



\$~4 & 5

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

4

+ **BAIL APPLN. 2287/2023**

RAJAN

..... Petitioner

Through: **Mr. M.L.Yadav, Advocate**

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: **Ms. Shubhi Gupta, APP for State with
SI Lalbahadur, PS: Mohan Garden.**

5

+ **BAIL APPLN. 3382/2023**

AJAY KUMAR

..... Petitioner

Through: **Mr. Shiv Chopra, Ms. Aadhyaa
Khanna, Mr. Siddharth Arora and Mr. Rishab
Nangia, Advocates**

versus

STATE OF NCT OF DELHI

..... Respondent

Through: **Ms. Shubhi Gupta, APP for State with
SI Lalbahadur, PS: Mohan Garden.**

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

04.03.2024

%

1. These are anticipatory bail applications under Section 438 Cr.P.C. preferred on behalf of the Applicants Rajan S/o Sh. Rakesh Kumar in BAIL APPLN. 2287/2023 and Ajay Kumar S/o Sh. Jagan Lal in BAIL APPLN. 3382/2023 in case FIR No.101/2023 dated 31.03.2023 under Sections 336/34 IPC at PS: Mohan Garden. Subsequently, Section 436 IPC was added. Interim protection was granted to Applicant Rajan on 12.07.2023 in



BAIL APPLN. 2287/2023 and to Applicant Ajay Kumar on 09.10.2023 in BAIL APPLN. 3382/2023.

2. Case of the prosecution is that a PCR Call vide DD No.23A was received in PS: Mohan Garden on 31.03.2023 from one Mantosh Kumar, complaining that his neighbour had lit fire in his factory premises. On receiving the call, the team reached the spot, where they met the Complainant, who stated that his neighbour Rajan S/o Rakesh and his brother-in-law, namely, Ajay Kumar and Mukul had lit fire in his godown. Pen drive, DVR and mobile phone were handed over by the Complainant, which according to him, contained a CCTV footage capturing the incident. CCTV footage showed that all the accused persons were at the spot and were lighting fire on the wall of the factory of the complainant. On the basis of the complaint, present FIR was registered.

3. It is stated in the Status Report that before registration of the FIR, all the three accused, Mukul, Rajan and Ajay Kumar had joined enquiry and Rajan stated that his brother-in-law Ajay Kumar had lit fire on his asking and later, all the three fled away from the spot on the scooty. Mukul was arrested during the course of the investigation on 05.09.2023. Notice under Section 41A Cr.P.C. was served on accused Rajan but he did not cooperate in the investigation since he neither aided the arrest of co-accused Ajay Kumar nor produced the scooty used for commission of the crime. The offences are serious. At the time of incident more than 20 labourers were sleeping in the factory premises and there was one high tension electric wire running through the factory premises apart from a pipeline of IOCL and if the fire would have spread, the magnitude of the damage would have been enormous.



4. Learned counsel for Applicant Ajay Kumar argues that the Applicant is innocent and has been falsely implicated. Notice under Section 41A Cr.P.C. was served on him, which connotes that custody of the Applicant was not required by the prosecution. By virtue of provisions of Section 41A(3) Cr.P.C., where a person complies with the notice under Section 41A(1) Cr.P.C. and continues to comply, he shall not be arrested in respect of the offence referred to in the notice unless for reasons to be recorded, Police Officer is of the opinion that he ought to be arrested and therefore, the prosecution will have to make out a strong and exceptional case to arrest the Applicant, which it has failed to make out and admittedly, going by the Status Report, Applicant has joined investigation three times *albeit* as a matter of record, he has joined investigation at least 15 times.

5. It is argued that going by the Status Report, the evidence collected by the Police, apart from a CCTV footage, is the statement of co-accused Rajan, who stated that his brother-in-law Ajay Kumar had lit fire in the godown on his asking. It is a settled law that disclosure statement of a co-accused and/or an extra-judicial confession are a weak piece of evidence and cannot be relied upon at this stage to contest the bail application. Reliance is placed on the provisions of Section 30 of the Indian Evidence Act, 1872 (hereinafter referred to as the 'Evidence Act') and the judgment of the Supreme Court in *Surinder Kumar Khanna v. Intelligence Officer, Directorate of Revenue Intelligence*, (2018) 8 SCC 271. It is urged that insofar as the CCTV footage is concerned, the same is tampered and in any case, being electronic evidence, its authenticity can only be established during trial, in accordance with the procedure under Section 65B of the Evidence Act. As can be seen from the CCTV footage, it was night and due



to darkness at the time of alleged incident, faces of persons allegedly committing the offences are not clearly visible. Therefore at this stage, applicants cannot be implicated on the basis of CCTV footage, heavily relied on by the prosecution.

6. Next contention is that the plea of non-cooperation in the investigation is primarily based on the non-recovery of the scooty, allegedly used by the accused persons to flee from the spot of crime. It is put forth in the Status Report that both Ajay Kumar and Rajan joined investigation and were interrogated, but gave wrong answers that they came at the spot on an e-rickshaw whereas the CCTV footage shows them coming on a scooty. It is a settled law that during interrogation, accused has a valuable right of silence and this right is embedded in Article 20(3) of the Constitution of India. Accused cannot be compelled to answer the questions tailor made to suit the Investigating Agency. Reliance is placed for this proposition on the judgment of the Supreme Court in *Santosh v. State of Maharashtra, (2017) 9 SCC 714*.

7. Prosecution is overlooking material facts that the place of occurrence was a public road outside the factory premises and accessible by anybody and everybody and that the complainant has not brought forth any relationship between him and the Applicant, professional otherwise or any previous animosity or business rivalry etc., which could serve as a motive for the Applicant to commit the alleged crime. Admittedly till date, no samples have been collected from the spot and there is no recovery from the Applicant. Ajay is 24 years old and has clean antecedents with a family of 03 siblings and parents and has deep roots in the society. All material evidence such as the CCTV footage, statement of Complainant etc.,



have been recovered and no custodial interrogation of the Applicant is required. There are no allegations of tampering with evidence or intimidating/threatening the Complainant or any other person associated with the case, while Applicant has been on interim protection granted by this Court.

8. Learned counsel for Applicant Rajan adopts the arguments raised on behalf of Applicant Ajay and adds that the fire was not inside the factory but outside on the road, which was accessible to general public as also the fact that lots of wastage material was lying outside the wall of the factory, which is visible in the photographs and this could have triggered the fire. It is reiterated that CCTV footage cannot be relied upon by the prosecution at this stage to deny bail as the faces of the person allegedly lighting fire on the spot are not visible due to darkness and tampering of the CCTV footage cannot be ruled out. Authenticity of the footage and presence of the Applicant at the scene of crime will be a matter of trial. No motive for committing the crime has been brought forth by the prosecution and/or the Complainant. The case against the Applicant so far is based primarily on extra-judicial confession, which is a weak piece of evidence and cannot form the basis of implicating the Applicant. It is urged that Applicant is a young boy aged 25 years with no criminal antecedents. Applicant has joined investigation as and when directed by the IO and is cooperating. All relevant material has been recovered and therefore, no custodial interrogation is required. Applicant is willing to join further investigation, as and when called for. There are no allegations of tampering with evidence and/or intimidating or threatening the Complainant, while under interim protection granted by this Court, against coercive action.



9. Learned APP for the State, *per contra*, states that Applicants are not cooperating in the investigation and are giving evasive answers with respect to the scooty on which they fled away from the scene of crime. CCTV footage shows that the accused persons came on a scooty and fled on the same but the Applicants are maintaining a consistent stand that they came on an e-rickshaw and therefore, custody is required to recover the scooty as the same is an important piece of evidence. The allegations are serious as the fire lit by the accused persons could have spread on account of a high tension electric wire running across the factory premises of the Complainant apart from a pipeline of IOCL and the life of 20 labourers sleeping inside the premises was at peril.

10. I have heard learned counsels for the Applicants and learned APP for the State and examined their contentions.

11. Case of the prosecution, as put forth in the Status Report, primarily hinges on the disclosure statement of Rajan *qua* Ajay Kumar, who allegedly stated that his brother-in-law Ajay Kumar had lit fire in the godown on his asking as well as on the CCTV footage. It is rightly contended on behalf of the Applicants that disclosure statements in the absence of any other corroborative material or evidence and extra-judicial confessions are a weak piece of evidence. CCTV footage is stated to have been retrieved from the spot but there are allegations of tampering with the same and it is also urged by the Applicants that the faces of the persons in the CCTV footage are not visible on account of darkness. Authenticity of the CCTV footage as well as the presence of the Applicants at the scene of crime and/or committing the crime, would be a matter of trial. It is not the case of the State that Applicants have not joined investigation and/or they are tampering



with evidence or threatening/intimidating any witness. Non-cooperation is alleged on the ground that Applicants are not aiding in recovery of the scooty, visible in the CCTV footage, on which the Applicants allegedly fled from the spot. During investigation, Applicants have given their respective stands and denied having travelled on the scooty. They cannot be compelled to give self-incriminating answers. Recently, the Supreme Court by order dated 06.03.2024 in ***Hemant Kumar v. State of Haryana, Special Leave to Appeal (Crl.) No.232/2024***, set aside the order of the High Court denying pre-arrest bail to the Appellant holding that participation in the investigation process does not entail making self-incriminating statements, which was the only reason why the State wanted to take the Appellant therein into custody. Applicants herein have joined investigation, as and when directed by the IO and there are no allegations of tampering with evidence or threatening any person associated with the case. Applicants have clean antecedents and have not been involved in any unlawful activity prior to the alleged offences. Save and except, the recovery of the scooty, even going by the Status Report, there is no allegation that Applicants are not cooperating. Rajan has been on interim protection of this Court vide order dated 12.07.2023 while Ajay Kumar was granted interim protection on 09.10.2023 and there are no allegations that either of the Applicant has misused the protection granted by the Court.

12. For all the aforesaid reasons, this Court is of the view that Applicants have made out a case for grant of anticipatory bail. It is accordingly directed that in the event of arrest, Applicants shall be released on bail, subject to furnishing personal bonds in the sum of Rs.50,000/- each with two sureties of the like amount each, to the satisfaction of the concerned Trial Court and



further subject to the following conditions:-

- i. Applicants shall not leave the country without prior permission of the Trial Court;
 - ii. They shall furnish their respective mobile numbers to the IO and keep the same active at all times and shall not change the mobile numbers without prior intimation to the IO and the Trial Court;
 - iii. They 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. They 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. They shall furnish their current residential addresses to the IO and intimate any change in the same to the IO and the Trial Court by way of an affidavit.
13. Applications stand 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 4, 2024/kks