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

% *Date of Decision: 09th October, 2023*

\+ BAIL APPLN. 3336/2023

SOMNATH PATIAL ..... Petitioner

Through: Mr Sushant Mukund, Mr. Sanjeev Baisal and Mr. Subhash Chandra, Advocates.

versus

STATE OF NCT DELHI ..... Respondent

Through: Ms. Richa Dhawan, APP for the State with SI Jagdish, PS Dwarka.

Mr. Mayank Sharma, Advocate for the Complainant along with Complainant in person.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This application has been filed on behalf of the Petitioner under Section 438 Cr.P.C, seeking anticipatory bail in case FIR No. 475/2021 dated 26.11.2021 under Sections 420/468/471/120-B IPC registered at P.S.: Sector-23, Dwarka.

2. Present FIR was registered on the complaint of one Dr. Ram Chander/Complainant who alleged that he is the registered owner of a built-up property bearing No. 401B, admeasuring 175 Sq. Yards, Sector-19, Dwarka, New Delhi ('subject property'), which was purchased and built by him after obtaining bank loan by mortgaging the said property in favour of Punjab National Bank ('PNB'), Kailash Colony, Delhi. On 05.10.2021 when

the wife of the Complainant visited the subject property, she found a notice dated 04.10.2021 affixed on the property reflecting that possession of the property was taken over on account of non-payment of the loan taken from PNB, C.R. Park, New Delhi. Complainant alleges that some unknown persons have managed to carry out a financial fraud by misusing title documents of his property by forging and fabricating the title documents. It is also alleged that one of the co-accused was inducted as a tenant in the property on the assurances of the property dealers in the area, however, through a well organized premeditated plan the miscreants have taken approximately Rs.2 crores as loan from PNB, Bhikaji Cama Place/C.R. Park by submitting forged title documents of the subject property.

3. Learned counsel for the Petitioner submits that Petitioner is a law abiding citizen and has retired from the post of Chief Manager, PNB, where he was working in the Retail Asset Processing Centre ('RAPC'), Green Park, New Delhi from 10.01.2019 to 25.03.2020. Employees deployed at the RAPC were tasked to process and sanction retail loan proposals i.e. housing loans, educational loans and Overdraft limits (OD) against properties received from allocated branches, falling under South Delhi Circle and approximately 50 branches were allocated to RAPC, Green Park. It is submitted that in the present case, as per the banking norms, RAPC received the loan application form duly filled in and accompanied with requisite documents of the prospective borrower, from Branch Office, C.R. Park for sanction of overdraft limit of Rs.1.95 crores. As per guidelines issued vide Circulars dated 31.03.2016 and 05.12.2016, Petitioner was required to have an initial interaction and assess the potentiality of the loan and thereafter concerned officials at the respective branches were responsible to look into

the loan application form and other documents submitted by the borrower. The original title deeds of the property intended to be mortgaged were to be received by the Lead Generating Branch. On receipt of the proposal, Petitioner allocated the case to an Agency approved by PNB for due diligence of KYC documents, ITRs and addresses' verification of the borrower and the guarantors. The report submitted did not show any adverse feature. Valuation of the property offered as collateral security was also carried out by an approved Valuer. As per norms prescribed by RBI and Head Office of PNB, legal opinion-cum-search of subject property documents was assigned to and was carried out by an Advocate, who also in her report stated that the property could be mortgaged as it was free from any encumbrance. Petitioner himself visited the business address of the borrower and met her, apart from inspecting the property sought to be mortgaged. After the process was completed, the Loan Manager scrutinized the due diligence reports and recommended the proposal for sanction of OD limit of Rs.1.95 crores and it was subsequent thereto that the Petitioner sanctioned the limit, based on the documents submitted and verified. In a nutshell, the case of the Petitioner is that due diligence was conducted at every level before the OD limit was sanctioned by the Petitioner and his action was in consonance with banking regulations, norms and guidelines incorporated in various circulars. It is strenuously urged that the Bank in question has neither initiated any investigation nor lodged a complaint against the Petitioner, as the Petitioner is not at fault and has followed required procedure for sanctioning the OD limit.

4. Detailed status report has been filed on behalf of the State. It is stated that the case was registered on the complaint of one Dr. Ram Chander

alleging that the title documents of the subject property had been forged and fabricated and on that basis a loan of nearly Rs.2 crores had been taken from PNB, Bhikaji Cama Place/C.R. Park, New Delhi. It is further stated that during the course of investigation, Complainant has been examined and in his statement under Section 161 Cr.P.C., he has stated that he has never given any guarantee for the loan in question and the photograph affixed on the document submitted is not his. He has also stated that the copies of the identity documents such as Aadhar Card, PAN Card and ITRs enclosed with the loan application were not submitted by him and has denied his signatures on the loan application, besides stating that even his date of birth has been wrongly mentioned and that his original property documents are with PNB, Kailash Colony, in respect of a loan taken by him.

5. It is stated in the report that original account opening form/loan application and other documents have been obtained from PNB, C.R. Park Branch along with money transaction statements etc. and it is found that as per records, loan application was submitted by the borrower Smt. Kanchan, proprietor of Shakti Enterprises along with Dr. Ram Chander as guarantor. Loan was sanctioned on 29.05.2019 and loan amount of Rs.1.95 crores was disbursed in the account of the borrower on 30.05.2019. Thereafter, further amounts were transferred into the accounts of the other co-accused. Accused Ravi Kumar Gehlot has been arrested on 22.08.2023 and after two days PC remand, he has been sent to Judicial Custody on 26.08.2023. As per the money trail discovered so far, the said accused has been identified as major beneficiary of the alleged loan. Anticipatory bail application of three other accused has been dismissed by the Trial Court and the persons are

absconding. Accused Ravi Kumar Gehlot has disclosed in his disclosure statement that the Petitioner herein was well-known to him and is the main person instrumental in sanctioning the loan. In fact, loan transaction was given effect to on his advice by submitting forged and fabricated identity proofs as well as title documents of the subject property with fake bank account details of Smt. Kanchan, the borrower.

6. It is further stated that Smt. Kanchan has been arrested on 28.09.2023 and is in judicial custody. On verification, the identity documents have been found to be fabricated. On careful scrutiny, the title documents of the property have also been found to be fabricated and forged, which is evident from a bare perusal of the stamp papers, which are fake. The Advocate who verified the title documents has disclosed that it was the Petitioner, at whose instance she had gone to the office and looked into the title documents of the property and verified the same. Investigation has further revealed that Petitioner had visited the property in question and clicked photographs with the borrower but did not bother to meet the guarantor. Petitioner has also ignored the vital fact that two loans were already shown to be existing on the same property at PNB, Kailash Colony, Delhi and is directly involved in sanctioning the loan in connivance with the other accused as well as some of the bank officials. Petitioner is also involved in case FIR No. 106/2020 under Sections 419/420/467/468/120B IPC PS EOW and case FIR No. 254/2022 under Sections 420/468/471/ 120B IPC PS Kalkaji. It is also stated that a notice under Section 41A Cr.P.C. was served on the Petitioner through his son on 16.09.2023 for joining investigation on 20.09.2023, however, he has failed to do so. Anticipatory bail application of the Petitioner was dismissed by the Sessions

Court vide order dated 21.09.2023 and the present application also deserves to be dismissed.

7. Learned APP submits that there are serious allegations against the Petitioner and the transaction in question may be a part of the larger bank fraud and thus further investigation is required. It is stated that since custodial investigation of the Petitioner is required to ascertain the true facts including the genuineness of the documents as well as the money trail, the anticipatory bail application be dismissed.

8. I have heard learned counsel for the Petitioner and the learned APP for the State.

9. In the present case, allegations against the Petitioner are that he has sanctioned the overdraft limit to the tune of Rs.1.95 crores in favour of the borrower on the basis of a loan application supported by forged and fabricated documents, more particularly, the title deeds of the property which was mortgaged for the sanction of the loan. Some of co-accused are in judicial custody while rest are absconding. 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:-

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Signing Date:10.10.2023 17:16:09

> *"**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".*
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> *(emphasis supplied)*

10. 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;*
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> *(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;*
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> *(iii) The possibility of the applicant to flee from justice;*
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> *(iv) The possibility of the accused's likelihood to repeat similar or other offences;*
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> *(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."

11. In ***Sushila Aggarwal and Others v. State (NCT of Delhi) and Another, (2018) 7 SCC 731***, the position of law, that while considering anticipatory bail applications, Court should consider nature and gravity of the offence(s), role attributed to the Applicant and facts of the case, was reaffirmed. In ***Pratibha Manchanda and Another v. State of Haryana and Another, (2023) 8 SCC 181,*** the Supreme Court observed that the relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent misuse of power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and interests of justice. The tight rope the Courts must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, Court must also consider gravity

of the offence, impact on the society and need for a fair and free investigation.

12. In the present case, the allegations against the Petitioner, who was the Chief Manager of the concerned bank and had sanctioned overdraft limit of Rs.1.95 crores in favour of the borrower, are serious and as per the stand of the State, custodial interrogation of the Petitioner is required as he needs to be confronted with various documents and statements. The loan transaction may be a part of a larger bank fraud and thus the entire trail needs to be unearthed. Hence, no ground for grant of anticipatory bail is made out. In so far as argument of the Petitioner that his action is in consonance with the Banking regulations, circulars and norms is concerned, the same will be a subject matter of investigation and cannot be adjudicated at this stage.

13. Accordingly, present bail application is dismissed.

14. Needless to state that the observations made herein are purely for the purpose of deciding the present application and shall not be construed as an expression on the merits of the case.

JYOTI SINGH, J

OCTOBER 09, 2023/shivam