Park, Delhi-110040 from the complainant for running factory. The complainant is a Chartered Accountant. The petitioner was his tenant for about 3 years 7 months w.e.f. 01st July, 2014. Lease-deed has expired on 30.11.2017. Since the complainant was demanding revision of rent, the applicant did not renew the lease and vacated the premises in the January, 2018 and handed over the possession to the complainant. After vacating the premises, the applicant had demanded return of security amount of Rs. 1,50,000/-. However, the complainant did not clear the same on one pretext or the another. The complainant has lodged the false first complaint on 27.03.2018 and further complaint to DCP on 02.04.2018 against the petitioner. Perusal of these complaints reveal that complainant was not aware about the exact items being stolen from his premises even after six days of theft. The first complaint dated 27.05.2018 did not contain any allegations of theft of articles and did not disclose commission of offence.

3. It is the case of the petitioner that complainant has improved

its complaint dated 02.04.2010 by making oral statement to the IO, on 10.04.2018 and had added new facts. The complainant had further added facts and improved his oral statement made to IO on 25.07.2018. The complainant has nothing to do with the basement. The basement was rented and possessed by one tenant Mr. Ankur Bansal and the petitioner had no access to the same.

4. The present case has been registered by the complainant in order to pressurize him to forgo his security amount of Rs. 1,50,000/- and to take the liability of electricity theft in which the applicant was not involved at all. The complainant has alleged that he had no access to the basement and had never taken any key of the basement from the complainant.

5. Ld. Counsel for the petitioner submitted that there is no need of interim custodial interrogation of the petitioner. There is delay in lodging the FIR. Petitioner is ready to join the investigation as and when required. Ld. Counsel further submitted that an RTI was also filed by the petitioner regarding the bills/ invoices of purchase of the item alleged to be stolen from the basement of the complainant bearing no. A-136, DSIIDC, Narela Industrial Park, Delhi-110040.

Perusal of the reply of the RTI reveals that complainant was unable to supply the bills of the articles alleged to have been stolen. He has, thus submitted that complainant has made false allegations against the petitioner regarding the theft of articles from his basement. It is submitted that the petitioner is ready to join the investigation as and when required and in these circumstances, it is prayed that petitioner be granted anticipatory bail and SHO/IO be directed to release the petitioner in the event of his arrest.

6. The anticipatory bail application is opposed by the Ld. APP for the State on the ground that the allegations against the applicant/accused are serious in nature. It is submitted that custodial interrogation of the petitioner is required to recover the stolen articles. The petitioner is not co-operating in the investigation. He has, therefore prayed for dismissal of the bail application.

7. I have considered the rival submissions. The present FIR was registered on the complaint of one N.C.Maheshwari who has rented out the ground and first floor to the petitioner Mukesh Gupta, s/o Late Sh. Ram Gupta R/o 130/2, Rameshwar Nagar, Model Town-III, Delhi though one Raju Goel S/o Late sh. Om Prakash R/o 7/26,

Roop Nagar, Delhi . A rent Agreement was also executed between the complainant and the petitioner. In January 2018, the complainant asked the petitioner for renewal of the rent agreement but he didn't pay any heed. Later on, he stopped receiving phone calls of the complainant. On 27-03-18, the complainant visited his property and found a lock on the main gate although whole of the property was found open. The complainant found that on 13-03-18, a raid was conducted by the team of Tata Power Delhi Distribution Limited (TPDDL) with regard to theft of electricity and after that Mukesh Gupta ran away with 7 Desktop Computers, 2 Printers, 2 VSTAI, 2 MCCB and furniture which were lying in the basement of the property. The complainant stated that the above mentioned items have been stolen by the petitioner. On his statement, a case vide FIR No. 541/18, dated 25-07-18, U/S 380 IPC, has been registered at PS Narela and the same is pending investigation.

8. During the course of investigation, the statements of the witnesses have been recorded. The search of the petitioner was made but he did not join investigation and applied for the anticipatory bail. On 10-08-18, by the order of Hon'ble Court, the

petitioner joined the investigation but he didn't co-operate in the investigation and his bail application was dismissed vide order dated 16-08-18 by the Hon'ble court of Ms Bimla Kumari, ASJ, Rohini Courts, Delhi. During further course of investigation, a notice U/s 91 Cr.P.C. was served to the complainant to provide the bills of stolen articles. He provided the copies of bills of some of the items. On 14-10-18 petitioner's house was visited but he was not found present. On this a notice 41-A CrPC was affixed at the house of the petitioner directing him to join investigation on 15-10-18 but he didn't join the investigation. On 16-10-18, the Hon'ble High Court at New Delhi passed an order and directed the petitioner to appear before the Investigating Officer on 18.10.2018 at 3.00 pm and also directed to not arrest him till the next date of hearing.

9. On 18-10-18, as per the directions of Hon'ble High Court, the petitioner came to join the investigation but neither the investigating officer HC Wazir had the copy of order nor the petitioner provided the same and, therefore, on that day he couldn't join investigation on 18.11.18, a notice under Section 41-A CrPC was served upon the petitioner with direction to join investigation on 28.11.18. On

28.11.18, the petitioner joined investigation. During the course of investigation, he stated that he had left the factory in January 2018 but didn't provide the details of vehicles with which he removed his machinery. He also stated that he doesn't know Yash Aggarwal in whose presence on 13-03-18, TPDDL had conducted the raid on the factory premises and prepared inspection report and also Yash Aggarwal had put his signature & mobile number on that report.

10. During further course of investigation, the complainant Mr. N.C. Maheshwari stated that Yash Aggarwal is relative of the petitioner and he is misleading the investigation by not disclosing his whereabouts. Call detail record of mobile number of petitioner i.e. 8447893633 & Yash Aggarwal i.e. 9540368536, (which was mentioned on the inspection report prepared by TPDDL on 13.03.18) were obtained and it was found that both of them were in continuous touch with each other. Even, on 13-03-18, when TPDDL conducted raid on the premises A-136, DSIIDC, Narela, Delhi, both of them were in touch with each other through mobile phone. It is also found that the petitioner was present around the factory. It proves that the petitioner was in possession of the premises No.-136,

DSI IDC, Narela, Delhi, contradictory to his claim that he had vacated the premises in January, 2018.

11. In view of the above facts appearing on record, it prima facie, does not suggest that petitioner was not involved in the commission of the offence. He is not co-operating in the investigation. Custodial interrogation of the petitioner will be required to recover the stolen property. Keeping in view the above facts, nature of allegations, no ground are made out for anticipatory bail to the petitioner. The anticipatory bail application is, therefore, dismissed.

BRIJESH SETHI, J

OCTOBER 18, 2019

Amit