



\$~9

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

+ **BAIL APPLN. 1070/2024**

**RAKESH KUMAR**

..... Applicant

Through: Ms.Mandavi Pandey, Mr.Girraj  
Singh Yadav, Mr.Vikas  
Tripathi, Ms.Shreya Pandey and  
Mr.Sanjeet Mishra, Advs.

versus

**STATE GOVT OF NCT DELHI AND ANR**

..... Respondents

Through: Mr.Aman Usman, APP with  
Insp. Pankaj Saroha

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**ORDER**

**14.05.2024**

%

1. This application has been filed under Section 438 read with Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') praying for grant of Anticipatory Bail in FIR No. 711/2023 registered at Police Station: Pandav Nagar, East District, Delhi under Sections 409 of the Indian Penal Code, 1860 (in short, 'IPC').

2. In a nutshell, it is the case of the prosecution that the Applicant was posted as the in-charge of the liquor shop no. G-2, 3 & 4 Abhishek Plaza, Plot No.16, LSC Pkt-B, Mayur Vihar-II, Delhi from 01.09.2022 to 07.06.2023. He was transferred from the said liquor shop to a PDS CTO Pusa Godown vide Order dated 17.05.2023. It is alleged that the Daily Sales/Stock Statement/Bottle Statement



Performa dated 01.06.2023 related to handing/taking over the charge of L-6 vend Mayur Vihar between the Applicant and the incumbent Ram Kumar duly signed by both of them as well as MTS staff, namely Utkarsh Singh and Vipin, posted at the vend was received in IMFL Accounts division. However, in respect of handing/taking over Performa, Ram Kumar stated that it did not bear his signatures. It is stated that the dispute was, therefore, reported to IMFL division and later to higher authorities of DSCSC. It is alleged that a physical verification of stock of L-6 vend Mayur Vihar Phase-II was, therefore, decided to be undertaken. It is further alleged that in the physical verification of the stock, it was found that there was a shortage of Rs.17,86,645/- (cash shortage of Rs.6,25,815/- and stock shortage of Rs.11,60,830/-) in the accounts of the Applicant. It is alleged that a show cause notice was also issued to the Applicant, and considering his conduct, the Applicant has been placed under suspension with effect from the Order dated 29.09.2023.

3. This Court by its Order dated 27.03.2024 directed that, on the Applicant joining investigation, no coercive steps be taken against the Applicant in the subject FIR.

4. The Status Report dated 09.05.2024 filed by the respondent no.1 states that, though the Applicant has joined the investigation as and when asked for, however, he has failed to produce his own records in respect of the allegations against him. It is further stated that the Applicant has also failed to give any clarification on the records that he was confronted with, by alleging cuttings and overwriting in the same. It is alleged that, in this manner, the



Applicant has not cooperated in the investigation. However, the learned APP, on instructions from the IO, fairly admits that post the Order dated 27.03.2024 of this Court, the Applicant has not been called for joining investigation by the IO.

5. The learned counsel for the Applicant submits that the entire case of the prosecution against the Applicant is based on documentary evidence for which custodial interrogation of the Applicant is not required.

6. On the other hand, the learned APP submits that the Applicant has to be confronted with various official records and he has not been cooperating in the investigation.

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

8. From the allegations of the prosecution, it is apparent that it is all based only on documentary evidence/record. It is well settled that the Applicant in the name of cooperation, cannot be made to sign his confessional statement; it is only for the prosecution to prove its case against the Applicant. The purpose of custodial interrogation is not just for the purpose of extracting a confession. Reference in this regard can be made to the recent Order dated 06.03.2024 of the Supreme Court passed in Special Leave Petition (Crl.) No. 232/2024 titled **Hemant Kumar v. State of Haryana**; and the judgment in **Santosh v. State of Maharashtra**, (2017) 9 SCC 714.

9. For the reasons stated, it is directed that in the event of arrest in FIR No. 711/2023 registered at Police Station: Pandav Nagar, East District, Delhi, the Applicant shall be released on Bail subject to



furnishing a personal bond in the sum of Rs.25,000/- with one local surety of the like amount to the satisfaction of the IO/Arresting Officer/SHO concerned, and further subject to the following conditions:

- (i) that the Applicant shall continue to join investigation as and when called by the IO/SHO concerned;
- (ii) that the Applicant shall not leave NCT of Delhi without intimating the IO/SHO concerned;
- (iii) that the Applicant shall not, directly or indirectly, try to contact/influence the complainant/victim or any other witness(s) or tamper with evidence of the case;
- (iv) that the Applicant shall furnish his mobile phone/landline number, which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO/SHO concerned;
- (v) that the Applicant shall provide his residential address to the IO/SHO concerned, and in the event of any change of the same, will immediately inform the same to the IO/SHO concerned; and,
- (vi) that the Applicant shall not indulge in any criminal activity.

10. In case the Applicant does not cooperate in the investigation, the prosecution shall be at liberty to file an appropriate application seeking cancellation of his Bail.

11. Needless to state, any observation touching upon the merits of the case is purely for the purposes of deciding the question of grant of



Anticipatory Bail and shall not be construed as an expression on the merits of the present case.

12. The Application is disposed of in the above terms.

**NAVIN CHAWLA, J**

**MAY 14, 2024/ns/AS**

*[Click here to check corrigendum, if any](#)*