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

+ **BAIL APPLN. 2629/2024 & CRL.M.(BAIL) 1232/2024**

SANJEEV ALIAS HALU

.....Petitioner

Through: Mr. Bharat Monga , Mr. Arvind
Malik and Ms. Amulya Upadhyay,
Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Raghuinder Verma, APP for the
State along with SI Gurmail Singh.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

12.12.2024

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1. The instant application under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 has been filed on behalf of the applicant/petitioner seeking the following reliefs:

“a. Set aside order dated 23.07.2024 passed by Ld. Session Judge North, Rohini Courts, Delhi in Bail Application No. 1286/2024 under FIR No 395/2024 U/S 336/34 IPC & 27/54/59 Arms Act, 1959 registered at PS Mukherjee Nagar; and

b. Grant anticipatory bail to the Applicant in the event of their arrest in connection with Case bearing FIR No 395/2024 U/S 336/34 IPC & 27/54/59 Arms Act, 1959 registered at PS Mukherjee Nagar; and..”

2. The brief facts that led to the filing of the instant petition are that the complainant filed a complaint before the concerned police station, thereby, alleging open firing in air and as per the status report of the Investigating



Officer (hereinafter “IO”), the pistol which has been used in the offence was supplied/handed over by the applicant to the co-accused who fired the shots in the air.

3. Learned counsel appearing on behalf of the applicant submitted that he is an innocent person and has not committed any offence as alleged in the FIR. The applicant was implicated under the present FIR based on the disclosure statement of the co-accused Aryan and without substantiating the same with any other proof. It is further submitted that no recovery of the weapon has been made from the applicant, rather, recovery was made from the possession of the co-accused Aryan and hence, his disclosure statement cannot be relied upon at this stage.

4. It is submitted that the only allegation against the applicant is that he has provided the weapon to one of the co-accused who opened fire in the air and thereafter he handed over the weapon to the co-accused Aryan who has been granted regular bail by the Coordinate Bench of this Court.

5. It is submitted that there is no history of previous involvement of the applicant in any criminal case, he has clean criminal antecedents, and he is a permanent resident of Jhajhar, Haryana and a 27 years old young boy. It is also submitted that there is no connection between the applicant and the co-accused. Moreover, the learned counsel appearing for the applicant, on instructions, undertakes that the applicant shall abide by all the terms and condition imposed by this Court while granting anticipatory bail.

6. It is submitted that the applicant shall cooperate with the investigating agency as and when required, and in view of the above facts and circumstances the instant applicant may be released on bail and the present application may be allowed.



7. *Per contra*, learned APP for the State has vehemently opposed the instant anticipatory bail application and submitted that there are serious allegations against the applicant, i.e., supplying the fire arms to the main accused Aryan. It is also submitted that the applicant is not permanent residence of Delhi, therefore, investigation agency has no control on the petitioner and thus, he is a flight risk.

8. It is submitted that for the purpose of investigation, the applicant's custodial interrogation is required, therefore, no cogent reasons are there to release the applicant on bail as prayed. Thus, the instant application may be dismissed

9. Heard learned counsel for the parties and perused the material on record.

10. It is a trite law that while granting anticipatory bail to an accused, the ramifications of such liberty should not compromise the veracity of the investigation. The said principle was encapsulated by the Hon'ble Supreme Court in the case of ***State of A.P. v. Bimal Krishna Kundu*, (1997) 8 SCC 104**, wherein, it 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.”

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...”

11. Thus, as per the settled position of law, the power to grant anticipatory bail is an exceptional power and should be exercised only in exceptional cases and not as a matter of course.

12. Adverting to the facts of the instant case, it is an admitted fact that the applicant has been implicated in the present FIR on the basis of the disclosure statement given by the co-accused Aryan, wherein, it has been



alleged that the applicant supplied/handed over the pistol to him who fired the shot in the air.

13. It is also admitted that there is no basis for the implication of the present applicant in the FIR as the statement given by the co-accused Aryan, to establish whether the pistol was actually supplied him, has not been substantiated with any material.

14. It is observed by this Court that the offences for which the applicant has been charged with under the Indian Penal Code, 1860, carries punishment for only three months imprisonment and under the Arms Act, 1959, minimum imprisonment is of three years only.

15. Further, there is no history of previous involvement of the applicant in any other criminal case, he has clean antecedents and he is a 27 years old young boy who has undertaken to abide by the all the terms and condition imposed by this Court while granting anticipatory bail.

16. Keeping in view the contentions advanced by the learned counsel for the parties and the observations made by this Court in the preceding paragraphs, as well as the settled position of law, this Court is inclined to grant anticipatory bail to the applicant.

17. Accordingly, it is directed that in the event of arrest, the applicant be released on bail on his furnishing a personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties of like amount to the satisfaction of the IO/Court concerned subject to the conditions as follows:-

- a) The applicant shall surrender his passport, if any, to the IO and shall under no circumstances leave India without prior permission of the Court concerned;



- b) The applicant shall cooperate in the investigation and appear before the IO/Court concerned of the case as and when required;
- c) The applicant shall remain present before the jurisdictional police station as and when required or till filing of the final report, whichever is earlier;
- d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
- e) The applicant shall provide his mobile number(s) to the IO and keep it operational at all times;
- f) In case of change of residential address and/or mobile number, the same shall be intimated to the IO/Court concerned by way of an affidavit.

18. With the aforesaid directions, the present anticipatory bail application stands disposed of along with the other pending applications, if any.

19. It is made clear that the observations made herein above are only for the purpose of adjudicating the instant anticipatory bail application and the same shall not be construed as expression of this Court on the merits of the case before the learned Trial.

CHANDRA DHARI SINGH, J

DECEMBER 12, 2024
rk/ryp

[Click here to check corrigendum, if any](#)