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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 3865/2022, CRL.M.A. 27393/2022

SATISH KUMAR

..... Petitioner

Through: Mr. Syed Hasan I. Adv. along with
Mr. Vikas Yadav, Mr. Syed Mohd.
Hassan, Advs.

Versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Hemant Mehla, APP for the State
with SI Teena P Goyal, PS Dwarka
More.
Mr. Prem Sagar Pal and Mr. Vikas
Saini, Advs. for R-2 with R-2.

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Date of Decision: 5th 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 petition seeking anticipatory bail in FIR No.687/2022 registered at PS Dwarka North, under Section 406/506 IPC.
2. Briefly stated facts are that the dispute relates to sale of vehicle bearing Registration No.DL10CN7959, make-BMW, Model XI SDRIVE20D. The case of the petitioner is that the vehicle bearing Registration No.DL10CN7959, make-BMW, Model XI SDRIVE20D was duly sold to him by the complainant for which the payment has

already been made.

3. Learned counsel submits that regarding the sale transaction of the same vehicle a civil suit no. 1267/2022 titled as ***Satish Kumar v. Transport Department, Govt. of NCT of Delhi & Ors.*** has been filed. In the said civil suit after looking into the written statement of the complainant, the learned Civil Court has passed an interim order in favour of the petitioner.
4. Learned counsel undertakes that the petitioner shall join the investigation as and when called by the IO.
5. Learned APP for the State has opposed the bail application and submits that in fact the payment which the petitioner is claiming to have been made against the vehicle was made against the sale of the flat. Learned APP for the State has also submitted that even during the course of the investigation, the petitioner has filed an affidavit purported to have been executed by the complainant which on the face of it is forged and fabricated. He submits that petitioner has not even supplied the original of the said affidavit despite having been called.
6. Learned counsel for the complainant has also opposed the anticipatory bail application on the ground that the petitioner has played a fraud upon the complainant and has taken away the vehicle of the complainant.
7. I have considered the submissions of all the parties.
8. Learned counsel for the petitioner has invited the attention of the Court to a document annexed with the application itself which is DD no. 0139A dated 12.08.2022 in which the husband of the complainant

has stated that the vehicle has been sold by his wife to the petitioner.

9. Learned counsel for the petitioner further undertakes that the petitioner shall supply the original affidavit dated 12.08.2022 purported to have been executed by the complainant.
10. 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.
11. 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 CrPC by a wise and careful use of their discretion, which by their long training and

experience they are ideally suited to do.

12. 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.
13. 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.PC has a direct bearing on the fundamental right to life and liberty of an individual. Thus, while considering the 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.
14. The present case revolves around alleged selling of the vehicle bearing Registration No.DL10CN7959, make-BMW, Model XI SDRIVE20D. The petitioner's case is that complainant sold this vehicle to him against consideration. The complainant's case is that petitioner has forcibly taken away the vehicle. The allegation of forging the document have also been made against the petitioner. It is an admitted case that a civil suit is pending regarding the same

transaction. In the civil suit, interim order has been passed in favour of the petitioner.

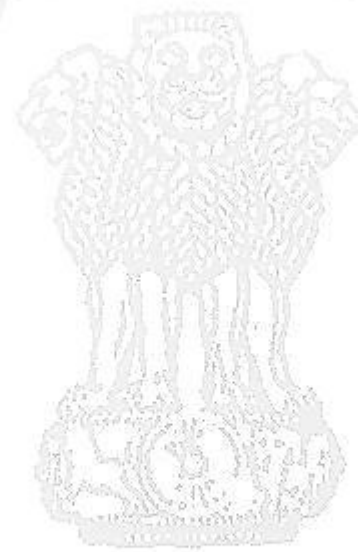
15. I consider that in the totality of the facts and circumstances, the petitioner, in the event of arrest be admitted to anticipatory bail on furnishing a personal bond in the sum of Rs.20,000/- each, with one surety of the like amount to the satisfaction of Investigation Officer subject to the following 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.
- f) the petitioner shall also inform the investigation officer about any change in their address.

16. It is made clear that in case, the petitioner fails to supply the original affidavit dated 12.08.2022, the prosecution shall be at liberty to move an application for cancellation of the bail.
17. The bail application along with pending application stands disposed of in the above terms.

DINESH KUMAR SHARMA, J

JANUARY 5, 2023/Pallavi



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