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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 151/2024 & CRL.M.A. 9713/2024

KRISHANU GOSWAMI

..... Applicant

Through: Mr. Sandeep Lamba, Mr.
Vishal Singh & Ms. Shital
Pawar, Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Mukesh Kumar, APP
for the State with Mr.
Rajesh Kaushik, Advocate.
Inspector Sarversh Kumar
(P.S. C.R. Park).
Mr. S.S. Ahluwalia,
Advocate for the
Complainant.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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09.04.2024

1. The present FIR bearing No. 176/2023 dated 02.08.2023 at Police Station Chitranjan Park for offence under Sections 408/34 of the Indian Penal Code ('IPC') was registered on a complaint given by Mr. Raj Kumar Chandra, who is the owner of jewellery shop in the name of Chandra & Sons.
2. It is alleged that on a physical verification of the jewellery stock in the shop, certain discrepancies were found. It was found that 4732.54 grams of gold items worth ₹2,90,00,000/- were missing. The applicant and four more employees who were entrusted with the stock of jewellery were named as accused persons by the complainant.
3. The learned counsel for the applicant submits that the



applicant has been falsely implicated in the present case.

4. He submits that the applicant was not the employee of the complainant and was assigned through the security agency and was made to work part time in the shop of the complainant.

5. He submits that the CCTV footage has not been examined by the State which would show that no misappropriation of gold items was done by the applicant. He further submits that at the time of incident, the applicant was at his hometown.

6. The learned Additional Public Prosecutor for the State opposes the grant of relief to the applicant.

7. He submits that during the course of the investigation, the statements of the customers of the shop and the other employees of the shop were recorded which clearly point towards the guilt of the applicant.

8. He submits that the applicant was made in charge of the vaults containing gold jewellery in the shop.

9. This Court has perused the case diary. The statement of the customer has been recorded who stated that the applicant was manager of the shop and had taken money for doing the jewellery repair work. The witnesses further stated that no receipt was issued for the said work and the money was taken in cash. The statements of the employees were also perused by this Court. The allegations made are serious in nature and cannot be stated to have been made to humiliate or insult the applicant.

10. It is also significant to note that the applicant has not joined the investigation which has led to initiation of the proceedings under Section 82 of CrPC.

11. The applicant has filed the bail application before this Court on an earlier occasion which was dismissed as withdrawn on 15.12.2023, noting that the applicant seeks to surrender before



the learned Trial Court.

12. Even though, the fact that the proceedings under Section 82 of the CrPC had not been mentioned in the order dated 15.12.2023, it is apparent that the bail application filed on an earlier occasion was withdrawn after the initiation of proceedings under Section 82 of the CrPC.

13. The applicant also sought liberty to surrender before the learned Trial Court.

14. However, yet again, the present application is filed through different lawyer wherein, it is stated that the application was withdrawn by the learned counsel who represented the applicant on an earlier occasion without any instructions.

15. It is a settled law that dismissal of bail application as withdrawn should be treated as rejection on merits because as a matter of practice, the counsel withdraws the bail application only if he finds that the Court is not inclined to exercise the discretion in his favour.

16. The averment made in the present application is clearly an afterthought.

17. Another aspect to be considered is that the process under Section 82 of the CrPC had been initiated against the applicants. The Hon'ble Apex Court in ***Prem Shankar Prasad v. State of Bihar*** : (2022) 14 SCC 516 has specifically observed as under:

“10.2. Despite the above observations on merits and despite the fact that it was brought to the notice of the High Court that Respondent 2-accused is absconding and even the proceedings under Sections 82/83CrPC have been initiated as far back as on 10-1-2019, the High Court has just ignored the aforesaid relevant aspects and has granted anticipatory bail to Respondent 2-accused by observing that the nature of accusation is arising out of a business transaction. The specific allegations of cheating, etc. which came to be considered by the learned Additional Sessions



Judge has not at all ~~been~~ considered by the High Court. Even the High Court has just ignored the factum of initiation of proceedings under Sections 82/83CrPC by simply observing that “be that as it may”. The aforesaid relevant aspect on grant of anticipatory bail ought not to have been ignored by the High Court and ought to have been considered by the High Court very seriously and not casually.

10.3 In State of M.P. v. Pradeep Sharma [State of M.P. v. Pradeep Sharma, (2014) 2 SCC 171 : (2014) 1 SCC (Cri) 768] , it is observed and held by this Court that if anyone is declared as an absconder/proclaimed offender in terms of Section 82CrPC, he is not entitled to relief of anticipatory bail...

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11. Thus the High Court has committed an error in granting anticipatory bail to Respondent 2-accused ignoring the proceedings under Sections 82/83CrPC.”

(emphasis supplied)

18. Keeping in view the aforesaid facts, this court finds no merits in the present application and the same is dismissed.

AMIT MAHAJAN, J

APRIL 9, 2024

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