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

% ***Date of Decision: 19th December, 2023***

\+ BAIL APPLN. 66/2023

RUPASHREE MAJUMDER ..... Petitioner

Through: Mr. Mohit Kumar Gupta and Mr. Durgesh Kumar Sharma, Advocates.

versus

STATE (NCT OF DELHI) THROUGH SHO SAFDARJUNG ..... Respondent

Through: Mr. Laksh Khanna, APP for State with SI Akshay Sheoran, P.S. S.J. Enclave.
Mr. Ashish Dutta, Mr. Mayank and Ms. Meenal Jain, Advocates for SBI.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This is an application preferred on behalf of the Applicant/Petitioner under Section 438 Cr.P.C. for grant of anticipatory bail in E-FIR No. SWO-SJE-000469/2022 dated 24.08.2022 registered under Sections 409/420 IPC at P.S.: Safdarjung Enclave, South West, Crime Branch, Delhi.

2. Status report has been filed on behalf of the State and a detailed reply has been filed on behalf of the Bank/Complainant i.e. State Bank of India.

3. As per the averments in the petition, Petitioner is working as Deputy Manager in SBI and has been employed with the Bank since 2009. Case of the Petitioner is that she was posted from 11.06.2019 to 22.07.2022 as

Deputy Manager at SBI, Green Park Extension and was transferred to SBI, South Campus Branch where she was harassed due to personal grudge of the Branch Manager. Petitioner has been falsely implicated for misappropriation of funds and even a departmental inquiry has been initiated on account of which Petitioner has been placed under suspension. On 04.09.2022, Investigating Officer (IO) gave notice to the Petitioner to join investigation alleging that investigation revealed that fixed deposits (FDs) worth Rs.1.35 crores were found in the name of the Petitioner in the Green Park Branch between 2019 to 2022, while she was posted as Deputy Manager. Petitioner joined investigation and stated that she was innocent. All transactions under the FDRs were in custody of the Bank Manager/Complainant and nothing was withdrawn by her. SBI Circular dated 28.02.2019 provides for New Voucher Verification Queue System on the same date of voucher along with provision of four eye concept which means that every transaction done by one person is supervised or checked and verified by other person. The prosecution is malicious as Petitioner has no role in the alleged misappropriation. In any case, investigation is based on documentary evidence alone and Petitioner is willing to join investigation. It is further submitted that bail is rule and jail is an exception and since no custodial interrogation is required, Petitioner be granted anticipatory bail.

4. It is submitted by the counsel that Petitioner was unable to join for investigation, when a notice was received on her WhatsApp on account of ill health and in support of this, she had forwarded the medical documents to the IO. The State can have no apprehension that Petitioner will abscond as she is participating in the disciplinary inquiry initiated by the Department and this is evident from a certificate dated 29.11.2023 issued by the

Department.

5. Mr. Laksh Khanna, learned APP for the State, relying on the status report submits that present FIR was registered on a complaint by one Ms. Shweta Saxena, Branch Manager, SBI Green Park Branch. During the course of investigation, when the Complainant was examined, she stated in her statement under Section 161 Cr.P.C. that Petitioner was found indulging in unauthorized transactions/financial irregularities while posted as Deputy Branch Manager from 11.06.2019 to 22.07.2022. On 17.05.2021, she fraudulently opened one PPF A/c No. 40183980693 in the name of her mother by wrongfully debiting the Banker's Cheque/Demand Draft No. 103600 in the name of SBI Bank for Rs.7,94,292/-. During further investigation, notice under Section 91 Cr.P.C. was issued to SBI Bank for providing relevant information/documents and reply was received, on perusal of which it was found that Petitioner had made STDR/FDR of Rs.1.35 crores in the name of her mother by way of Banker's Cheque/Demand Drafts after which Sections 420/409 IPC were added in place of Section 379 IPC. Despite notice to the Petitioner, she was not joining investigation on the pretext of her ill health and visits to the addresses given by her have been unsuccessful as she was not found on the said addresses. Petitioner has misused her official position by opening PPF account and making STDR/FDR in her mother's name by wrongfully debiting the Banker's cheque/DDs. The instruments are yet to be recovered from her possession and she is not co-operating.

6. In a detailed reply filed by the Bank, it is reiterated that Petitioner has misused her position in the Bank and misappropriated funds. Additionally, on 16.08.2022, while posted as Service Manager in South Campus Branch

Petitioner indulged in several unauthorized transactions, without the customers instructions and transferred a total sum of Rs.8,74,330/- into multiple account numbers, details of which have been furnished in the reply. Further, on the pretext of her father's medical expenses, Petitioner wrongfully and dishonestly claimed Rs.9,12,293/- by fraudulently showing her father to be dependent on her while it was later discovered that father was a pensioner of the Railways receiving a pension of Rs.41,710/- per month. Petitioner should not be granted anticipatory bail as she is not joining investigation and is capable of tampering and destroying evidence and influencing witnesses since she is a bank employee and all relevant documents are in the Bank. In support of this plea, counsel for the Complainant submits that on 22.08.2022 when inquiries were being made from the Petitioner regarding her fraudulent activities, she ran away towards the washroom with several official documents in her hand and after locking herself destroyed some of the crucial documents. It is strenuously urged that there are multiple bank documents involved in the matter including multiple bank transaction routed through various channels and custody of the Petitioner is required to unearth the truth. It is further stated that while considering an application for grant of anticipatory bail the nature and gravity of the alleged offence, propensity to commit another offence, chances of absconding and influencing witnesses and tampering with evidence are important parameters which the Courts must keep in mind. Reliance is placed on the judgment of the Supreme Court in ***Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation, (2013) 7 SCC 439*** wherein the Supreme Court has held that economic offences constitute a class apart and need to be visited with a different approach in matters of bail.

7. I have heard learned counsel for the Petitioner, learned APP as well as learned counsel for the Bank/Complainant.

8. As per the Status report filed by the State and the detailed reply filed by the Bank, Petitioner is involved in multiple unauthorized transactions and financial irregularities, amounting to misappropriation etc. As per the allegations made by the Complainant, Petitioner is accused of fraudulently opening a PPF account in the name of her mother and wrongfully debiting a Banker's cheque/DD in the name of SBI, Green Park Extension to the tune of Rs.7,94,292/-, in addition to another fraudulent FDR of Rs.1.35 crores in the name of Petitioner's mother. It is the case of the Respondent that multiple transactions, documents and customers' accounts are involved in the matter and custody of the Petitioner is required for further investigation to unearth the truth. It appears that the Petitioner has not been co-operating in the investigation, on one pretext or other. The allegations are serious and relate to many bank transactions including alleged misappropriation from the accounts of several customers. The Bank has brought forth that during investigation in the office of the Bank, Petitioner had destroyed several important and crucial documents and thus there is an apprehension that she would abscond if granted protection and will not join and co-operate in investigation. Petitioner contends that since the investigation centres around documentary evidence, there is no need to take the Petitioner in custody. Suffice would it be to state that the investigation is at a nascent stage and it is not for this Court either to hazard a guess as to the method of investigation or to regulate the same. It cannot be said that the investigation will be restricted to documentary evidence alone. The contention that Petitioner has joined departmental proceedings cannot be the sole reason to come to a

conclusion that she would co-operate in the investigation and in any case, this stand cannot be accepted considering that in the past Petitioner has avoided joining investigation.

9. In ***Siddharam Satlingappa Mhetre v. State of Maharashtra and Others, (2011) 1 SCC 694,*** the Supreme Court considered the principles laid down by the Constitution Bench of the Supreme Court in ***Shri Gurbaksh Singh Sibbia and Others v. State of Punjab, (1980) 2 SCC 565*** and held as follows:-

> *"**112**. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:*
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> *(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."

10. Factors to be taken into account while considering grant of anticipatory bail application have been delineated by the Supreme Court in the case of ***Sumitha Pradeep v. Arun Kumar C.K. and Another, 2022 SCC OnLine SC 1529*** and are: (a) *prima facie* case against the accused; (b) nature of offence; and (c) severity of the punishment. This Court in ***Haresh Kumar Choudhary v. State (NCT of Delhi), 2023 SCC OnLine Del 1877,*** relying on the observations of the Supreme Court in ***State Rep. By The C.B.I. v. Anil Sharma, (1997) 7 SCC 187,*** dismissed the anticipatory bail application on the ground that custodial interrogation of the applicant was required. Relevant passage from the judgment of the Supreme Court in ***Anil Sharma (supra)*** is as follows:-

*"**6.** We find force in the submission of the CBI that **custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code**. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. **Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated**. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders".*

(emphasis supplied)

11. In view of the aforesaid facts and circumstances, this Court is not inclined to grant anticipatory bail to the Petitioner and the petition is accordingly dismissed, making it clear that Court has not expressed any opinion on the merits of the case.

12. Petition stands disposed of.

JYOTI SINGH, J

DECEMBER 19, 2023/kks/shivam