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

+ **BAIL APPLN. 1840/2023 & CRL.M.A. 14973/2023**

**BIBHU PRASAD MISHRA**

..... Petitioner

Through: Mr. Yogendra Kumar Verma and Ms.  
Jyoti Verma, Advocates

versus

**THE STATE GOVT OF NCT OF DELHI THROUGH SHO**

..... Respondent

Through: Ms. Shubhi Gupta, APP for State with  
SI Dilsukh, PS: K.N. Katju Marg.

**CORAM:**

**HON'BLE MS. JUSTICE JYOTI SINGH**

**ORDER**

**13.03.2024**

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1. This application has been filed under Section 438 Cr.P.C. read with Section 482 Cr.P.C. on behalf of the Applicant seeking anticipatory bail in case FIR No.292/2020 dated 02.09.2020 under Sections 39/49/51 of the Wild Life (Protection) Act, 1972 registered at PS: K.N. Katju Marg, Rohini.
2. It is the case of the prosecution that a complaint was received that some e-commerce websites were selling restricted seal stone i.e. coral on their online websites which is a prohibited item under the Wild Life (Protection) Act, 1972. To ascertain the true picture, the Complainant placed an online order on 25.08.2020 on one of the e-commerce websites and bought two big coral stones. On 02.09.2020, the said e-commerce website sent a packet containing two coral stones through courier on address bearing No. B-6/110, Sector 17, Rohini, Delhi and enquiry revealed that the delivery



boy worked in the courier company of the said website. Information was given to the Police at 100 number and when the packet was opened in front of the Police the coral stones were recovered and complaint was lodged. It was later revealed that the seller was Chandan Herbal and Spiritual Products, a proprietorship concern in Bhubaneswar, Odisha and present FIR was registered. Investigation further revealed that the Applicant herein is the proprietor of the said proprietorship concern and he was accordingly called for investigation.

3. Case of the Applicant is that he is the proprietor of Chandan Herbal and Spiritual Products but a false complaint was lodged and Applicant has been falsely implicated in the present case. The allegations that the Applicant through his firm is selling corals on the online shopping sites are misfounded. IO had issued notice under Section 41A Cr.P.C. to the Applicant and the Applicant promptly joined the investigation and is ready and willing to do so, as and when directed by the IO. The plea taken by the IO that Applicant is not co-operating in the investigation is based on a premise that Applicant is not giving satisfactory answers with respect to the source of the corals and is not disclosing the name of the person who sent the parcel for delivery on the online sites. This is a misconceived plea and against the well-settled position of law that no person can be compelled during investigation to make self-incriminating statements and has a right to silence under Article 20(3) of the Constitution of India. Applicant is unaware of the sale of coral stones on any online shopping portal and cannot be directed by the IO to forcibly state that Applicant is aware of the source of the corals or their delivery by any person. Reliance is placed on the order of the Supreme Court in *Hemant Kumar v. State of Haryana, Special*



*Leave to Appeal (Crl.) No.232/2024*, decided on 06.03.2024, for the proposition that IO cannot compel a person during investigation to make self-incriminating statements. Reliance is also placed on the judgment of the Supreme Court in *Selvi and Others v. State of Karnataka, (2010) 7 SCC 263*, which is a landmark judgment on the right of a person to silence. Applicant also urges that the Supreme Court in *Arnesh Kumar v. State of Bihar and Another, (2014) 8 SCC 273*, has observed that in offences punishable with imprisonment for a term which may be less than 7 years or may extend to 07 years with or without fine, ordinarily arrests should be discouraged. In the present case, the offences alleged to be committed by the Applicant carry a sentence of upto 07 years and since the Applicant is otherwise joining investigation and co-operating therein, he should be released on anticipatory bail.

4. Learned APP for the State, *per contra*, opposes the application on the ground that allegations against the Applicant are serious in nature. FIR was registered on complaint on one Gaurav Gupta, who is working as an Animal Officer in some NGO where prohibited sea coral articles were ordered on online shopping sites and were actually delivered on 02.09.2020 by the delivery boy and it is the Applicant who is the sole proprietor of Chandan Herbal and Spiritual Products from where the sea corals were sold. The articles are prohibited articles under the Wild Life (Protection) Act, 1972. Moreover, the Applicant is not co-operating in the investigation and changing his stand continuously. On one hand, he denies having any connection with the products and on the other hand, he claims that one of his erstwhile employees Sonu Shukla had brought the products from some place, which is unknown to him. Sonu Shukla has unfortunately expired and



it is therefore only the Applicant who can lead the IO to the source of the prohibited article.

5. I have heard learned counsel for the Applicant and learned APP for the State.

6. On 29.05.2023, this Court had granted interim protection to the Applicant against arrest till the next date of hearing, subject to his joining investigation and co-operating therein, as and when directed by the IO. Interim order has continued till date. It is not disputed that the Applicant has been joining investigation and non-cooperation is alleged on the ground that the Applicant is refusing to give satisfactory answers with respect to the source of the prohibited articles and/or the name of the delivery boy.

7. The Supreme Court in ***Santosh s/o Dwarkadas Fafat v. State of Maharashtra, (2017) 9 SCC 714***, while relying on one of its earlier decisions in ***Selvi (supra)*** held as under:-

*“6. It appears, the IO was of the view that the custody of the appellant is required for recording his confessional statement in terms of what the co-accused had already stated in the statement under Section 161 of the Code of Criminal Procedure, 1973. The IO was of the opinion that the appellant was not cooperating because he kept reiterating that he had not purchased the foodgrains. The purpose of custodial interrogation is not just for the purpose of confession. The right against self-incrimination is provided for in Article 20(3) of the Constitution. It is a well-settled position in view of the Constitution Bench decision in Selvi v. State of Karnataka [Selvi v. State of Karnataka, (2010) 7 SCC 263 : (2010) 3 SCC (Cri) 1] , that Article 20(3) enjoys an “exalted status”. This provision is an essential safeguard in criminal procedure and is also meant to be a vital safeguard against torture and other coercive methods used by investigating authorities. Therefore, merely because the appellant did not confess, it cannot be said that the appellant was not cooperating with the investigation. However, in case, there is no cooperation on the part of the appellant for the completion of the investigation, it will certainly be open to the respondent to seek for cancellation of bail.”*



8. In *Bijender v. State of Haryana, Special Leave to Appeal (Crl.) No. 1079/2024*, decided on 06.03.2024, the Supreme Court observed that an accused, while joining investigation as a condition for remaining enlarged on bail, is not expected to make self-incriminating statements under the threat that the State shall seek withdrawal of such interim protection. Recently, the Supreme Court in *Hemant (supra)*, reiterated the said proposition of law. Certainly, this cannot be understood to mean that the accused will not render co-operation for completion of the investigation. Once granted interim protection, Applicant is always expected to join investigation and co-operate therein and cannot be heard to defend any hindrance caused to an on going investigation. In the present case, the Applicant is joining investigation and has undergone detailed interrogation as reflected from the case diary, shown to the Court during the course of hearing. It would be a matter of trial whether the sea corals were sold by the proprietorship concern of the Applicant and/or the source thereof. Counsel for the Applicant has stated that he is willing to co-operate in investigation, as and when the IO calls him in future. It may also be noted that the Applicant was granted interim protection by this Court on 29.05.2023 and there are no allegations that he has made any attempt to tamper with evidence and/or threaten or intimidate any person associated with the case. Learned APP, on instructions from the IO, has also stated that the investigation will be completed soon and Charge Sheet shall be filed.

9. Having considered the overall facts and circumstances, this Court is of the view that the Applicant has made out a case for grant of anticipatory bail. It is accordingly directed that in the event of arrest, Applicant be released on bail on furnishing a personal bond in the sum of Rs.25,000/-



with two sureties of the like amount to the satisfaction of the concerned IO and further subject to the following conditions:-

- i. Applicant shall not leave the country without prior permission of the Trial Court;
- ii. He shall furnish his mobile number to the IO and keep the same active at all times and shall not change the mobile number without prior intimation to the IO and the Trial Court;
- iii. He shall appear before the Trial Court on the dates of hearing and/or for any further investigation, as and when directed by the IO;
- iv. He shall not, directly or indirectly, indulge in any illegal activity or make any inducement, threat or promise to any person associated with the case including the Complainant; and
- v. He shall furnish his current residential address to the IO and intimate any change in the same to the IO and the Trial Court by way of an affidavit.

10. Bail application along with pending application stands disposed of in the aforesaid terms, making it clear that this Court has not expressed any opinion on the merits of the case.

**JYOTI SINGH, J**

**MARCH 13, 2024/kks/shivam**