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

% Judgment delivered on: 21.07.2023

+ BAIL APPLN. 3738/2022

PRAVEEN

..... Petitioner

versus

STATE OF NCT OF DELHI & ANR. Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Rudro Chatterjee, Advocate.

For the Respondents : Mr. Shoaib Haider, APP for State with
SI Reema, PS-IGI Airport.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. This is an application under Section 438 Cr.P.C., 1973 filed on behalf of the applicant seeking anticipatory bail in connection with case FIR No. 435/2022 under Sections 420/468/471 IPC, 1860 and Section 12 of the Passports Act registered at PS : IGI Airport.

2. Mr. Chatterjee, learned counsel appearing for the applicant submits that the applicant was a co-resident of the same village as the passenger Mr. Rinku Kumar.



3. Learned counsel submits that the applicant does not dispute that he was in contact with the said passenger Mr. Rinku Kumar before or during the day of the alleged offence and they were in touch with each other as friends. Therefore, there is nothing to suspect if there are phone call records between the applicant and the said passenger Rinku Kumar.

4. Learned counsel also draws attention of this Court to the affidavit sworn by the said Rinku Kumar giving the details of their nativity as also friendship from the village itself in Alupur, Tehsil-Madlauda, Zila-Panipat, Haryana.

5. Learned counsel submits that the passenger himself has categorically in his affidavit submitted that the applicant is a good friend and has no role so far as the procurement of fake visa is concerned. Learned counsel submits by relying upon the said affidavit that, the passenger himself has categorically stated that it is one Mr. Ravinder Kumar Sahni, who has duped him and procured him a fake visa.

6. Learned counsel submits that the police has been unable to arrest the actual perpetrator of the crime, i.e., Mr. Ravinder Kumar Sahni and has caught hold of the applicant instead, who is innocent and was only helping his friend Mr. Rinku Kumar at the time when he was in difficulty with respect to the aforesaid transaction. Other than that, learned counsel submits, there was no other transaction between the applicant and Mr. Rinku Kumar.

7. Moreover, learned counsel also submits that the investigations carried out by the police authorities have failed to show as to how and in what manner, the applicant is connected to the allegation of fake visa stamp on the passport of Mr. Rinku Kumar.



8. Learned counsel submits that there is no attending or connecting circumstance, linking the applicant to the allegation of fake visa and, therefore, the custodial interrogation, even otherwise, of the applicant is not required.

9. Learned counsel also submits that all the allegations which have been levelled against the applicant are based purely on the disclosure statement of the co-accused, which is impermissible in law.

10. On the aforesaid grounds, learned counsel submits that the applicant should be enlarged on anticipatory bail.

11. *Per contra*, Mr. Shoaib Haider, learned APP for the State by referring to the status report submits that it was the passenger Mr. Rinku Kumar, who had disclosed the name of the applicant and had also disclosed that it was at his behest that the amounts in cash was paid to different persons for the purposes of arranging fake visa for Guatemala.

12. Mr. Haider, learned APP also submits that though the applicant has been participating in the investigation, however, the crucial link to establish the complicity of the applicant with the unknown accused persons as also Mr. Ravinder Kumar Sahni, is the mobile phone, which very conveniently, according to the learned APP, applicant claims to have lost.

13. In fact, learned APP submits that whatever CDRs have been made available to the Investigating Authorities are clear pointers to the fact that the applicant was in touch with Mr. Rinku Kumar, the passenger.

14. In fact, Mr. Haider, learned APP for the State submits that the day of arrest of Mr. Rinku Kumar, the said passenger tried to contact the applicant in the first instance through WhatsApp message and no other



person. According to Mr. Haider, learned APP, the last mile connectivity to the complicity of the present applicant is the immediate reaction of Mr. Rinku Kumar, the passenger who tried to make contact with the applicant the day of his arrest.

15. Learned APP submits that unless the custodial interrogation of the applicant is available to the Investigating Authorities, the link between the fabrication and arrangement of the fake visa as also the trail of money will not be established.

16. On that basis, learned APP for the State submits that the application of the applicant be dismissed.

17. This Court has considered the submissions of the learned counsel for the applicant as also learned APP for the State and perused the documents on record.

18. The fact that the petitioner was belonging to same village as also being close in touch with the passenger on the mobile phone would not accrue to the benefit of the applicant, so far as the present case is concerned, inasmuch as that could be a primary reason as to why the passenger had contacted the applicant as soon as he was arrested.

19. The second limb of the facts which emanate from the record is the loss of the mobile phone at a time when the police was conducting investigations in the present FIR. In that, the link between the applicant as also the passenger Mr. Rinku Kumar and the alleged other persons whose names were disclosed by Mr. Kumar, is stated to have been lost.

20. Yet another reason for doubting the credibility of the version of the applicant is the deletion of the WhatsApp chats, which would have



been available in the mobile phone, which is stated to have been lost by the applicant.

21. Learned APP submits that all the messages and the calls after the calls made by Mr. Rinku Kumar to the applicant soon after he was detained abroad, have been recovered by the FSL which lead the Investigating Authorities to suspect the complicity of the applicant in the aforesaid transactions and offences.

22. So far as the submissions in respect of the reliance of the Prosecuting Authorities on the statement of a co-accused is concerned, it is merely upon the custodial interrogation that the complicity of the applicant with the offences under the FIR would be established. Therefore, to submit at this stage, that the reliance upon the disclosure statement of the co-accused, to form an opinion about the culpability of the applicant would not be tenable in law.

23. In view of the aforesaid, this Court is of the considered opinion that no case is made out for granting anticipatory bail to the applicant and, therefore, the same is dismissed.

TUSHAR RAO GEDELA, J.

JULY 21, 2023/nd