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

+ BAIL APPLN. 664/2024

VINOD KUMAR JAISWAL @ VINOD GUPTAPetitioner

versus

CENTRAL BUREAU OF INVESTIGATION ECONOMIC
OFFENCE-II

.....Respondent

+ BAIL APPLN. 1024/2024, CRL.M.A. 8977/2024

VINOD KUMAR JAISWAL @ VINOD GUPTAPetitioner

versus

CENTRAL BUREAU OF INVESTIGATION, ECONOMIC
OFFENCE-II

.....Respondent

Present: Mr.Sanjay Kumar, Mr.Sandesh Jha, Mr.Shashank, Mr.Aditya Sharma, Mr.Ayush Goel, Mr.Sachin Deshdeep, Mr.Ravi Mishra and Mr.Jayesh Mishra, Advts. for the petitioners. Mr.Ravi Sharma, SPP for CBI with Mr.Premtosh K.Mishra, Mr.Ishann Bhardwaj, Mr.Prabhull Kumar and Ms.Madhulika Rai Sharma, Advts. for CBI

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

01.08.2024

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1. Present applications have been filed for grant of anticipatory bail in case F.I.R Nos. RC2202023E0016/2023 & RC2202023E0017/2023 under Section 8 read with Section 22, 23 & 29 N.D.P.S. Act, P.S. CBI, EO-II. At the outset, Mr. Sanjay Kumar, learned counsel for the



applicants submits that the evidence against the petitioner is only in the form of confessional statement of the co-accused. Learned counsel submits that in view of the law laid down in *Toofan Singh v. State of Tamil Nadu*, 2021 (4) SCC 1 inter alia held that disclosure made by any accused is not admissible as evidence as officers who are invested with powers under Section 53 of the NDPS Act are "police officers" within the meaning of Section 25 of the Evidence Act, and therefore any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act. Thus, such statements cannot be considered to convict an accused under the NDPS Act.

2. Further, the Apex Court in *Bharat Chaudhary v. Union of India* (2021) 20 SCC 50 reiterated the law laid down in *Toofan Singh (Supra)* that mere reliance on the statement of the co-accused is too tenuous a ground to convict an accused under the NDPS Act. Hence, the confessional statement of co-accused is not admissible
3. Learned counsel submits that since there is no other evidence against the present petitioner, he may be admitted to anticipatory. Learned counsel for the petitioner has also submitted that the petitioner is in fact the resident of Navi Mumbai whereas the notice was sent on the native place in U.P. on 17.08.2023 for appearing before CBI on 22.08.2023.
4. Learned counsel further submits that the petitioner who is an uneducated person got the information late, and by the time he could explore the avenues for legal recourse, the CBI issued the coercive process. Learned counsel for CBI at the outset has submitted that the conduct of the petitioner is such that he may not be entitled to be admitted to anticipatory bail. Learned counsel for the CBI has



submitted that the petitioner has not joined investigation and the proceedings under section 82 Cr.PC have already been initiated against him. Learned counsel submits that if the petitioner is admitted to anticipatory bail, he may flee away from the ends of justice.

5. I have considered the submissions, Cr.P.C provides that the discretion of anticipatory bail may be exercised on the following grounds:

“Section 438 (1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter-alia, the following factors, namely—

- (i) the nature and gravity of the accusation;*
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
- (iii) the possibility of the applicant to flee from justice; and.*
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail;*

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this Sub-Section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.

1A. Where the Court grants an interim order under Sub-Section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court,



1B. The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.

6. It is a settled proposition that the jurisdiction of anticipatory bail is to be exercised sparingly only if the person applying for the same, satisfied the court that he has reasons to believe that he may be arrested on accusation of having committed a non-bailable offence as also reiterated in ***Gurbaksh Singh Sibbia Etc v. State of Punjab*** 1980 AIR 1632.
7. The rigors as provided under Section 37 of NDPS or in other acts as in PMLA etc. are in addition to rigors of section 438 Cr.PC. For anticipatory bail in such special statutes, the petitioner has to cross two thresholds. First, the condition as required under section 438 Cr.P.C. and then additional condition as required under the special act i.e. Section 37 of NDPS in the present case.
8. In the present case, as has been pointed out by the learned counsel for CBI, the petitioner has not joined the investigation and is absconding and is not available on any of the given address. Learned counsel for CBI has submitted that he has even withdrawn his children from the school. Learned counsel for petitioner submits that the coercive process have been issued only after the petitioner has approached this court for the anticipatory bail. Learned counsel therefore submits that the petitioner cannot be blamed for not joining the investigation in such



circumstances as he was given the legal remedies.

9. The proceedings under section 82 Cr.PC are pending before trial court. Learned counsel submits that the petitioner shall approach the learned trial court for recalling of process under section 82 Cr.P.C. The trial court shall consider the same in accordance with the law taking into account the fact that the application for anticipatory bail was pending before this court. In order to enable the petitioner to avail the remedy of filing proceedings for recall of process of section 82 Cr.PC, no coercive shall be taken for four weeks i.e. till 01.09.2024.
10. With the above directions, the present petitions along pending applications stands disposed of.

DINESH KUMAR SHARMA, J

AUGUST 1, 2024

rb/k**