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

% Judgment delivered on: 16.10.2023

+ **BAIL APPLN. 1698/2023**

NAVNATH SAMPAT PUKALE Petitioner
Through: Mr. Sunil Dalal, Sr. Adv. Mr.
Tushar Rohmetra, Mr. Manisha
Saroha, Mr. Nikhil Beniwal,
Mr. Mahabir Singh, Mr. Navish
Bhati, Advs.
versus
STATE Respondent
Through: Ms. Richa Dhawan, APP with
SI Vikram Singh P.S. Karol
Bagh Mr. Mohit Kapoor, Ms.
Komal Shukla, Advs. for
complainant with complainant
in person.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present bail application has been filed under section 439 Cr.P.C. read with 482 Cr.P.C. seeking regular bail in FIR No. 209/2023 under section 408/411 IPC (Section 411 was added subsequently), registered at Police Station Karol Bagh, Delhi.

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2. The FIR was registered on the basis of a complaint made by the complainant alleging that the petitioner and one person namely Dhanaji Maeitkari, have committed criminal act of cheating, criminal breach of trust, dishonestly receiving stolen property and criminal conspiracy. It is the case of the prosecution that the Petitioner herein approached the complainant for a job of artisan/*karigar* through one of his known persons and was working as an employee in his shop. On 31.01.2023 one customer came to the complainant's shop and ordered for purchase of 1kg brick of 24 carat gold, as the said stock was unavailable at that time with the complainant, the complainant approached one of his supplier namely Dhanaji Vitthal Jadav to supply the said gold brick and requested him telephonically to handover the same to his employee i.e., the Petitioner herein. Thereafter the Petitioner went to the supplier's shop, took the delivery of the gold brick and retained the same with himself and absconded from work without returning the said gold brick of 1kg which was entrusted to him.

3. Upon inquiry made by the complainant, the complainant got to know that the petitioner herein took undue benefit of the said gold brick and had sold the same to one goldsmith namely Dhanaji Maitkeri who was running his shop in Rohini. After selling the gold brick the Petitioner left Delhi and escaped to his hometown.

4. During the course of investigation, on 06.02.2023 the accused/Petitioner was arrested from Pune, Maharashtra. In his disclosure statement the Petitioner stated that he sold some part of the



gold i.e. 13.33 Grams for Rs 76,400 to a *karigar* at Rohini. The said gold was later on seized by the police. The Petitioner was taken into custody but no property of gold was recovered from him.

5. During further investigation it was found that the Petitioner had switched off his mobile phone and purchased a new mobile phone & sim card to contact his family members. The search warrants to search the house of the Petitioner were issued by the Trial court but the case property could not be recovered.

6. Learned Senior Counsel appearing on behalf of the Petitioner submits that the Petitioner is innocent and he has been falsely implicated in the present case. He Submits that the fact of the matter is that the said gold brick was snatched from the Petitioner, thereafter the Petitioner called up the employer/complainant and informed him about the same but the employer instead of believing the Petitioner made a concocted story accusing the applicant of stealing the said gold brick and thereafter fired the accused from the employment.

7. He further submits that there was a considerable delay in filing the FIR as the incident took place on 31.01.2023 and the FIR was registered on 04.02.2023 which shows the prosecution version has been manipulated.

8. The Learned Senior Counsel for the petitioner further submits the petitioner is not at flight risk because as soon as the petitioner came to know that the FIR has been lodged against him, he himself duly surrendered before the police authorities which shows the bonafide of the petitioner.



9. He submits that as far as the recovery is concerned, no recovery of gold has been affected from or at the instance of the petitioner. Additionally, a search warrant was also issued to search the petitioner's house but still no recovery of gold was affected.

10. He submits that the investigation is complete and the chargesheet has already been filed by the authorities, but the charges are yet to be framed. Further, 14 witnesses have been cited in the charge-sheet, therefore, the trial is going to be a protracted one.

11. The learned senior counsel submits that against the petitioner an offence under Section 408 IPC has been invoked which is punishable with an imprisonment that may extend to seven years. He places reliance on *Arnesh Kumar vs State of Bihar* to contend that before making an arrest for the offences punishable with imprisonment for a term less than or equal to seven years, a notice of appearance in terms of Section 41A Cr.P.C. is to be served but in the present case no notice of such kind was served upon the Petitioner.

12. He submits that there is not an iota of evidence that the alleged gold was received by the petitioner. Furthermore, the bill upon which the prosecution is relying upon does not bear the signature of the petitioner or any other individual. He further submits that the present case also does not fulfil the ingredients of Sec 411 IPC.

13. *Per contra*, the Ld. APP for the State supported by the learned counsel for the complainant submits that the petitioner was an employee of the complainant and he was asked to take delivery of the gold brick and get the same to the complainant's shop where a



customer was waiting for the said gold brick but instead of delivering the said gold brick he fled away with that property and went to Rohini to sell the same.

14. She submits that the co-accused Dhanaji Maeitkari to whom the gold weighing around 13.33 grams was sold is the cousin of the petitioner. Further, Dhanaji Maeitkari, who was made to join the investigation, disclosed that the gold brick was handed over to him by his cousin i.e. the petitioner herein & a small quantity was cut from the said gold brick by him and the remaining was returned to the petitioner. She further submits that since Dhanaji Maeitkari is the cousin of the petitioner and he is the sole witness who can depose that the gold brick was given to him, there is all likelihood that he will be manipulated by the petitioner if the petitioner is enlarged on bail.

15. She submits that the petitioner had not joined the investigation, he was absconding and he had not surrendered voluntarily, a raid was conducted and thereafter the petitioner herein was apprehended and arrested.

16. She places reliance on the CCTV footage, which is part of the chargesheet, to contend that the petitioner is seen checking-in in a hotel and taking out cash from the bag.

17. She submits that the petitioner/applicant deliberately switched off his mobile phone and started contacting his family members from the alternate numbers. She submits that the petitioner purchased a new mobile phone and a sim card which was also seized during the investigation. The CDR's were also procured which proves the escape route of the petitioner.



18. I have heard the learned Senior Counsel for the petitioner and the Ld. APP for the state along with the counsel for the complainant and have perused the record.

19. Undoubtedly, the only offence invoked against the petitioner is under section 408 IPC. Clearly, offence under Section 411 IPC cannot be invoked against the petitioner as there is no allegation against him that he dishonestly received the stolen property.

20. No recovery was affected from the petitioner, only 14 grams gold was recovered from Dhanaji Maeitkari who stated that the said gold was sold to him by the petitioner, but the same is yet to be established. It is also not in dispute that the Pune residence of the petitioner was searched & the petitioner was in 9 days police custody but still no recovery was affected at the instance of the petitioner.

21. The probative value of the CCTV footage of a hotel in which the petitioner allegedly appears to be taking out cash from his bag has to be seen by the learned Trial Court at the stage of trial and it would not be appropriate for this Court to comment on the same at this juncture as it may prejudice the case of the prosecution as well as that of the accused person.

22. At this stage it cannot be overlooked that there is presumption of innocence in favour of the petitioner. Further, nothing has been pointed out to show that the petitioner has a criminal record. Apart from the complicity of the petitioner, the other parameters for granting of bail are also required to be considered. A co-ordinate bench of this Court in *State (NCT of Delhi) v. Sanjeev Kumar Chawla*, 2020 SCC



OnLine Del 1970 after considering various judgments of the Hon'ble Supreme Court has summed up the principles governing grant of bail.

The relevant paragraph of the judgment reads as under:-

"33. The principles governing grant of bail which the courts have to consider can be enumerated, though not exhaustively, as under:—

- a. The gravity and severity of the offence and the nature of accusation;*
- b. Severity of punishment;*
- c. The position and status of the accused vis-à-vis the victim and the opportunity to approach the victims/witnesses;*
- d. The likelihood of the accused fleeing from justice;*
- e. The possibility of tampering with the evidence and/or the witnesses;*
- f. Obstructing the course of justice or attempting to do so;*
- g. The possibility of repetition of the offence;*
- h. The prima facie satisfaction of the court in support of the charge including frivolity of the charge;*
- i. The peculiar facts of each case and nature of supporting evidence."*

23. The object of judicial custody is not punitive but to secure the presence of the accused during the trial. The following observations of the Hon'ble Supreme Court in **Vinod Bhandari v. State of Madhya Pradesh, (2015) 11 SCC 502** could advantageously be referred to:

"12. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be passed. The detention is not supposed to be punitive or preventive. Seriousness of the allegation or the availability of material in support thereof are not the only considerations for declining bail. Delay in commencement



and conclusion of trial is a factor to be taken into account and the accused cannot be kept in custody for indefinite period if trial is not likely to be concluded within reasonable time.”

24. The maximum sentence which could be imposed for the offence under Section 408 IPC is seven years and the petitioner is in judicial custody since 17.02.2023. The trial is yet to commence and there being 14 witnesses cited by the prosecution, therefore, trial is not likely to be concluded anytime soon. So far as the apprehension expressed by the Learned APP that the petitioner in the event of being enlarged on bail may influence and threaten the witnesses is concerned, the same can be dispelled by putting strict conditions on the petitioner.

25. Considering the circumstances in entirety, I am of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is admitted to regular bail subject to his furnishing personal bond in the sum of Rs. 20,000/- and a surety bond of the like amount to the satisfaction of the learned Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- (i) Petitioner/applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- (ii) Petitioner/applicant shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the Investigating



Officer concerned. The mobile location be kept on at all times.

(iii) Petitioner/applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with the, witnesses or any family members of the witnesses

26. It is made clear that the observations made herein above are only for the purpose of considering the bail application and the same shall not be deemed to be an expression of opinion on the merits of the case.

27. The petition stands disposed of.

28. Copy of the order be forwarded to the concerned Jail Superintendent for information and necessary compliance.

29. Order *dasti* under the signature of the Court Master.

VIKAS MAHAJAN, J

OCTOBER 16, 2023/dss

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