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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 665/2024**

ANMESH @ BHURA Applicant

Through: Mr. Kumar Amit, Adv.

versus

THE STATE GOVT.OF NCT DELHI Respondent

Through: Mr. Mukesh Kumar, APP
for the State along with
Ms. Sonia Gupta & Mr.
Anupam Pandey, Adv.
SI Sudhir Rathi, PS Burari.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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07.05.2024

1. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 ('CrPC') seeking pre-arrest bail in FIR No.75/2024 dated 29.01.2024 registered at Police Station Burari for offences punishable under Sections 380 of the Indian Penal Code, 1860.
2. The FIR was registered on a complainant given by the complainant namely, Kripal Singh, alleging that a theft took place at his house.
3. It is alleged that on 28.01.2024 when the complainant had gone to his in laws place a theft took place at his house and one television, nine watches, gold earrings, and a gold chain, were stolen.
4. On the basis of local enquiry and secret information, on 31.01.2024 applicant along with two other associates namely Vikas Yadav and Mohit were interrogated on suspicion but the same were relieved from the Police station on the said date.
5. During the course of investigation after perusing the CCTV footage of the entire stretch of the area, it was found that



the applicant was seen outside the house of the complainant, at the time of the incident. Apart from him, two other persons were also seen carrying a television / LED on a bike and the applicant was talking to them in a suspicious manner.

6. The learned Counsel for the applicant submits that the applicant is falsely implicated in the present case. He submits that when the applicant was called during the course of enquiry he had joined the enquiry and visited the police station and was also relieved thereafter.

7. He submits that the applicant is a young man of 23 years of age coming from poor strata of society, drives a Champion Tempo, and is the sole bread earner of his entire family.

8. He submits that the applicant is not named in the present FIR and has no concern with the commission of the alleged offence.

9. The learned Additional Public Prosecutor for the State has opposed the grant of present bail application. He submits that the CCTV footage of the area was examined, and the applicant was seen to be roaming around the house in a suspicious manner, where the theft took place.

10. He submits that the applicant is also involved in other cases of similar nature.

11. He submits that the applicant is clearly seen in the CCTV footage talking to the persons who were seen coming out of the victim's house with the stolen articles.

12. I have heard the learned Counsel for the parties.

13. I have also perused the CCTV footage. The applicant, at this stage, does not appear to be falsely implicated. The applicant can be seen talking to the other co-accused persons. The applicants can also be seen covering his face while moving away



from the victim's house.

14. It is to be kept in mind that the investigation is currently at a nascent stage. The considerations governing the grant of pre-arrest bail are materially different than those to be considered while adjudicating the application for grant of regular bail, as in the latter case, the accused is already under arrest and substantial investigation is carried out by the investigating agency.

15. It is trite law that the power to grant a pre-arrest bail under Section 438 of the CrPC is extraordinary in nature and is to be exercised sparingly. Thus, pre-arrest bail cannot be granted in a routine manner. The Hon'ble Apex Court, in the case of ***State of A.P. v. Bimal Krishna Kundu*** : (1997) 8 SCC 104, held as under:

“8. A three-Judge Bench of this Court has stated in Pokar Ram v. State of Rajasthan [(1985) 2 SCC 597 : 1985 SCC (Cri) 297 : AIR 1985 SC 969] : (SCC p. 600, para 5)

“5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal.”

9. Similar observations have been made by us in a recent judgment in State v. Anil Sharma [(1997) 7 SCC 187 : 1997 SCC (Cri) 1039 : JT (1997) 7 SC 651] : (SCC pp. 189-90, para 8)

“The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest.”

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12. We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the



respondents. It is disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on “the career of millions of students”, learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order.”

16. It is settled law that the custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the CrPC [*State v. Anil Sharma : (1997) 7 SCC 187*]. Granting pre-arrest bail to the applicant would undoubtedly impede further investigation. An order of pre-arrest bail cannot be granted in a routine manner so as to allow the applicant to use the same as a shield.

17. The investigation has, revealed habitual engagement of the present applicant in such criminal practices. Given the pattern of conduct and the serious implications of the offence as alleged, there is a justified concern regarding the applicants’ potential influence over the evidence and the possibility of committing similar offences if not detained.

18. The investigation is at a nascent stage and the Police needs to be given a fair play in the joints to investigate the matter in the



manner they feel appropriate.

19. Considering the status report filed by the State, it cannot be held, at this stage, that the investigation is being carried out with the intention to injure or humiliate the applicant. The nature and the gravity of the allegations are serious. Specific allegations have also been made that the applicant has been indulging into similar offences on earlier occasions and there is sufficient material, at this stage, for the State to seek custodial interrogation of the applicant.

20. In the present case the applicant could be seen with other two-accused persons who can be seen going inside the lane of the complainant's house and thereafter leaving with a television / LED on a motor cycle. The body language of the applicant also implicates him since he was seen in the lane of the complainant's house and was talking to the other two accused persons.

21. The other co-accused persons are yet to be identified and the stolen articles are yet to be recovered.

22. It also not in dispute that the applicant has criminal antecedents and was previously arrested in FIR No. 49/2022 and FIR No. 874/2021.

23. In view of the above, no case is made out for grant of bail. The present application is accordingly dismissed.

24. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

AMIT MAHAJAN, J

MAY 7, 2024