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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 2035/2024

ABHINAV ALIAS RAHUL

.....Applicant

Through:

Adv. Ranvir Singh Kundu,
Adv. Mukesh Panchal,
Adv. Ravi Bhargava, Adv.
Priya Gupta, Adv. Rohit
Makija & Adv. Shyam
Babu.

versus

STATE OF NCT OF DELHI

.....Respondent

Through:

Mr. Ajay Vikram Singh,
APP for the State.
SI Nandkishor Patil, PS
Kalyanpuri.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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05.07.2024

1. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 (**CrPC**) seeking prearrest bail in FIR No.215/2024 dated 21.03.2024 under Sections 307/34 of the Indian Penal Code, 1860 (**IPC**) registered at Police Station Kalyanpuri.
2. At the outset, it is pointed out that the proceedings 82 of the CrPC have been initiated against the applicant. The learned Additional Public Prosecutor for the State submits that in such circumstances, the present application is not maintainable. He relies upon the judgment passed by the Hon'ble Apex Court in the case of **Prem Shankar Prasad v. State of Bihar : (2022) 14 SCC 516**, wherein it was observed as under:

“10.2. Despite the above observations on merits

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and despite the fact that it was brought to the notice of the High Court that Respondent 2-accused is absconding and even the proceedings under Sections 82/83CrPC have been initiated as far back as on 10-1-2019, the High Court has just ignored the aforesaid relevant aspects and has granted anticipatory bail to Respondent 2-accused by observing that the nature of accusation is arising out of a business transaction. The specific allegations of cheating, etc. which came to be considered by the learned Additional Sessions Judge has not at all been considered by the High Court. Even the High Court has just ignored the factum of initiation of proceedings under Sections 82/83CrPC by simply observing that “be that as it may”. The aforesaid relevant aspect on grant of anticipatory bail ought not to have been ignored by the High Court and ought to have been considered by the High Court very seriously and not casually.

10.3 In State of M.P. v. Pradeep Sharma [State of M.P. v. Pradeep Sharma, (2014) 2 SCC 171 : (2014) 1 SCC (Cri) 768] , it is observed and held by this Court that if anyone is declared as an absconder/proclaimed offender in terms of Section 82CrPC, he is not entitled to relief of anticipatory bail...

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xxx

11. Thus the High Court has committed an error in granting anticipatory bail to Respondent 2-accused ignoring the proceedings under Sections 82/83CrPC.”

(emphasis supplied)

3. The learned counsel for the applicant submits that the co-accused persons who have been alleged the similar role have already been released on bail. He submits that the proceedings under Section 82 CrPC have been erroneously initiated against the applicant as no notice under Section 41(a) of the CrPC was ever served on the applicant. He submits that steps have already been taken for dropping of proceedings under Section 82 of the



CrPC.

4. In view of the judgment passed by the Apex Court in ***Prem Shankar Prasad v. State of Bihar*** (*supra*), the present application is dismissed.

5. The applicant is, however, at liberty to take steps in accordance with the law for challenging the proceedings that have been initiated against him under Section 82 of the CrPC.

6. The application is disposed of in the aforesaid terms.

AMIT MAHAJAN, J

JULY 5, 2024
“SK”