



2024:DHC: 949



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

Date of decision: 06.02.2024

+ **CRL.M.C. 1707/2022**

SHARVAN JHA

..... Petitioner

Through: Mr.Rahul Sharma and
Mr.Kshitij, Advs.

versus

STATE (GOVT. OF NCT OF DELHI) & ANR.

..... Respondents

Through: Mr.Aman Usman, APP with SI
Sudhir Rathi

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed under Section 482 and 439 (2) of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') seeking cancellation of the purported anticipatory bail granted to the respondent no. 2 in FIR No.943/2021 registered at Police Station: Burari, North, Delhi under Section 420 of the Indian Penal Code, 1860 (in short, 'IPC') by the Order dated 05.03.2022 passed by the learned Additional Sessions Judge-04, Central District, Delhi (hereinafter referred to as 'Additional Sessions Judge') in Bail No. 358/2022 (hereinafter referred to as 'Impugned Order').

2. In spite of service of notice on the respondent no. 2, none is appearing for the respondent no. 2.

3. The Impugned Order reads as under:



"It is submitted by the counsel for accused that as now he has joined the investigation and even cooperated with the investigation.

On the other hand, it is submitted by the IO that earlier the seller did not properly sell the property in question to such applicant Amit Bhardwaj as per investigation carried out so far. But at the same time, IO states that he does not need custodial interrogation of present accused and he does not feel to arrest of such accused at present.

Heard.

On the other hand, it is claimed by the counsel for the complainant that his hard earned money of Rs. 37,50,000/- is taken away by cheating and misrepresentation by such accused and the same is not recovered so far.

Having regard to the nature of offence and the maximum punishment for the same, the provision of section 41A Cr.PC and the directions of the Hon'ble High Court in the case of 'Arnesh Kumar' coupled with the statement of IO that he does not need custodial interrogation of the present applicant, as there is no reasonable apprehension to arrest at present, this present application is disposed off with liberty to move afresh, if need so arises in future. IO is directed to give 07 days notice to the applicant / accused in case in future he feels that there is necessity to arrest of present applicant / accused.

With these observations, the present bail application stands disposed off. Copy of this order be given dasti to both the parties. Further, copy of this order be also given dast to IO / SHO concerned."

(Emphasis supplied)

4. The learned counsel for the petitioner submits that, in spite of grave allegations, the Investigating Officer (IO) for reasons unknown has not sought the custodial interrogation of the accused. He submits that, even otherwise, the direction of the learned Additional Sessions



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Judge that the IO shall give notice of seven days to the respondent no.2 in case in future if he feels that there is necessity to arrest the respondent no.2, cannot be sustained.

5. The learned APP for the State, on the other hand, submits that the Impugned Order cannot be read as the one granting anticipatory bail to the respondent no.2. He submits that IO is within his right to seek custodial interrogation, if at any future date it is felt necessary.

6. I have considered the submissions made by the learned counsels for the parties.

7. The Impugned Order cannot be read as the one granting anticipatory bail to the respondent no.2. It merely records the statement of the IO stating that he does not feel it necessary to seek custodial interrogation of the respondent no.2 and on this statement, grants liberty to the respondent no.2 to move a fresh application in case the IO at any future date requires his custodial interrogation.

8. As far as the direction of the learned Additional Sessions Judge that the IO shall give seven days notice to respondent no.2 herein in case in future he feels that there is necessity to arrest him, reference may be made to the judgment of the Supreme Court in ***Union of India v. Padam Narain Aggarwal and Others***, (2008) 13 SCC 305, wherein the Supreme Court held as under:-

“44. In the case on hand, the respondents were only summoned under Section 108 of the Act for recording of their statements. The High Court was conscious and mindful of that fact. It, therefore, held that applications for anticipatory bail, in the circumstances, were pre-mature. They were, accordingly, disposed of by directing the respondents to appear



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before the Custom Authorities. The Court, however, did not stop there. It stated that even if the Custom Authorities find any non-bailable offence against the applicants (respondents herein), they shall not be arrested without ten day's prior notice to them.

45. In our judgment, on the facts and in the circumstances of the present case, neither of the above directions can be said to be legal, valid or in consonance with law. Firstly, the order passed by the High Court is a blanket one as held by the Constitution Bench of this Court in Gurbaksh Singh and seeks to grant protection to respondents in respect of any non-bailable offence. Secondly, it illegally obstructs, interferes and curtails the authority of Custom Officers from exercising statutory power of arrest a person said to have committed a non-bailable offence by imposing a condition of giving ten day's prior notice, a condition not warranted by law. The order passed by the High Court to the extent of directions issued to the Custom Authorities is, therefore, liable to be set aside and is hereby set aside."

9. In ***Nathu Singh v. State of Uttar Pradesh and Others***, (2021) 6 SCC 64, the Supreme Court held as under:-

"21. If the proviso to Section 438(1), Cr.P.C. does not act as a bar to the grant of additional protection to the applicant, the question still remains as to under what provision of law the Court may issue relief to an applicant after dismissing their anticipatory bail application.

22. Without going into the question of whether Section 438, CrPC itself allows for such a power, as it is not necessary to undertake such an exercise in the present case, it is clear that when it comes to the High Court, such a power does exist. Section 482,



CrPC explicitly recognizes the High Court's inherent power to pass orders to secure the ends of justice. This provision reflects the reality that no law or rule can possibly account for the complexities of life, and the infinite range of circumstances that may arise in the future.

23. We cannot be oblivious to the circumstances that Courts are faced with day in and day out, while dealing with anticipatory bail applications. Even when the Court is not inclined to grant anticipatory bail to an accused, there may be circumstances where the High Court is of the opinion that it is necessary to protect the person apprehending arrest for some time, due to exceptional circumstances, until they surrender before the Trial Court. For example, the applicant may plead protection for some time as he/she is the primary caregiver or breadwinner of his/her family members, and needs to make arrangements for them. In such extraordinary circumstances, when a strict case for grant of anticipatory bail is not made out, and rather the investigating authority has made out a case for custodial investigation, it cannot be stated that the High Court has no power to ensure justice. It needs no mentioning, but this Court may also exercise its powers under Article 142 of the Constitution to pass such an order.

24. However, such discretionary power cannot be exercised in an untrammelled manner. The Court must take into account the statutory scheme under Section 438, CrPC, particularly, the proviso to Section 438(1), CrPC, and balance the concerns of the investigating agency, complainant and the society at large with the concerns/interest of the applicant. Therefore, such an order must necessarily be narrowly tailored to protect the interests of the applicant while taking into consideration the concerns of the investigating



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authority. Such an order must be a reasoned one.”

10. In the present case, as the prosecution still maintains that it is not intending to arrest the respondent no.2 as custodial interrogation is not required, in my view, there was no necessity for the learned Additional Sessions Judge to pass the above direction.

11. Accordingly, the same is set aside. However, it shall be open to respondent no.2 to avail of his legal remedies in case in future there is any threat of his arrest.

12. It shall also be open to the petitioner to avail of his legal remedies in accordance with law.

13. The petition is disposed of in the above terms.

NAVIN CHAWLA, J

FEBRUARY 6, 2024/ns/RP

Click here to check corrigendum, if any