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

\+ BAIL APPLN. 1105/2022, CRL.M.A. 11212/2022

MANOJ JAIN ..... Petitioner

Through: Mr. Nitin Sehgal and Mr. Jatin Kumar, Advs.

versus

THE STATE ..... Respondent

Through: Mr. Amit Sahni, APP for the State with SI Jitender Kumar, PS Daryaganj.

Mr. Sahil Kalia, Adv. for complainant.

% ***Date of Decision: 7th December, 2022***

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

JUDGMENT

DINESH KUMAR SHARMA, J. (Oral)

BAIL APPLN. 3250/2021

1. Present application has been moved under Section 438 Cr.P.C. for grant of anticipatory bail in FIR No. 134/2022 lodged at PS Daryaganj under Sections 420/406 IPC.

2. The petitioner was granted interim protection dated 8th April, 2022 on payment of Rs.15,00,000/- to the complainant company within a period of one week. The matter was also referred to mediation and an order

was passed stating that no coercive action shall be taken against the petitioner. However, the mediation could not materialize.

3. Learned counsel for the petitioner submits that in fact it was only a commercial transaction which turned bad. It has been submitted that there is no criminality in the case. Petitioner has been joining the investigation and therefore, the anticipatory bail may be granted.

4. Learned counsel for the complainant states that it was not a commercial transaction. The petitioner had issued a cheque of around Rs.70,00,000/- from an account which had already been closed. Learned counsel submits that it is a case of cheating.

5. Learned APP further states that though the petitioner had joined the investigation but he has not been satisfactorily reply.

6. The facts in brief are that the complainant who is in the business of publishing and distributing the advanced level engineering books filed a complaint against the petitioner Manoj Kumar alleging therein that he is in business with the petitioner since 2010 for publishing and distributing of books. The complainant alleged that initially accused used to clear small bills and gained confidence of the complainant. However, in the year 2017 the petitioner defaulted in making the payments. The matter was referred to the mediation and petitioner promised to clear the bills without default. In view of the conduct of the petitioner, the complainant stopped the credit account. The credit account was re-opened in September 2019 on the request of the petitioner and the petitioner purchased reference books from the complainant from September 2019 to October, 2021. The complainant apprehending that the petitioner may not make the payment again

stopped the supply. After persuasion, petitioner issued 12 Post dated cheques of Rs.5,00,000/- each drawn on Yes Bank in favour of the complainant company. The petitioner also issued afresh cheque of Rs.70,04,034/- dated 6th March, 2021 to the complainant against the previous invoices. The cheque was dishonoured with the remark "account closed"

7. During inquiry, it was found that the petitioner has issued the cheque on 6th March, 2021 while his account was closed on 18th February, 2021. It was also found that in the bank statement of the account that petitioner had never balance of Rs.70,00,000/- in his bank account from January, 2021 to 18th February, 2021. Though, initially the petitioner did not join the investigation. However, subsequently, on the service of notice under Section 41 (1) A Cr. PC, the petitioner joined the investigation on 6th September, 2022. The gist of the present case is that the petitioner issued a cheque from the account which was already closed and he never had balance in his bank account.

8. During the course of the submissions, learned counsel for the petitioner submits that petitioner would further pay a sum of Rs.10,00,000/- to the complainant company within four weeks.

9. It is relevant to note that the petitioner has not misused the interim protection granted to him by this court.

10. The criterias for granting the bail under Section 438 Cr.P.C. are quite well defined. The first and foremost thing that the court hearing an anticipatory bail application should consider is the *prima facie* case put up against the accused. Thereafter, *inter alia*, following factors should be looked into:

(i) the nature and gravity of the accusation;

(ii) the possibility of the applicant to flee from justice; and

(iii) whether the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

11. It is a settled proposition that the basic rule of criminal jurisprudence is bail and not jail. This court and the Supreme Court has said this time and again that the courts must enforce this principle in practice. It has to be borne in mind that denial of bail amounts to deprivation of personal liberty.

12. In the case of ***Siddharam Satilingappa Mhetre vs. State of Maharashtra*** (2001) 1 SCC 694, while considering matter of grant of anticipatory bail after exahaustively analysing the rights under Article 21 the Apex Court *inter alia* held that a great ignominy, humiliation and disgrace is attached to the arrest. It was further held that arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community.

13. In ***Nathu Singh v. State of U.P.*** (2021) 6 SCC 64, the Apex Court inter alia held that grant or rejection of an application under Section 438 Cr. PC has a direct bearing on the fundamental right to life and liberty of an individual. Thus, while considering the bail this court has to look into the facts and circumstances of the case so as to ensure that there is no infringement of fundamental rights. In ***Nathu Singh*'s** case (supra), the Apex Court *inter alia* held that Section 438 Cr.P.C. needs to be read liberally, and considering its beneficial nature, the courts must not read in limitations or restrictions that the legislature have not explicitly provided for.

14. The parameter for grant of anticipatory bail are the nature and gravity of offence, the role attributed to the applicant and the facts of the case. It is also pertinent to mention here that this Supreme Court has laid down time and again that unnecessary restrictions or conditions should also not be imposed in routine manner. The conditions, which limit the grant of anticipatory bail may be granted only if they are required in the facts of any case(s). Reliance has been placed upon ***Sushila Aggarwal v. State (NCT of Delhi)*** (2020) 5 SCC 1.

15. In the present cases, the nature of evidence is substantially documentary in nature and is already in the custody of the investigating agencies.

16. In the totality of facts and circumstances, in the event of the arrest of the petitioner, the petitioner shall be admitted to anticipatory bail on furnishing a personal bond of Rs.50,000/- with one surety of the like amount to the satisfaction of the learned Trial Court/CMM/Duty MM subject to following conditions applicable on each Applicant individually:

a) the Applicant shall cooperate in the investigation and appear before the Investigating Officer of the case as and when required;

b) the Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;

c) the Applicant shall provide his/her mobile number(s) to the Investigating Officer and keep it operational at all times;

d) the Applicant shall drop a PIN on the Google map to ensure that his location is available to the Investigating Officer; and

e) In case of change of residential address and/or mobile number, the Applicant shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.

17. With these observations the bail application along with pending application stands disposed.

DINESH KUMAR SHARMA, J

DECEMBER 7, 2022
Pallavi