

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

Date of decision: 07th October, 2021

IN THE MATTER OF:

+ **BAIL APPLN. 3693/2021 & CRL.M.A. 16147/2021**

KALA RAM @KAMLESH

..... Petitioner

Through: Mr. R. K. Tarun and Mr. Rohit Shukla, Advocates.

versus

STATE

..... Respondent

Through: Mr. Amit Chadha, APP for the State with SI Thakur Singh, PS Spl. Staff/Central District.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J (ORAL)

1. This application under Section 438 Cr.P.C. is for grant of bail to the petitioner in the event of arrest in FIR No.240/2021 dated 07.07.2021, registered in Police Station D.B.G. Road for offences punishable under Sections 392/34 IPC.

2. Shorn of details, the facts, leading to the instant bail application, are as under:

- a) The instant FIR has been registered on the complaint of one - *Chintu Gupta S/o of Sh. Ram Gopal Gupta*, who states that he has been working as a cash delivery boy with one – *Sunil Harjai*. It is stated that the complainant was engaged by another person namely *Nitesh Jain*, who is known to *Sunil Harjai*. It is stated that on 07.07.2021 at

about 11:30 AM, he got a call from *Nitesh Jain* to collect a sum of Rs.32.5 lacs from one – *Tonu Modi's* having its office at C-45/5, 1st Floor, Lawrence Road Industrial Area, Delhi. It is stated that as per the instructions from *Nitesh Jain*, the complainant collected the said amount of money from the said address and kept it in a bag while he was going towards his destination near a Jeevan Mala Hospital, New Rohtak Road, Delhi. It is stated that two persons came on a Red & Black Coloured TVS scooty without any number plate and stopped their scooty near the motorcycle of the complainant. It is stated that the person riding the scooty was wearing a black colour T-shirt and the pillion rider was wearing a purple colour T-shirt. It is stated that the two persons tried to snatch the bag from the complainant and when the complainant resisted, they pushed the complainant and the pillion rider pointed a pistol like weapon on the complainant and threatened him to hand over the bag. It is stated that the amount of Rs.32.5 lacs, complainant's keys and his Aadhar Card was taken by the two persons and they both fled away from the spot. Subsequently, the instant FIR No.240/2021 has been registered at Police Station D.B.G. Road for offences punishable under Sections 392/34 IPC.

- b) The petitioner filed an application under Section 438 Cr.P.C being Bail Application No.2415, before the Sessions Court, seeking anticipatory bail. However, the same was dismissed by the learned Additional Sessions Judge (Electricity) – 01, Central, Tis Hazari Courts, Delhi *vide* order dated 28.09.2021. The learned ASJ has observed that the petitioner has the previous involvements. It is also stated that the co-accused – *Ravi Gupta*, who is stated to be the pillion

rider, gave details of the plan hatched by both of them before the commission of the present crime. It is also noticed by the learned ASJ that the co-accused has given a detailed statement laying out the specific role of the *Kala Ram @Kamlesh* (petitioner herein) in the commission of the crime.

3. The petitioner, thereafter, filed the instant bail application under Section 438 Cr.P.C before this Court for grant of bail to the petitioner in the event of arrest. Learned counsel appearing for the petitioner raised the following contentions:

- i. That no location charts have been prepared by the investigating agency to connect the petitioner with the alleged offence;
- ii. That no sketch of area has been prepared;
- iii. That the identification test parade of the co-accused was sought for only after 20 days of arrest;
- iv. That the petitioner was driving previous scooty and he did not use the said weapon as stated in the complaint;
- v. That there are no CCTV footages of the alleged incident;
- vi. And lastly, that the complainant was working with *Nitesh Gupta* only for two month and it is yet not known that the said amount was there in the bag or not;

4. It is further contended by the learned counsel for the petitioner that merely on the strength of a disclosure statement of the co-accused, the petitioner cannot be denied anticipatory bail. For this proposition, the learned counsel for the petitioner relies upon an Order of this Court in Bail Application No.1435/2010 dated 20.08.2021 case titled as **Manoj Rana vs. State**. He further states that the Trial Court ought not to have rejected the

bail application of the petitioner only on the basis of the antecedents. He further states that the antecedents of the petitioner are of no consequence and for this purpose, the learned counsel for the petitioner relies upon an Order of this Court in CRL.A. 178/2015 dated 09.07.2015 in case titled as **Sachin vs. State of NCT of Delhi.** Learned counsel for the petitioner further relies upon a Judgment of Hon'ble Supreme Court in **Prabhakar Tewari vs. State of U.P. & ANR.** (CRL.A. 152/2020) to contend that the severity of the allegations alone cannot be a ground for rejecting the anticipatory bail.

5. Per contra, Mr. Amit Chadha, learned APP for the State, vehemently opposes the instant bail application by contending that the case is now no longer limited only to the disclosure statement of the co-accused. He states that the investigation has revealed the complicity of the petitioner in the alleged crime. He states that on the disclosure of the co-accused, the keys and the Aadhar Card of the complainant have been recovered 15 Kilometres away from the place of alleged incident. He states that there are CCTV footages of the petitioner and the co-accused, who went to Rajasthan after committing the alleged offence and stayed in a hotel. He further states that the petitioner is a habitual offender and has involved in total six (6) other cases in Delhi, including three cases with the co-accused. He further states that besides, this there is also a case registered against the petitioner, which is pending before the Hon'ble High Court of Gujarat in **Criminal Misc. Application No.12621/ 2021**, registered at Police Station Palanpur East, Distt – Banaskantha, Gujarat for the offences under Sections 65(A), 116(B) and 98 (2) of the Prohibition Act and is coming up for hearing on 11.10.2021. He further states that the Call Detail Records (CDRs) disclose that the petitioner was continuously in touch with the co-accused – *Ravi*

Gupta.

6. Mr. Amit Chadha, learned APP, on instructions from SI Thakur Singh, Police Station Special Staff/Central District further states that the petitioner is a resident of Sirohi, Rajasthan. He states that despite raids being conducted, the petitioner is evading arrest and as a result of which the proceedings under Section 82 Cr.P.C. has already been initiated against the petitioner. He further, on instructions, states that the location charts of the petitioner and the co-accused in Delhi as well as in Rajasthan have been prepared. He, therefore, states that the custodial interrogation of the petitioner is required in this case.

7. Heard, learned counsels for the parties and perused the material on record.

8. The parameters for granting anticipatory bail have been succinctly laid down in Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694, wherein the Supreme Court has observed 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 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. A perusal of the parameters for granting anticipatory bail laid down

by the Hon'ble Supreme Court shows that the Court must consider the seriousness of the offence, the nature of investigation that is required before the charge sheet is filed, the likelihood of the petitioner's absconding from justice, the antecedents of the accused and chances of the petitioner tampering with evidence or threatening the witnesses.

10. The order of this Court relied upon by the petitioner in **Manoj Rana vs. State** (Supra) is not applicable to the facts of this case because the charges in that case were under Sections 420/468/471/511/120B IPC wherein the evidence was primarily documentary in nature unlike the instant case.

11. The order of this Court relied upon by the petitioner in **Sachin vs. State of NCT of Delhi** (Supra), wherein the proposition raised by the petitioner that the antecedents of the petitioner is irrelevant, is also not applicable in this case because that was a case of the conviction of the petitioner and the antecedents of an accused is not a relevant factor while convicting an accused.

12. The Judgment of the Hon'ble Supreme Court relied on by the petitioner in **Prabhakar Tewari vs. State of U.P. & ANR** (Supra) is not applicable to the facts of the present case. In that case the Supreme Court chose not to interfere with the orders of the High Court and has not laid down that the severity of the allegation alone cannot be a ground for rejecting the anticipatory bail of the accused. As stated in **Siddharam Satlingappa Mhetre** (supra) the nature and gravity of the accusation and the exact role of the accused are the prime factors that has to be considered while granting or refusing to grant anticipatory bail to the accused.

13. As stated by Mr. Amit Chadha, learned APP for the State, that the

stage of investigation in the present case is not limited to only the disclosure statement of the co-accused. The learned APP for the State, on instructions, states that there are CCTV footages showing that the petitioner and the co-accused, after committing the crime have gone to Rajasthan and stayed in a Hotel there.

14. The petitioner and the co-accused are involved in three more cases. The antecedents of the petitioner is a very important factor which has to be kept in mind before deciding an application for anticipatory bail. The investigation *qua* the petitioner is still ongoing. The petitioner is evading arrest and the chances of the petitioner threatening the complainant or tampering with evidence cannot be ruled out. This Court, therefore, is of the opinion that the petitioner is not entitled to the benefit of bail in the event of arrest. Custodial interrogation of the petitioner is required for unearthing the plans hatched by the petitioner and the co-accused and the way the plan was executed and also for the recovery of money.

15. Accordingly, the application stands dismissed along with all the pending application(s), if any.

OCTOBER 7, 2021

S. Zakir

SUBRAMONIUM PRASAD, J