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

+ **BAIL APPLN. 2204/2024**

ANKIT @ DADA

..... Petitioner

Through: Mr. Narender Singh and Mr. Chetan
Kumar, Advocates.

versus

**THE STATE THROUGH: SHO PS WAZIRABAD GOVT OF NCT
OF DELHI**

..... Respondent

Through: Mr. Hemant Mehla, APP for the
State with SI Sajeevan Nair, Spl.
Staff, North District.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **02.07.2024**

CRL.M.A. 18757/2024 (exemption)

Exemption allowed, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed-of.

BAIL APPLN. 2204/2024

By way of the present application filed under section 438 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner seeks anticipatory bail in FIR bearing No.56/2024 registered on 18.01.2024 under sections 392/394/395/397/307/506/34/147/148/149 of the Indian Penal Code 1860 ('IPC') at P.S.: Wazirabad.

2. The petitioner had approached the learned Sessions Court, which court has, *vide* order dated 09.04.2024, dismissed the anticipatory bail application.
3. Issue notice.



4. Mr. Hemant Mehla, learned APP appears for the State on advance copy; accepts notice; and opposes the grant of anticipatory bail or any other protective order in the matter.
5. Mr. Mehla argues, that the case involves a gun-shot injury received by one Rajeev; and both the call-detail-records as well as video-footage of the spot show the presence of the petitioner at the scene of the incident. Furthermore, learned APP submits that since the petitioner was evading arrest, non-bailable warrants were issued against him; and as of now proceedings under section 82 of Cr.P.C. have been initiated against the petitioner. Furthermore, it is submitted that custodial interrogation of the petitioner is necessary; and the petitioner is also required to be put through a TIP.
6. Besides, Mr. Mehla argues, that in view of the decision of the Supreme Court in ***Srikant Upadhyay and Ors. vs. State of Bihar and Anr.***¹, an anticipatory bail application would not be maintainable once proceedings under section 82 of Cr.P.C. have already been initiated against an accused. Relevant extract of the said judgment is as follows:

“5. In the decision in Pradeep Sharma’s case (supra) this Court held that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 Cr.P.C., he is not entitled to relief of anticipatory bail. After extracting Section 438, Cr. P.C., it was further held therein thus:—

“The above provision makes it clear that the power exercisable under Section 438 of the Code is somewhat extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely

¹ 2024 SCC OnLine SC 282



implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty.”

“6. In Prem Shankar Prasad’s case (supra), this Court took note of the fact that the respondent-accused was absconding and concealing himself to avoid service of warrant of arrest and the proceedings under Sections 82/83, Cr.P.C. have been initiated against him, set aside the order of the High Court granting anticipatory bail ignoring the proceedings under Sections 82/83, Cr. P.C. Thus, it is obvious that the position of law, which was being followed with alacrity, is that in cases where an accused against whom non-bailable warrant is pending and the process of proclamation under Sections 82/83, Cr. P.C. is issued, is not entitled to the relief of anticipatory bail.”

7. Upon a consideration of the submissions made, this court is not inclined to entertain the present petition seeking anticipatory bail; which is accordingly dismissed; without however making any observations on the merits of the matter.
8. The petition is disposed-of.
9. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

JULY 2, 2024/ak