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

+ **BAIL APPLN. 3335/2024**

SANJAY RAJAK

.....Petitioner
Through: Ms. Shilpa Saini &
Mr. Saroj Kumar Singh,
Advs.

versus

**THE STATE OF NCT OF
DELHI & ANR.**

.....Respondents
Through: Mr. Ajay Vikram Singh,
APP for the State
SI Vikas, PS- Khyala

**CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN**

**ORDER
17.09.2024**

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1. The present application is filed seeking pre-arrest bail in FIR No. 233/2024 dated 15.04.2024 registered at Police Station Khyala for offence under Section 381 of the Indian Penal Code, 1860.
 2. The FIR was registered on an allegation that the applicant who was working as a house servant in the complainant's house, had stolen the jewellery and cash and had run away.
 3. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. He submits that the applicant worked for more than 20 years with the complainant and when the complainant stopped giving him his salary, he left the job. He submits that the applicant is ready and willing to join the investigation.
 4. The allegation of committing a theft in the house of an employer especially when the employee has been working for
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more than two decades, by stretch of imagination, can be called as a minor offence. Every house owner puts a lot of trust in the servants and, at times, leave the entire house at the disposal of the servants. No reason has been argued as to why an employer would try to falsely implicate his servant for an offence of theft.

5. The complaint had been given stating that the applicant had been stealing the amounts over the years and one gold chain, one diamond necklace, two gold bangles and two pairs of gold earrings were also found to be stolen by the applicant.

6. It is pointed out that a notice under Section 41 of the Code of Criminal Procedure, 1973 was served on the applicant by the Police in his village when the Police team visited for the purpose of investigation and the applicant did not join investigation which also led to issuance of the Non-Bailable Warrants. No recovery has been made till date.

7. It is to be kept in mind that the investigation is currently at a nascent stage. The considerations governing the grant of pre-arrest bail are materially different than those to be considered while adjudicating the application for grant of regular bail, as in the latter case, the accused is already under arrest and substantial investigation is carried out by the investigating agency.

8. 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 consideration 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.”

9. 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.

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10. The allegations, at this stage, cannot be called frivolous or be said to have been made to humiliate and injure the applicant.
11. In view of the above, no ground is made out for grant of pre-arrest bail and the present bail application is dismissed.
12. It is clarified that nothing stated herein be taken as an expression of opinion on the merits of the case.

AMIT MAHAJAN, J

SEPTEMBER 17, 2024
“SS”