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

+ **BAIL APPLN. 2154/2024**

SATISH KUMAR Applicant
Through Ms. Svetlana Khiyungdzuzu.

versus

THE STATE (GOVT. OF NCT, DELHI) Respondent
Through Mr. Ajay Vikram Singh,
APP for the State.
SI Sandeep Kumar, PS
G.K.-I, New Delhi.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
02.07.2024

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1. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 ('CrPC') seeking grant of pre-arrest bail in FIR No. 320/2023 dated 21.12.2023, for offences punishable under Sections 406/419/420/467/468/471/120B/34 of the Indian Penal Code, 1860 ('IPC'), registered at Police Station Greater Kailash-I.

2. The case of the prosecution is that on 27.03.2023, a complaint was filed by Ms. Sonia Jain alleging that she had purchased a plot bearing No. R/287, GK-1, New Delhi ('**the subject property**') from its actual owner, Ms. Raj Kumari through a registered sale deed dated 08.04.2022. She alleged that Mr. Prakash Gautam and his family were unlawfully occupying the subject property and had refused to relinquish possession.

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3. During the course of investigation, it was found that Mr. Prakash Gautam and his family were residing in the subject property as caretakers, which was owned by Ms. Raj Kumari who had passed away on 04.03.2001. The investigation also revealed that the legal representatives of the deceased had never authorized the sale of the subject property.

4. The investigation further unearthed that the sale deed was forged by accused, Sonia Jain in connivance with the other accused persons, namely, Sanjay Jain, Kumar Vishesh Gautam, Girish, Neeraj Gautam. It is alleged that the accused persons also produced a lady who impersonated herself as Ms. Raj Kumari and forged identification documents, including Aadhar Card and Pan Card, in her name.

5. It is alleged that the accused, Sanjay Jain facilitated the transfer of ₹1.44 crores into a joint account of the lady who impersonated herself as Ms. Raj Kumari and accused, Kumar Vishesh Gautam, from which the latter withdrew the amount in cash.

6. The present FIR was registered thereafter at the behest of the complainant, namely, Suresh Kumar Dahuja, who claimed joint ownership of the subject property and denied having ever sold it. He alleged that the subject property had been illicitly sold in the year 2022 by unidentified parties

7. On 16.03.2024, the accused persons, namely, Sonia Jain and Sanjay Jain were arrested. On 20.03.2024, accused Vishesh Kumar Gautam was arrested and during the interrogation, he disclosed the involvement of the present applicant in hatching a conspiracy to illicitly acquire the subject property by falsifying its title deed. He further disclosed that the lady who

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impersonated herself as Ms. ~~Smt.~~ Raj Kumari was produced by the applicant.

8. The applicant is additionally alleged to have received ₹80,00,000/- from the accused Kumar Vishesh Gautam, however, the said amount is yet to be recovered.

9. The applicant did not join the investigation and on 16.04.2024 proceedings under Section 82 of the CrPC were initiated against the applicant by the learned Trial Court.

10. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. She submits that no specific role has been alleged against the applicant. She submits that the name of the applicant was not even mentioned by the complainant in the FIR.

11. She submits that the applicant is implicated in the present case based on misleading facts. She submits that the sale deed allegedly executed between Smt. Raj Kumari and the accused – Sonia Jain also does not show any involvement of the applicant.

12. She submits that the applicant has been roped into the present case based on the disclosure statement of the accused – Kumar Vishesh Gautam.

13. The learned Additional Public Prosecutor for the State submits that the application is not maintainable since the proceedings under Section 82 of the CrPC have been initiated against the applicant and are pending consideration before the learned Trial Court.

14. I have heard learned counsel for the parties.

15. It is to be kept in mind that the considerations governing the grant of pre- arrest bail are materially different than those to be considered while adjudicating the application for grant of

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regular bail, as in the latter the accused is already under arrest and substantial investigation is carried out by the investigating agency.

16. It is trite law that the power to grant a pre-arrest bail under Section 438 of the CrPC is extraordinary in nature and is to be exercised sparingly. Thus, pre-arrest bail cannot be granted in a routine manner. The Hon'ble Apex Court, in the case of **State of A.P. v. Bimal Krishna Kundu : (1997) 8 SCC 104**, held as under:

“8. A three-Judge Bench of this Court has stated in Pokar Ram v. State of Rajasthan [(1985) 2 SCC 597 : 1985 SCC (Cri) 297 : AIR 1985 SC 969] : (SCC p. 600, para 5)

“5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal.”

9. Similar observations have been made by us in a recent judgment in State v. Anil Sharma [(1997) 7 SCC 187 : 1997 SCC (Cri) 1039 : JT (1997) 7 SC 651] : (SCC pp. 189-90, para 8)

“The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest.”

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12. We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though



subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on “the career of millions of students”, learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order.”

17. It is settled law that the custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the CrPC [***State v. Anil Sharma : (1997) 7 SCC 187***]. Granting pre-arrest bail to the applicant would undoubtedly impede further investigation. An order of pre-arrest bail cannot be granted in a routine manner so as to allow the applicant to use the same as a shield.

18. Another aspect to be considered is that the process under Section 82 of the CrPC had been initiated against the applicant. Recently, the Hon’ble Apex Court in ***Srikant Upadhyay v. State of Bihar*** : 2024 SCC OnLine SC 28, extensively discussed the implications of being declared an absconder under Section 82 of the CrPC on the eligibility for pre-arrest bail. The judgment clarified that if an individual is actively evading arrest and has been declared an absconder or a proclaimed offender, it significantly affects their ability to obtain anticipatory bail and after referring to the earlier precedents on the point. The Hon’ble
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Apex Court succinctly laid down the law in the following lines:

“10. When a court grants anticipatory bail what it actually does is only to make an order that in the event of arrest, the arrestee shall be released on bail, subject to the terms and conditions. Taking note of the fact the said power is to be exercised in exceptional circumstances and that it may cause some hinderance to the normal flow of investigation method when called upon to exercise the power under Section 438, CrPC, courts must keep reminded of the position that law aides only the abiding and certainly not its resistant. By saying so, we mean that a person, having subjected to investigation on a serious offence and upon making out a case, is included in a charge-sheet or even after filing of a refer report, later, in accordance with law, the court issues a summons to a person, he is bound to submit himself to the authority of law. It only means that though he will still be at liberty, rather, in his right, to take recourse to the legal remedies available only in accordance with law, but not in its defiance....”

25. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the court depending on the facts and circumstances of each case. While called upon to exercise the said power, the court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence....”

19. The Hon’ble Apex Court in ***Prem Shankar Prasad v. State of Bihar: (2022) 14 SCC 516*** has specifically observed as under:

“10.2. Despite the above observations on merits 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

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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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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)

20. Therefore, it is clear that the established legal stance, rigorously adhered to, is that an accused who has a pending non-bailable warrant and against whom a proclamation has been issued under Sections 82/83 of the CrPC, is not eligible for anticipatory bail.

21. The allegations against the applicant center on involvement in a fraudulent scheme to acquire the subject property through the forgery of legal documents and impersonation. The applicant is implicated in a conspiracy to illegally acquire the subject property by falsifying its title deed. It is alleged that the applicant arranged for a woman to impersonate Ms. Raj Kumari, the deceased owner of the property, to facilitate the fraudulent sale. This impersonation included the creation of forged identification documents, such as Aadhar and PAN cards, in Ms. Raj Kumari's name. The applicant is further accused of receiving ₹80,00,000 from Kumar Vishesh Gautam, one of the co-accused, as part of the fraudulent scheme. The recovery of this amount is still pending and the applicant is absconding.



22. This Court has meticulously reviewed the case file pertaining to the instant matter, which *prima facie* indicates a significant and conspicuous involvement of the applicant in the commission of the alleged offence. The involvement of the applicant has been explicitly alleged by four accused persons. Additionally, the statement of the accused person in whose favour the sale deed was allegedly executed further corroborates the applicant's participation in the commission of the offence. There is no indication provided as to why the applicant would be falsely implicated in this matter. Furthermore, a photocopy of the purported forged sale deed was procured and substantiated through verification with the Registrar.

23. The investigation conducted thus, so far does not indicate that the applicant is sought to be falsely implicated. The material presented by the prosecution establish a *prima facie* involvement of the applicant. The investigation is at a nascent stage and the investigating agency needs to be given a fair play in the joints to investigate the matter in the manner they feel appropriate.

24. Accordingly, the present bail application under Section 438 CrPC is dismissed. Pending applications, if any, stands disposed of.

25. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

AMIT MAHAJAN, J

JULY 2, 2024

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