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

+ BAIL APPLN. 466/2021

PINTU RAM Petitioner

Through: Mr. Mohit Gupta, Adv.

versus

THE STATE Respondent

Through: Mr. Hemant Mehla, APP for the State
with IO Bimla, PS Narela Industrial
Area.

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Date of Decision: 6th January 2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. This is a bail application seeking anticipatory bail of accused Pintu Ram in case FIR No. 20/2021 registered at PS Narela Industrial Area under Sections 376/354/354B/506/509/323/34 IPC.
2. Learned APP for the State submits that the charge-sheet has been filed against two accused persons. However, further investigation in respect of the present petition is continuing and charge-sheet is likely to be filed against three more accused persons including the petitioner in the present case.
3. This Court vide order dated 01.03.2021 granted the interim protection and passed the following order:

“1. On the last date of hearing i.e. 24.02.2021, the Investigating Officer was directed to examine the entire CCTV footage of the incident and to file status report as to if the petitioner is visible at all in the footage or not. It was the case of the prosecution the entire incident was covered by the CCTV footage.

2. The additional report of the Investigating Officer dated 26.02.2021 says the face of the petitioner herein though is not visible in the CCTV footage, but the complainant has identified him on the basis of the body structure/built of petitioner herein.

3. In the circumstances, it would be appropriate if the petitioner joins the investigation as and when called for by the Investigating Officer/SHO concerned.

4. List on 15.07.2021 and in the meanwhile, the petitioner should not be arrested in this case.”

4. Subsequently, the interim order was continued from time to time. It has been stated by the IO that the accused-petitioner has joined the investigation as and when directed.
5. This Court vide order dated 09.12.2021, further extended the interim protection and directed the State to file a short status report with regard to the pre and post location of the petitioner so as to verify his complicity in the offence.
6. IO has stated that the status report had been filed and the location of the petitioner was not found near the place of the incident. IO has further stated that the face of the petitioner is not visible on the CCTV footage.
7. It is a settled proposition that the basic rule of criminal jurisprudence is bail and not jail. The Supreme Court and this court have time and again held that the courts must enforce this principle in practice. It is

also settled law that denial of bail amounts to deprivations of personal liberty. It is however imperative to bear in mind that the consideration governing exercise of discretion for granting anticipatory bail are materially different from those of an application for bail. Anticipatory bail is not to be granted as a matter of rule, it should be granted when the Court is convinced that the person would not misuse his liberty.

8. This court deems it appropriate to reiterate that discretion vested under section 438 Cr.P.C. should be exercised with care and circumspection depending upon the facts and circumstances of each case justifying its exercise. Thus, the discretion vested should be exercised with caution and prudence. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. The grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case. As observed in ***Gurbaksh Singh Sibbia vs State of Punjab***, AIR 1980 SC 1632, and reiterated in a catena of other judgements, the Courts must exercise their jurisdiction under Section 438 Cr.P.C. by a wise and careful use of their discretion, which by their long training and experience they are ideally suited to do.
9. The Supreme Court in ***Siddharam Satilingappa Mhetre vs. State of Maharashtra***, (2001) 1 SCC 694, while considering a matter relating to grant of anticipatory bail and after exhaustively analysing the rights under Article 21 *inter alia* held that great ignominy, humiliation, and disgrace is attached to an arrest. It was further held that an arrest leads to many serious consequences not only for the accused but for the

entire family and at times for the entire community.

10. In *Nathu Singh v. State of U.P.*, (2021) 6 SCC 64, the Supreme Court *inter alia* held that grant or rejection of an application under Section 438 Cr.P.C. has a direct bearing on the fundamental right to life and liberty of an individual. Thus, while considering grant of 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. Further it was also *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.

11. In the present case the petitioner has been joining the investigation as and when directed by the IO. I consider that in the totality of the facts and circumstances of the case, the petitioner, in the event of arrest be admitted to anticipatory bail on furnishing a personal bond in the sum of Rs. 30,000/- with one surety of the like amount to the satisfaction of Investigation Officer/SHO subject to the following conditions:

- a) the petitioner shall cooperate in the investigation and appear before the Investigating Officer of the case as and when required;
- b) the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;

- c) the petitioner shall provide his/her mobile number(s) to the Investigating Officer and keep it operational at all times;
- d) the petitioner 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 petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit;

12. The bail application stands disposed of in the above terms.

DINESH KUMAR SHARMA, J

JANUARY 6, 2023

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