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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 22.11.2022

Judgment delivered on: 25.11.2022

+ BAIL APPLN. 3817/2020

RAJEEV ARORA

..... Petitioner

Through: Mr. Jatan Singh, Mr. Siddharth Singh,
Mr. Sudharshoon Joon and Mr. Saurav
Joon, Advocates.

versus

STATE

..... Respondent

Through: Mr. Laksh Khanna, APP for State
with Inspector Vipin Yadav and ASI
Rajpal Singh from PS Budh Vihar.

+ BAIL APPLN. 3821/2020

NAVEEN SAGAR

..... Petitioner

Through: Counsel (appearance not given).

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Mr. Laksh Khanna, APP for State
with Inspector Vipin Yadav and ASI
Rajpal Singh from PS Budh Vihar.

+ **BAIL APPLN. 3884/2020**
SANJAY AWASTHI Petitioner
Through: Counsel (appearance not given).

versus

STATE (GOVT. OF NCT OF DELHI) Respondent
Through: Mr. Laksh Khanna, APP for State
with Inspector Vipin Yadav and ASI
Rajpal Singh from PS Budh Vihar.

+ **BAIL APPLN. 4381/2021**
MOHD. AKHTAR Petitioner
Through: Mr. Sanjay Mani Tripathi, Advocate.

versus

THE STATE NCT OF DELHI Respondent
Through: Mr. Laksh Khanna, APP for State
with Inspector Vipin Yadav and ASI
Rajpal Singh from PS Budh Vihar.

+ **BAIL APPLN. 2652/2022**
RAMAN ABROL Petitioner
Through: Mr. Mukesh Kalia, Mr. B.S. Sharma
and Ms. Kanika Vohra, Advocates.

versus

THE STATE, GOVERNMENT OF NATIONAL CAPITAL
TERRITORY OF DELHI Respondents

Through: Mr. Laksh Khanna, APP for State
with Inspector Vipin Yadav and ASI
Rajpal Singh from PS Budh Vihar.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. Four separate applications under Section 438 Cr.P.C. read with Section 482 Cr.PC for grant of anticipatory bail have been preferred on behalf of the petitioners, **Rajeev Arora** (BAIL APPLN. 3817/2020), **Naveen Sagar** (BAIL APPLN. 3821/2020), **Sanjay Awasthi** (BAIL APPLN. 3884/2020) and **Mohd. Akhtar** (BAIL APPLN. 4381/2021) in FIR No. 54/2020, under Section 420/120B/34 IPC, registered at PS Budh Vihar.

An application for regular bail under Section 439 Cr.PC has also been preferred on behalf of the petitioner **Raman Abrol** (BAIL APPLN. 2652/2022) in the aforesaid FIR.

2. In brief, as per the case of prosecution, complainant Mohd. Iqbal alleged that he is a permanent resident of Lal Bazar, Alamdhar Colony, Srinagar, Kashmir and presently residing with one of his acquaintance Shri Prashant Kumar at Sector-5, Rohini, Delhi. He had an ancestral Kashmir-Blue-Sapphire (Neelam) stone weighing 13.03 carats, which he intended to sell on account of dire need of money for purpose of treatment of his wife. For the aforesaid purpose, he discussed the same with one **Fayaz** R/o Baramullah, Kashmir (proclaimed offender in present case), who was

already known to him. About five days prior to lodging of FIR i.e. 25.02.2020, **Fayaz** called him and informed that he could help him in selling the Neelam to some prospective buyer. Further on 22.02.2020, **Fayaz** fixed a meeting at Crown Plaza, Sector-10, Rohini in room no. 1509 with one **Raman** (petitioner in BAIL APPLN. 2652/2022) who claimed himself to be a South Indian and having his in-laws at Jammu. **Fayaz** informed the complainant that **Raman** would give an amount of Rs. 10 lakhs as token amount after seeing the Neelam and the balance amount would be paid after testing of Neelam in laboratory. Thereafter, on 24.02.2020, **Fayaz** came near the residence of complainant along with his associates and asked him to show the Neelam. Complainant insisted them for coming inside the house, but he was asked to show Neelam to them in the Innova Car. It is further the case of complainant that he came near to Car bearing No. MH-05-BJ-9800 and handed over the Neelam to **Raman** and another person who was sitting in front seat. At aforesaid time, suddenly 4 to 5 persons came shouting 'Police-Police' on which **Raman** ran away from the place after keeping the Neelam with him. As such it was alleged that **Raman** and **Fayaz** in connivance with 4-5 associates, took the Neelam by deception.

3. During investigation, complainant Mohd. Iqbal claimed that the cost of the said Neelam was more than Rs. 3 Crores and relied upon testing report dated 12.02.2019 from International Gem Institute Testing Lab Private Ltd., Jaipur, Rajasthan and Gemstone report dated 16.08.1999 from another testing lab at Switzerland. It is further the case of prosecution that CCTV footage of meeting on 22.02.2020 of complainant Mohd. Iqbal with accused **Fayaz** and other associates was obtained and as per hotel records, **Fayaz** had checked in the hotel Crown Plaza, Rohini on 22.02.2020 at 2.00 pm and

checked out on 23.02.2020 at 11.53 am. Further, **Raman Abrol** (petitioner in Bail Application No. 2652/2022), **Fayaz Ahmad**, complainant Mohd. Iqbal and Prashant were seen in the CCTV footage dated 22.02.2020. Also **Akhtar Gujjar** (petitioner in BAIL APPLN. 4381/2021) was also seen in the hotel. It was further revealed that accused **Raman Abrol**, **Fayaz Ahmad Mir** alongwith two other persons namely **Akhtar Gujjar** and Manjoor Ahmed Vani (Constable) had stayed in Hotel Ivory Place, Karol Bagh, New Delhi. As per records provided by the hotel, **Fayaz Ahmad Mir** (proclaimed offender) alongwith **Akhtar Gujjar** (Petitioner in Bail Application No. 4381/2021) and Manjoor Ahmed Vani had stayed in Hotel Ivory Place, Karol Bagh on 22.02.2020 and had checked out on 24.02.2020 after the incident. The CCTV footage provided by the hotel also confirmed the presence of **Raman Abrol**, **Fayaz Ahmad Mir**, **Akhtar Gujjar** and Manjoor Ahmed Vani. Accused **Raman Abrol** also had Car No. JK-02-BT-0046 Swift Car which was parked near Hotel Ivory Place, Karol Bagh.

4. It was also revealed in investigation that on 24.02.2020 (i.e. the date of incident) **Raman Abrol** alongwith **Fayaz** and **Naveen Sagar** (petitioner in BAIL APPLN. 3821/2020) had come to meet complainant in Innova Car No. MH-05-BJ-9800 where the other accused **Rajeev Arora** (petitioner in BAIL APPLN 3817/2020) and **Sanjay Awasthi** (petitioner in Bail Application No. 3817/2020) were present at the spot in another Maruti Dezire Car bearing registration No. DL-2CAZ-1389 owned by **Rajeev Arora** (petitioner in Bail Application No.3817/2020).

Further the CCTV footage of the place of occurrence on 24.02.2020, reflected that Innova Car entered the place of occurrence Rajiv Enclave,

Sector-5, Rohini at 2.16 pm and at about 2.20 pm, accused **Raman** was seen outside the Car. About 2.26 pm, accused **Naveen Sagar** and **Fayaz** were seen together and had entered the kothi no. 5 and at 2.33 pm, they came out of same. At 2.47 pm, complainant Mohd. Iqbal alongwith his friend Prashant came to the place of occurrence. Thereafter, accused **Raman Abrol** after allegedly getting the precious Neelam from complainant, came out running at 2.57 pm and sat in the Maruti Dezire Car No. DL-2CAZ-1389 in which **Sanjay Awasthi** and **Rajeev Arora** were sitting and fled away in the car of **Rajeev Arora**. As per the CCTV footage, **Sanjay Awasthi** and **Rajeev Arora** were seen sitting in Martuti Dezire Car No. DL-2CAZ-1389 which belongs to **Rajeev Arora**. Further **Akhtar Gujjar** (petitioner in BAIL APPLN. 4381/2021) is also seen in the CCTV footage at the place of occurrence. The CDR details of the mobile phones of petitioners also confirmed that they were in contact with each other.

5. The treatment papers of the wife of the complainant Smt. Mujamil Jan were also collected during investigation which confirmed the version of complainant that his wife was undergoing treatment. It was also revealed that another FIR No. 46/2019 dated 11.03.2019, under Section 379/34/120B IPC was registered at PS Jagatpuri at the instance of the complainant for theft of the aforesaid Neelam which was subsequently settled and compounded. Further, statement of head of Masjid Muhamadia (Hanfia) was recorded under Section 161 Cr.PC, who confirmed that the said Neelam had been returned back to the complainant in the aforesaid case.

6. It is further the case of prosecution that accused **Raman Abrol** was arrested after he surrendered on 14.01.2021. Prior to same he was on interim

protection, vide order dated 14.10.2020 in BAIL APPLN. 2497/2020, as informed by learned counsel for the petitioner. Further as per the case of prosecution, accused **Fayaz** is absconding and proceedings under Section 82 Cr.P.C. have been initiated against him.

Learned APP for the State has also clarified that the chargesheet stands filed only against accused **Raman Abrol**, while the remaining four accused (applicants) have been placed in column no. 12 at the time of filing of the chargesheet in view of interim protection granted to the petitioners by the High Court vide different orders passed in 2020.

7. Learned counsel for petitioner/accused **Raman Abrol** (BAIL APPLN. 2652/2022) submits:

(a) That the petitioner was initially granted protection by Hon'ble High Court vide order dated 14.10.2020 in BAIL APPLN. 2497/2020, but since the application was withdrawn on 22.12.2020, accused surrendered before the learned Trial Court. Further the accused remained on interim bail as per HPC recommendations from 17.05.2021 and surrendered on 20.07.2022. It is urged that petitioner had already joined the investigation and no recovery has been effected.

(b) That the chargesheet against the petitioner already stands filed and the liberty of bail granted on earlier occasions has not been misused by the petitioner.

(c) That the case is triable by learned MM and the complaint filed by the complainant does not inspire confidence as an earlier FIR No. 46/2019, under Section 379 IPC was also registered by complainant in respect of same Neelam which was settled and compounded. The fact that

the said Neelam was recovered, does not find corroboration from record of aforesaid case.

(d) That the present FIR No. 54/2020 has been lodged on 25.02.2020, under Section 420/120B/34 IPC and no test report in between 11.03.2019 till the lodging of present FIR has been obtained to corroborate if the Neelam was actually in possession of the complainant.

8. Learned counsel for petitioner/accused **Rajeev Arora** (BAIL APPLN. 3817/2020) submits:

(a) That the chargesheet has already stands filed and petitioner/**Rajeev Arora** is on interim protection vide order dated 14.10.2020 till date. No purpose would be served by directing the accused to surrender as he has already joined and cooperated in investigation.

(b) It is also urged that despite custodial interrogation of co-accused **Raman Abrol**, no recovery of alleged Neelam could be effected and the allegations have been primarily made against co-accused **Fayaz** and **Raman Abrol**.

(c) That merely on the ground of alleged non-cooperation during investigation as alleged by the prosecution, the benefit of anticipatory bail cannot be denied.

(d) Reliance is further placed upon *Santosh S/o Dwarkadas Fafat vs. The State of Maharashtra, Criminal Appeal No. 1759 of 2017* decided by Hon'ble Supreme Court on 10th October 2017 and *Balan Mani vs. State NCT of Delhi, Bail Application No. 4286/2021 & Crl.M (Bail) 1490/2021*, to contend that the interim protection needs to be confirmed since the

chargesheet has already been preferred by the prosecution and the custodial interrogation is not required.

9. Learned counsel for petitioner **Mohd. Akhtar** (BAIL APPLN. 4381/2021) submits that the only allegations against the **Mohd. Akhtar** is that he was present at the spot of alleged incident of theft and allegations of conspiracy are not supported. Further, no active role has been assigned to the petitioner.

10. Learned counsel for petitioner **Naveen Sagar** (BAIL APPLN. 3821/2020) and **Sanjay Awasthi** (BAIL APPLN. 3884/2020), reiterates the contentions made on behalf of co-accused and submits that the chargesheet already stands filed. Further, no active role is stated to have been attributed to the petitioners.

11. On the other hand, the applications have been vehemently opposed by learned APP for the State and following submissions were urged:

(a) That P.O. proceedings already stand initiated against co-accused **Fayaz** and custodial interrogation of all the accused is required for the purpose of unearthing the complete conspiracy and recovery of Neelam, costing around Rs. 3 Crores. Reliance is also placed upon the test reports obtained by the complainant regarding the valuation of aforesaid Neelam.

(b) That the chargesheet has only been filed against **Raman Abrol** (petitioner in BAIL APPLN 2652/2020) and the stand taken by other petitioners that the chargesheet stands filed against them, is incorrect. It is pointed out that in view of the interim protection granted by the High Court, the petitioners were placed in column no. 12 and the supplementary

chargesheet shall be filed only after conclusion of the investigation against the petitioners.

(c) That the conspiracy is writ large and is corroborated by the CCTV footage, wherein all the accused visited the premises of the complainant in two separate cars in a pre-planned manner. Further, a confusion was created by the accused in conspiracy shouting 'police-police' and in the process, Neelam was taken by **Raman** and **Fayaz** after practicing deception upon the complainant. Reliance is also made to the details as depicted from the CCTV footage at the time of incident as well as prior to the incident and the hotel records.

(d) That the factum of illness of the wife of the complainant was duly verified and the wife of the complainant is stated to have recently expired as the complainant could not arrange for necessary funds for the treatment.

(e) That the factum of return of the Neelam in the earlier complaint lodged by the complainant was duly verified by recording the statement of head of Masjid Muhamadia (Hanfia).

(f) That an application had been moved before the learned Trial Court for the purpose of conducting brain mapping and lie detector test of **Raman Abrol** and **Rajeev Arora**, which was denied by the accused. The orders passed by learned Trial Court are stated to have been challenged in revision before the concerned Sessions Court.

(g) It is also pointed out that accused **Rajeev Arora** was also involved in another case registered in 2006 under the Copyright Act.

12. I have given considered thought to the contentions raised.

Admittedly, in the present case, the chargesheet has been filed only against accused **Raman Abrol** and the other petitioners herein have been placed in column no. 12 on account of interim protection granted to them vide various orders. The custody of the petitioners has been sought on behalf of the investigating agency for the purpose of making the recovery of the Neelam valued around Rs. 3 Crores.

A bare perusal of the complaint in the present case reveals that there was a pre-planned conspiracy and deception played on the complainant by luring him to show the Neelam after claiming that the same was to be purchased by **Raman Abrol**. Further the complainant was deceived to show the Neelam outside his premises in the Innova Car to the accused and finally duped of the same after creating a melee.

The role played by the co-accused in the entire incident is crucial since 4-5 persons came shouting 'police-police', the moment the Neelam was handed over to **Raman** who fled along with **Sanjay Awasthi** and **Rajeev Arora**, who were sitting in the car which was owned by **Rajeev Arora**.

It may also be noticed that **Fayaz** and **Naveen Sagar** had come to meet the complainant in Innova Car No. MH-05-BJ-9800, which reflects the complicity and common plan made by the petitioners for the purpose of duping the complainant. Even prior to incident dated 24.02.2020, accused **Raman Abrol**, **Fayaz Mir**, **Akhtar Gujjar** and Manjoor Ahmed Vani stayed in hotel Ivory Place at Karol Bagh from 22.02.2020 to 24.02.2020 and had checked out after the incident. Further in the meeting at Hotel Crown Plaza, Sector-10, Rohini, **Akhtar Gujjar** is seen in the aforesaid hotel alongwith the accused and was even present at the time of incident. The facts

and circumstances reflect that petitioners had been accompanying each other in the meeting and also staying at same hotels, in a pre-planned manner. The custodial interrogation of the petitioners is imperative to recover the Neelam and unfold the entire conspiracy. Merely because the four petitioners have been granted an interim protection by the High Court by various orders, cannot be a ground to automatically confirm the benefit of anticipatory bail or admit the co-accused **Raman** to regular bail.

It may be appropriate to refer to the observations of Hon'ble Supreme Court in **Sumitha Pradeep Vs. Arun Kumar C.K. & Anr.**, Special Leave to Appeal (Crl.) No.7188/2022, dated 21.10.2022 wherein the order passed by High Court granting anticipatory bail was set aside.

“In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail.”

13. Considering the facts and circumstances of the case, role of the accused and the manner in which the complainant has been duped of a Neelam/Blue-sapphire stone, valued at Rs. 3 Crores in conspiracy, no grounds for bail are made out. It is unfortunate that the wife of the complainant also expired as the complainant could not arrange the necessary funds by the sale of Neelam, of which he was duped by the accused/petitioners.

All the applications are accordingly dismissed.

The interim protection in the respective bail applications accordingly stands withdrawn.

Nothing stated hereinabove shall tantamount to any expression of opinion on the merits of the case.

November 25, 2022/*akc*

(ANOOP KUMAR MENDIRATTA)
JUDGE