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

\+ BAIL APPLN. 1658/2024

MOHAMMAD KADER ABDUL REHMAN SAYED..... Petitioner
Through: Mr. Anand Sudamarao Jondhale, Advocate.

versus

THE STATE NCT OF DELHI ..... Respondent
Through: Mr. Yudhvir Singh Chauhan, APP with SI Dheerendra Kumar, PS: Special Cell, NDR, for State.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

<u>O R D E R</u>

% **09.05.2024**

1. This application has been filed by the applicant Mohammad Kader Abdul Rehman Sayed S/o Abdul Rehman, seeking anticipatory bail under Section 438 Cr.P.C. in case FIR No. 42/2024 dated 18.01.2024 registered under Sections 419/420/120B IPC at PS: IGI Airport.

2. The case of the prosecution, as emerging from the FIR as well the Status Report filed before the Trial Court is that the present FIR was registered on the written complaint of Raja Ram Meena regarding possession of seven fake driving licenses by the accused persons, namely Kaku Toufiq S/o Kaku Abdul Gafoor R/o 1228 Madina Colony, Usmania Street Bhatkal, Uttara Kannada, Karnataka, and Hayyan Kola S/o Mohammed Hussain Amjad Kola R/o 45, Bhatkal, Bhatkal Bazar SO Bhatkal, Uttara Kannada, Karnataka. Both the accused persons were

detained at IGI Airport, Delhi by Custom officials due to alleged involvement in smuggling of gold. Source inputs were received from the central agencies that both the accused persons have links with absconding Indian Mujahedeen terrorists Riyaz Bhatkal, Iqbal Bhatkal and their other associates, who are funding terror activities in India from Pakistan and Dubai. On receipt of this information, case was transferred to Special Cell, Delhi.

3. It is stated that during investigation, police custody remand of both the accused was obtained and during interrogation, they disclosed that they were working for one Washiq, who is based in Dubai, though they had never met him. It was also disclosed that Washiq contacted them on WhatsApp in regard to gold smuggling. They accepted the offer and agreed to work for him as he proposed to pay Rs.20-30 thousand for each trip. The accused persons travelled by air to different places on the directions of Washiq and whenever directed, they would collect gold from the earmarked places and deliver the same to persons identified on WhatsApp. For every trip, Washiq used to send tickets 3-4 hours before the scheduled flight time. After delivery of gold, all chats and photographs with tickets were deleted. They further disclosed that Washiq provided them fake driving licenses through one of his known person Abdul Kader (applicant herein) and using these as identity proofs, the accused persons would travel.

4. It is stated in the status report that during investigation, notices regarding verification of the recovered driving licenses from Kaku Taufiq were sent to the concerned RTO Authorities at Shivmoga and Mysore, Karnataka and as per response received, all the licenses were forged and not issued by the Authorities. Notices were sent to various domestic airlines to

provide the travel history details of the accused persons Kaku Taufiq and Hayyan Kola as also with respect to the names that were appearing in the driving licenses. The Airlines responded by providing the travel history, which showed several visits made by the accused persons. As per secret sources, the real name of Washiq was Syed Midina Vasiulla and it came to light that he had left India 18 years back for Pakistan and is a Pakistan passport holder and presently residing in Dubai. Investigation revealed that applicant was the one, who was providing fake driving licenses on the direction of Washiq.

5. It is stated that analysis of CDRs of Hayyan Kola and careful perusal of replies from the Airlines revealed that he had travelled on the fake ID of Aastik Siddh Sharaf and Kaku Taufiq had travelled four times on fake IDs in the name of Adam Adil Shams Pudi and Akshar Akeel Subair Babu. Both the IDs were provided by the applicant on the direction of Washiq. During investigation, one team visited Mumbai, Maharashtra and with the assistance of local police, a raid was conducted at the house of the applicant but he was not found. His wife contacted the applicant telephonically in the presence of police and on surveillance, location of his mobile phone was found near his house, but after sometime, the phone was found to be switched off. Raid was again conducted at the residence of the applicant and attempt was made to execute the Non-Bailable Warrants, but the applicant had absconded. On 12.03.2024 proceedings were initiated by the Trial Court under Section 82 Cr.P.C.

6. Learned counsel for the applicant submits that applicant is innocent and has been falsely implicated. He is not named in the FIR and the Investigating agency is only acting on suspicion. No incriminatory evidence

has been recovered from the house of the applicant. He has no past criminal record and is ready and willing to join investigation.

7. Learned APP, on the other hand, states that the allegations against the applicant are serious. Secret information has revealed nexus and links of the applicant with persons funding terrorist activities in India. His custodial interrogation is required to unearth the whole nexus not only of providing forged and fabricated driving licenses but also his connect and links with the terrorist group, if any. Proceedings have been initiated against the applicant under Section 82 Cr.P.C, as the applicant is evading the process of law.

8. Heard counsel for the applicant and learned APP for the State.

9. There is no doubt that parameters for grant of pre-arrest bail are materially different from those, which are to be kept in mind while adjudicating an application for grant of regular bail as in the latter case, accused is incarcerated and more often than not substantial investigation is over. The Supreme Court has cautioned that power to grant pre-arrest bail under Section 438 must be exercised sparingly. In ***State of AP v. Bimal Krishna Kundu and Another, (1997) 8 SCC 104,*** the Supreme Court observed that the implications of arming the accused, when they are pitted against serious allegations involving well-orchestrated conspiracy, with a pre-arrest bail order though subject to conditions, sometimes harms the investigation and impedes the prospects of unearthing the truth and all ramifications involved in the conspiracy. In ***State Rep. by the CBI v. Anil Sharma, (1997) 7 SCC 187,*** the Supreme Court observed that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 Cr.P.C.

10. In the present case, applicant is accused of providing forged driving licenses to the other accused persons, who are found involved in smuggling of foreign origin gold. Investigation has revealed a long travel history of the co-accused by various Airlines on these alleged fake documents. Significantly, investigation is ongoing into the terror links of the accused persons with Indian Mujahedeen terrorist group. Applicant has failed to join investigation despite repeated notices and process under Section 82 Cr.P.C. has been initiated by the Trial Court. As per the prosecution, custodial interrogation of the applicant is required to unearth the whole nexus and recovery of material evidence from or at the instance of the applicant and beyond doubt, the allegations are serious.

11. In view of the aforesaid facts and circumstances, no ground is made out for grant of anticipatory bail to the applicant and the application is dismissed.

12. It is made clear that observations made in this order will not be construed as an expression on the merits of the case.

JYOTI SINGH, J

MAY 9, 2024
B.S. Rohella