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

+ CRL.M.C. 2668/2019

HARDIP SINGH GILL

..... Petitioner

Through: Mr. Arjun Dewan, Mr. Akash Arora
& Ms. Soumya Vaishy, Advocates.

versus

STATE & ANR

..... Respondents

Through: Mr. Kewal Singh Ahuja, APP for
State with Insp. Manish Kumar, PS
EOW.
Mr. Shailesh Poddar & Mr. Sachin
Gupta, Advocates for R-2.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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09.01.2020

Vide the present petition, the petitioner seeks the setting aside of the order dated 27.04.2019 of the learned ASJ-04 (Central), THC, New Delhi in relation to the FIR No.104/2016, PS EOW under Sections 420/468/471/120B/467 of the Indian Penal Code, 1860 vide which the respondent no.2 i.e. the applicant of that bail application was allowed to be released on anticipatory bail with interim protection having been granted to him for the period of 15 days from the date 27.04.2019 to join the investigation with the Investigating Officer/ SHO, PS EOW on 29.04.2019 and in the event of arrest, was allowed to be released on his filing a personal bond in the sum of Rs.75,000/- with one surety of the like amount to the satisfaction of the Investigating Officer/ SHO, PS EOW

subject to conditions that he would join the investigation of the case as and when required by the Investigating Officer.

The applicant submits that the previous anticipatory bail application of the applicant had been rejected on 31.10.2018 and that there has been substantially no change of the circumstances thereafter and there were no fresh grounds for the grant of anticipatory bail after rejection of the said order. It has inter alia been submitted on behalf of the petitioner placing reliance on the verdict of the Hon'ble Supreme Court in ***"Mahipal Vs. Rajesh Kumar"*** 2019 SCC OnLine SC 1556 with specific reference to observations in paragraphs 26 to 30 of the said verdict, which read to the effect:-

"26. There is another reason why the judgment of the learned Single Judge has fallen into error. It is a sound exercise of judicial discipline for an order granting or rejecting bail to record the reasons which have weighed with the court for the exercise of its discretionary power. In the present case, the assessment by the High Court is essentially contained in a single paragraph which reads:

"4. Considering the contentions put-forth by the counsel for the Petitioner and taking into account the facts and circumstances of the case and without expressing opinion on the merits of the case, this Court deems it just and proper to enlarge the Petitioner on bail."

27. Merely recording "having perused the record" and "on the facts and circumstances of the case" does not sub-serve the purpose of a reasoned judicial order. It is a fundamental premise of open justice, to which our judicial system is committed, that factors which have weighed in the mind of the judge in the rejection or the grant of bail are recorded in the order passed. Open justice is premised on the notion that justice should not only be done, but should manifestly and undoubtedly be seen to

be done. The duty of judges to give reasoned decisions lies at the heart of this commitment. Questions of the grant of bail concern both liberty of individuals undergoing criminal prosecution as well as the interests of the criminal justice system in ensuring that those who commit crimes are not afforded the opportunity to obstruct justice. Judges are duty bound to explain the basis on which they have arrived at a conclusion.

28. In Kalyan Chandra Sarkar v. Rajesh Ranjan MANU/SC/0214/2004 : (2004) 7 SCC 528, a two judge Bench of this Court was required to assess the correctness of a decision of a High Court enlarging the Accused on bail. Justice Santosh Hegde, speaking for the Court, discussed the law on the grant of bail in non-bailable offences and held:

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the Accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind.”

(Emphasis supplied)

29. Where an order refusing or granting bail does not furnish the reasons that inform the decision, there is a presumption of the non-application of mind which may require the intervention of this Court. Where an earlier application for bail has been rejected, there is a higher burden on the appellate court to furnish specific reasons as to why bail should be granted.

30. The perfunctory analysis by the High Court in the present case cannot be sustained. For the reasons indicated above, the appeal is allowed and the order of the High Court enlarging the first Respondent on bail is set aside.”

to submit and contend that the observations made in the impugned order dated 27.04.2019 do not suffice to meet the test of giving a reasoned decision for the grant of the interim protection as granted thereby.

It is essential to observe that the impugned order dated 27.04.2019, takes into account the aspects of a stated settlement having been arrived at between the parties on 30.10.2018 and also indicates of a transaction of Rs.20,00,000/- in the form of a demand draft having been given in the name of the present petitioner. The impugned order also states that the said demand draft had been handed over to the petitioner herein and further states to the effect that the delivery of the said demand draft was not denied on behalf of the present petitioner, though, it was categorically submitted that the said demand draft had not been encashed by the complainant i.e. the petitioner, which is reiterated even now that the said demand draft has not yet been encashed. The copy of the said demand draft is also indicated to have been placed on the record during the course of the proceedings on the anticipatory bail application. It is also indicated vide the impugned order that payments of sum of Rs.10,00,000/- on 03.12.2018, Rs.5,00,000/- on 04.12.2018 and Rs.10,00,000/- on 23.01.2019 were also made to the petitioner by the applicant. It is also indicated vide the impugned order that the complainant i.e. the petitioner herein had sent a mail to the applicant of the bail application i.e. the respondent no.2 apprising him of a receipt of an alert of a transaction of Rs.10,00,000/- on 23.01.2019 which the complainant assumed related to the Lord Buddha Society and stated that it could not be utilized by the petitioner, in as much as, it did not effect the settlement or the ongoing Court cases.

Reliance appears also to have been placed on behalf of the applicant of the bail application i.e. the respondent no.2 on a resolution endorsement dated 01.11.2018, wherein the complainant i.e. the petitioner herein was asserted to have stated that he would not claim any right on the piece of land which was transferred by the applicant i.e. the respondent no.2 in the name of the wife of the petitioner as their share was in the property of the Lord Buddha Society.

The impugned order also reflects to the effect that the respondent no.2 had joined the investigation from the year 2016-18. The factum of an agreement dated 31.01.2018 having been executed between the parties is not indicated to have been refuted, though, it was submitted on behalf of the complainant i.e. the petitioner that the said signatures of the complainant thereon were taken by pressurizing him, in relation to which a Court query is indicated to have been put by the learned ASJ-04, Central at the time of the consideration of the application for anticipatory bail whether any legal action had been taken qua such signatures, in relation to which it was informed that a legal notice was sent to the counsel for the respondent no.2 herein but that the complainant had not taken any further steps in relation thereto.

The amounts in relation to the transactions made in December, 2018 are stated to have been returned to the applicant, though the amount in relation to the transaction of 23.01.2019 was informed to be still lying with the complainant though the complainant had written to the bank for returning of the same to the respondent no.2. It had been informed by the Investigating Agency during the course of consideration of the anticipatory

bail application that the specimen signatures of the applicant of that application i.e. the respondent no.2 were required and that the custodial investigation was required and that the certificate of land was only a photocopy and that the original was with the applicant in relation to which it had been informed on behalf of the applicant i.e. the respondent no.2 that the photocopy of the certificate of land had been obtained by the applicant i.e. the respondent no.2 herein from the CBSE through the RTI and he did not have the original of the same and that the same may be with the complainant i.e. the petitioner herein. It was also submitted that the applicant of the anticipatory bail application was ready to join the investigation and was ready to give his signatures whenever required as well as to give the requisite documents of the contemporary period with the signatures qua the certificate of land.

It has been now informed on behalf of the State that the police report under Section 173 of the Cr.P.C., 1973 has been filed on 29.07.2019. Inspector Manish Kumar, EOW informs that the signatures of the respondent no.2 herein i.e. the applicant of the anticipatory bail application had been taken and the specimen signatures of the applicant i.e. the respondent no.2 herein are stated to have been sent to the FSL, the FSL result is reported to be still awaited even as per the police report under Section 173 of the Cr.P.C., 1973 dated 29.07.2019. It is also informed on behalf of the State and on behalf of the respondent no.2 that the matter is pending before the learned Trial Court for the date 20.01.2020 and that cognizance of the offences had been taken vide order dated 25.11.2019.

The consideration of the aspect of the anticipatory bail to the

applicant vide the impugned order dated 27.04.2019 which has taken into account the aspects as delineated hereinabove, cannot be said to have been done without application of mind and it cannot be said that by mere observance of the words that keeping in view the totality of the facts and circumstances of the case and the developments after the dismissal of the previous anticipatory bail application on 30.10.2018, the impugned order dated 27.04.2019 had granted the anticipatory bail without any application of mind.

Taking into account the factum that the police report under Section 173 of the Cr.P.C., 1973 in the matter has already been filed and cognizance has already been taken, the petition is disposed of with observations and directions to the effect that the impugned order dated 27.04.2019 shall enure till the next date before the learned Trial Court subject to the application for bail being filed by the applicant before the date of hearing fixed before the Trial Court which is stated to be 20.01.2020 with further directions that the respondent no.2 shall not leave the country.

The petition stands disposed of.

Nothing stated hereinabove shall amount to any expression on the merits or demerits of the bail application, if any, filed before the learned Trial Court.

Copy of the order be given Dasti, as prayed.

ANU MALHOTRA, J

JANUARY 09, 2020

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