



\$~61

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 836/2024**

MOHD SALMAN

..... Applicant

Through: Adv. Rohit Baisla & Adv.
Vandana Dhoundiyal.

versus

THE STATE GNCT OF DELHI

..... Respondent

Through: Mr. Utkarsh, APP for the
State.
SI Ramakant, PS Kotwali.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
06.03.2024

%

CRL.M.A. 7289/2024 (*exemption from filing dim/illegible and
certified copies of the FIR and orders*)

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

BAIL APPLN. 836/2024

3. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 ('CrPC') seeking grant of pre-arrest bail in FIR No. 812/2023 dated 17.09.2023 for offences under Sections 308/341/34 of the Indian Penal Code, 1860 ('IPC'), registered at Police Station Kotwali.

4. The applicant apprehending arrest, filed an application seeking grant of pre-arrest bail under Section 438 of the CrPC on an earlier occasion, before the learned Additional Sessions Judge, Tis Hazari Courts, Delhi which was dismissed by the learned Additional Sessions Judge (ASJ) by order dated 13.10.2023,

BAIL APPLN. 836/2024

Page 1 of 4



wherein it was noted that the applicant was absconding and the offence committed is serious in nature. The weapon of offence was also not recovered and the custodial interrogation of the applicant was required.

5. The applicant had thereafter filed an application before this Court being Bail Application No. 3601/2023. The said application was heard and when the Court was not inclined to pass any order, the application was dismissed as withdrawn by order dated 05.02.2024.

6. The applicant once again, approached the learned Special Judge (NDPS), Tis Hazari Courts, Delhi and filed another application seeking grant of pre-arrest bail under Section 438 of the CrPC which was dismissed by the learned Special Judge, noting that successive anticipatory bail applications are not to be entertained since there was no change in circumstance.

7. Yet, another application is filed by the applicant before this Court under Section 438 of the CrPC which is the fourth attempt in succession without there being any change in circumstances.

8. The learned counsel for the applicant submits that the applicant had joined the investigation pursuant to interim protection granted by this Court on an earlier occasion, and that constitutes change in circumstances.

9. The learned Additional Public Prosecutor for the State, however, objects the maintainability of the present application. He submits that the applicant pursuant to joining the investigation has not cooperated and after hearing the arguments, this Court had dismissed the application filed by the applicant under Section 438 of the CrPC by order dated 05.02.2024.

10. He further submits that dismissal of bail application as
BAIL APPLN. 836/2024

Page 2 of 4



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. He submits that the filing of successive pre-arrest bail applications is abuse of process of Court.

11. As noted above, this is the fourth bail application filed by the applicant seeking same relief. The bail application filed by the applicant had already been dismissed by order dated 13.10.2023, passed by the learned ASJ. It was specifically noted that the applicant also has previous involvement in relation to the offence under Section 307 of the IPC and he had played an active role in connection with the offence. The learned Trial Court after hearing the arguments had opined that the custodial interrogation of the applicant is required.

12. It is pertinent to note that the applicant in the present case had withdrawn the pre-arrest application filed on an earlier occasion, before this court. 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. [Ref: *Rajkumar v. State (NCT of Delhi)* : 128 (2006) DLT 264]

13. It has been held in the catena of judgments that there must be change in circumstances to warrant fresh consideration of the bail application. The successive bail applications filed without there being any change in circumstances, is strongly discouraged, and is a gross abuse of the process of law.

14. The Hon'ble Apex Court in *G.R. Ananda Babu v. State of T.N.:* (2021) 16 SCC 725 held that successive anticipatory bail applications ought not to be entertained by the Courts. The same
BAIL APPLN. 836/2024

Page 3 of 4



also has an effect in increasing the pendency of the proceedings before the Courts. The Courts while entertaining the successive bail applications also has to waste the precious time which can be devoted for consideration of the litigation in relation to the genuine litigants.

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

16. Expression of any opinion may not be treated as an expression on the merits of the case.

AMIT MAHAJAN, J

MARCH 6, 2024
“SK”