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

+ **BAIL APPLN. 1333/2023, CRL.M.A. 10820/2023**

GURUSHARAN SINGH CHOHAN Petitioner

Through: Mr. Siddharth Aggarwal, Sr. Adv.
with Ms. Rudrali Patil, Mr. Abhishek
Chandravanshi, Mr. Sebin Michael
Joseph, Mr. Shivam Deepsingh, Mr.
Mohit Dedha, Advs.

versus

THE STATE NCT OF DELHI Respondent

Through: Mr. Sanjeev Bhandari, ASC with Mr.
Kunal Mittal, Mr. Saurabh Tanwar,
Advs.
Mr. Amit Sahni, APP for the State
with SI Shailendra Tiwari, ER-
II/Crime Branch.
Mr. Abdul Gaffar, Adv. (VC)

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Date of Decision: 25th April, 2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

CRL.M.A. 10821/2023 (exemption)

Exemption is allowed subject to all just exceptions.

BAIL APPLN. 1333/2023

1. The present bail application has been moved under Section 438 of Cr.P.C. seeking anticipatory bail in case FIR No. 159/2020 dated 17.10.2020 registered at PS Crime Branch, under Sections 420/468/471/120B IPC & 3 of Emblems and Names (Prevention of Improper Use) Act, 1950. This is the fourth bail application filed by the petitioner-accused.
2. The first bail application bearing BAIL APPLN. 258/2022 was dismissed as withdrawn vide order dated 07.03.2022. Subsequent to that, the petitioner moved another bail application bearing BAIL APPLN. 350/2022 which was dismissed vide a detailed order dated 31.03.2022 by the learned Additional Sessions Judge-01, North East, Karkardooma, Delhi.
3. The petitioner again invoked the jurisdiction of this Court and filed a bail application bearing BAIL APPLN. 1474/2022, which was also dismissed by a detailed order of this Court dated 08.07.2022.
4. Subsequently another bail application bearing BAIL APPLN. 1495/2022 was preferred and the same was also dismissed by a detailed order dated 24.12.2022 passed by the learned ASJ-02, Karkardooma Courts, Delhi.
5. Subsequent thereto, the petitioner again moved a bail application before this Court vide bail application bearing BAIL APPLN. 862/2023 and the same was disposed of vide order dated 16.03.2023 with a direction to the petitioner to join the investigation and the IO

was directed to serve a notice of seven days in case he felt the necessity of effecting the arrest of the petitioner.

6. The petitioner in compliance of this order, joined the investigation on 24.03.2023, 29.03.2023, 05.04.2023 and 18.04.2023. However, IO served a notice under Section 41A Cr.P.C. on 18.04.2023 in compliance of the order dated 16.03.2023.
7. Sh. Siddharth Aggarwal learned senior counsel for the petitioner has vehemently argued that in fact the petitioner is being harassed unnecessarily and despite the fact that he has joined the investigation continuously as and when directed by the IO. Learned senior counsel submits that the petitioner cannot be arrested merely because he is not settling the matter with the complainant or not giving answers suitable to the prosecution. Learned senior counsel submits that even as per the record only Rs. 12,00,000/- have been received in the account of the petitioner - accused and that too not from the account of the complainant. However, the complainant is demanding a sum of around Rs. 2,11,00,000/-. Learned senior counsel submits that in fact the prosecution agency is being compelled by the learned CMM by way of consecutive orders to effect the arrest of the present petitioner which are totally illegal in nature. Learned senior counsel submits that after orders passed by this Court dated 08.07.2022 in bail application bearing BAIL APPLN. 1474/2022 there are significant changes of circumstances i.e. the charge sheet has been filed; the petitioner has continuously been joining the investigation; the repeated orders passed by learned CMM directing the IO to arrest the accused persons

which is totally illegal in nature. Learned senior counsel submits that thus the petitioner may be admitted to anticipatory bail.

8. Sh. Sanjeev Bhandari learned standing counsel has vehemently opposed the bail application and submits that in fact the petitioner has been avoiding arrest since the beginning and though he has appeared before the IO but did not cooperate with the investigation.
9. Learned standing counsel further submits that the bail application of the petitioner was dismissed by a detailed order dated 08.07.2022 and there are no changes in circumstances thereafter.
10. It is a settled position of law that the basic rule of criminal jurisprudence is bail not jail. The Supreme Court and this Court in a number of cases have propounded that the courts must enforce this principle in practice. It is also settled law that denial of bail amounts to deprivations of personal liberty. However, what must be borne in mind is that power under section 438 of CrPC is an exceptional power and should be exercised only in exceptional cases and not in general cases. The consideration governing exercise of discretion for granting anticipatory bail are materially different from those of an application for bail. The parameters for grant of anticipatory bail are very well settled. It is an exceptional power which has to be exercised by the Court only in the cases where there is a possibility of misuse or abuse of process of the Court. Anticipatory bail is not to be granted as a matter of rule and should be granted only when a special case is made out and the Court is convinced that the person would not misuse his liberty. Thus, the power of anticipatory bail being of extraordinary

nature should be exercised only in exceptional cases.

11. The Supreme Court after referring to various judgements and guidelines has enumerated the following factors and parameters to be considered while dealing with anticipatory bail:

- a. Nature & gravity of accusation and the exact role of the accused must be properly comprehended before the arrest is made
- b. 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
- c. The possibility of the applicant to flee from justice
- d. The possibility of the accused's likelihood to repeat similar or other offences
- e. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him/ her
- f. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a large number of people
- g. 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.
- h. While considering the prayer for grant of anticipatory bail a balance has to be struck between two facts, 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.

- i. The court is to consider reasonable apprehension of tampering of witness or apprehension of threat to the complainant.
- j. 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 cause of events, the accused is entitled to an order of bail.

12. In the present case, firstly, the bail application being moved by the petitioner has been rejected on merits by the learned Sessions Judge vide order dated 31.03.2022 and thereafter by this Court vide order dated 08.07.2022.

13. It is advantageous to refer to the order dated 08.07.2022 passed by this Court:

“12. It has been submitted by the applicant that the role of the applicant is not spelt out through the FIR except to the extent that it has been stated towards the end of the complaint made by the complainant that apart from the persons named in the FIR, the complainant had met some more of his friends who had invested in Rice Puller fraud companies inclusive that of Accent Star Casa Mumbai, the MD of which is the applicant in which company his friend Rajan Mittal had invested money. Qua the said submission, it is essential to observe that, as per the status report submitted by the State, apart from Rajan Mittal, the

complainant is also indicated to have invested a sum of Rs.80 Lakhs with the applicant out of the total Rs.211 Lakhs that were received by the applicant inclusive of the amount of Rs.80 Lakhs from the complainant and Rajan Mittal, the friend of the complainant. Taking the totality of the circumstances of the case into account and the gravity of the nature of the offence whereby innocent farmers have been duped into investing their hard earned money into a fake Rice Puller allegedly created by the NASA with an emblem of the DRDO, without there being any such DRDO and NASA involved in the manufacture of any Rice Puller, it is essential that the conspiracy in relation to the alleged fraud of cheating innocent persons with the aid of the DRDO emblem is investigated thoroughly. Thus, there is no ground of grant of anticipatory bail and the application is rejected, despite the submission made on behalf of the applicant that he would be willing to deposit the entire amount allegedly required to be recovered from him.”

14. I consider that merely because the charge sheet has been filed there is no change of circumstances. Rather filing of the charge sheet indicates that the allegations against the petitioner stand affirmed. Secondly, merely because the learned CMM has passed certain orders, during the course of investigation, would not entitle the petitioner to be admitted on anticipatory bail. The jurisdiction to be exercised by the learned MM during the course of investigation has been settled by the Hon'ble Supreme Court in ***Sakiri Vasu vs. State of UP***, (2008) 2 SCC 409 wherein it is inter alia held as under:

“18. It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special

mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution.

20. In ascertaining a necessary implication, the court simply determines the legislative will and makes it effective. What is necessarily implied is as much part of the statute as if it were specifically written therein.

24. In view of the abovementioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) CrPC to order registration of a criminal offence and/or to direct the officer in charge of the police station concerned to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) CrPC, we are of the opinion that they are implied in the above provision.

25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 CrPC. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters and relegate the petitioner to his alternating remedy, first under Section 154(3) and Section 36 CrPC before the police officers concerned, and if that is of no

avail, by approaching the Magistrate concerned under Section 156(3).

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) CrPC or other police officer referred to in Section 36 CrPC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 CrPC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 CrPC. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 CrPC simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the police officers concerned, and if that is of no avail, under Section 156(3) CrPC before the Magistrate or by filing a criminal complaint under Section 200 CrPC and not by filing a writ petition or a petition under Section 482 CrPC.

28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an

alternative remedy the High Court should not ordinarily interfere.”

15.The Court of the learned MM cannot be made powerless so as to deprive it to monitor the investigation. It is the duty of the learned MM to see whether the investigation is being conducted fairly or not. There is a thin line which may determine whether this authority has been transgressed or not. However, in any case any observations made by the learned MM on the investigation to be conducted by the IO would not entitle the petitioner for bail. The petitioner to avail the bail has to show his case on merits.

16.In view of the totality of facts and circumstances of the case and the submissions made above, this Court considers that the petitioner is not entitled for anticipatory bail. Hence, the present petition along with all pending applications stand dismissed.

17.Order *dasti*.

DINESH KUMAR SHARMA, J

APRIL 25, 2023/Pallavi