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

+ **BAIL APPLN. 3555/2024**

AMAR CHAND PERJAPATI

.....Petitioner

Through: Appearance not given

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Satish Kumar, APP for the State
with SI Parveen Kumar PS Lahori
Gate

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

18.11.2024

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1. The instant bail application under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (earlier under Section 438 of the Code of Criminal Procedure, 1973) has been filed on behalf of the petitioner/applicant seeking anticipatory bail in FIR No. 0519/2023 registered at Police Station - Lahori Gate, Delhi for the offence punishable under Section 406 of the Indian Penal Code, 1860.

2. Learned counsel appearing on behalf of the applicant submitted that the applicant is an innocent person and has been falsely implicated in the instant case as he has not committed any offence as alleged in the aforesaid FIR.

3. It is submitted that the impugned FIR was falsely registered against the applicant based on fabricated facts, with a *mala fide* intention to



implicate him in a false case of committing criminal breach of trust by extorting money.

4. It is submitted that the applicant was working as an employee with the complainant for 5-6 years. However, it was falsely alleged by the complainant that on 22nd September, 2024, a sum of Rs. 51,00,000/- was given to the applicant for the purpose of making a payment at Sadar Bazar, Delhi. It is submitted that the applicant has no knowledge of the incident, which allegedly took place on 22nd September, 2024, and therefore, there is no basis of the above-mentioned allegation that the applicant has taken the aforesaid money amounting to Rs. 51,00,000/-.

5. It is submitted that there are material contradictions in the complainant's narration of series of events, wherein, he initially stated that the alleged amount as Rs. 21,00,000/-, however, later modified the quantum of the money as Rs. 51,00,000/-. Therefore, there is no *prima facie* case against the applicant.

6. It is further submitted that the applicant has duly cooperated with the investigating agency and appeared thrice before the concerned officials. Furthermore, it is submitted that the applicant shall abide by all the terms and conditions as imposed upon him by this Court while granting him anticipatory bail.

7. During the course of arguments, learned counsel of the applicant apprised this Court that the proceedings under Section 82 of the Code of Criminal Procedure, 1973 (hereinafter as the "Code") have been initiated against the applicant, as mentioned in the Status Report filed on behalf of the State. In view of the same, it is submitted that the applicant is unaware



of the issuance of Non-Bailable Warrants (hereinafter as the “NBW”) and initiation of proceedings under Section 82 of the Code against him.

8. It is further submitted that it is a settled position of law that the mere initiation of proceedings under Section 82 of the Code against an accused is not an embargo for consideration of the anticipatory bail. In support of his arguments, learned counsel for the applicant placed reliance on paragraph nos. 8 and 9 of *Asha Dubey vs. State of Madhya Pradesh* dated 12th November, 2024 in SLP(Crl.) 13123/2024, and in view of the same, it is submitted that if the proceedings under Section 82 of the Code are initiated against the accused, the same cannot be taken as an absolute ground for denial of the granting anticipatory bail. Therefore, this Court may consider the instant application seeking anticipatory bail on merits.

9. It is submitted that the applicant had previously filed an application seeking anticipatory bail before the concerned ASJ, however, the same was dismissed vide order dated 19th September, 2024 on the ground that the alleged money was not recovered. However, it is submitted that the recovery of the alleged money is not an imperative and sole condition for the Court in granting anticipatory bail.

10. Learned counsel for the applicant further placed reliance on the judgements/orders passed by the Hon’ble Supreme Court in the case of *Bijender vs. State of Haryana* dated 6th March, 2024 in SLP (Crl.) 1079/2024 and *Md. Tahuid @ Kallu, Manoj Singh vs. The State of Bihar* dated 8th February, 2024 in CA 721/2024. On the basis of the said judgments/orders, it is submitted that non-cooperation in the investigation cannot be the sole ground for denying anticipatory bail to the accused.



11. In view of the foregoing submissions, it is prayed that the applicant may be granted anticipatory bail.

12. *Per Contra*, learned APP appearing on behalf of the State vehemently opposed the instant application submitting to the effect that the applicant has never cooperated with the investigating agency.

13. It is submitted that the police officials had raided the applicant's house multiple times, however, he was never found and has been absconding. Moreover, the applicant has kept his mobile phone switched off, thereby, not allowing the investigating agency to contact him for investigation of the case. Given the said circumstances, the investigating agency was left with no option but to file an appropriate application for issuance of NBW against the applicant, however, due to absence of the applicant at his house, proceedings under Section 82 of the Code were initiated to ensure his presence before the investigating agency for the purpose of interrogation.

14. It is further submitted that the concerned police officials raided the house of the applicant's relatives at Churu, Rajasthan and the applicant's relatives manhandled the police officials. In view of the same, learned APP placed the Case Diary before this Court for perusal and submitted that the incident has been mentioned in the Case Diary.

15. It is submitted that the applicant's conduct of not cooperating with the investigating agency for interrogation and the conduct of his relatives in beating the police officials makes it clear that the applicant is avoiding the investigation and is not entitled for any discretion from this Court.

16. Accordingly, it is prayed that the instant application, being devoid of any merits, is liable to be dismissed.



17. Heard learned counsel appearing on behalf of the parties and perused the record as well as the case diary details placed before this Court.

18. Before going into the merits of the case, it is pertinent to delve into the contention made on behalf of the applicant that the anticipatory bail cannot be denied on the ground of mere initiation of proceedings under the Section 82 of the Code.

19. It is an admitted fact that the proceedings under Section 82 of the Code have already been initiated against the applicant and the same is pending before the Court concerned, wherein the date fixed for appearance is on 2nd December, 2024.

20. It is a settled position of law that the proceedings initiated under Section 82 of the Code cannot be an embargo for granting anticipatory bail to the accused and this principle has been reiterated in the case of ***Asha Dubey vs. State of Madhya Pradesh (Supra)***, which was relied upon by the applicant.

21. However, it is to be borne in mind that while the proceedings under the said provision cannot be made a sole condition or a blanket ban for denial of the anticipatory bail, the Courts are still bound to assess and analyse the peculiar facts and circumstances of the case on merits for granting anticipatory bail.

22. Moreover, in the aforesaid case law, although the Hon'ble Supreme Court opined that proceedings under Section 82 cannot be made a sole ground for rejection of the anticipatory bail, it ultimately granted the anticipatory bail to the accused therein based on the merits of the case.



23. Therefore, this Court is of the view that despite the proceedings initiated against under Section 82 of the Code, the merits of the case have to be assessed for granting or not granting the anticipatory bail.

24. Adverting to the merits of the case, upon perusal of the Case Diary details, it is observed that the details therein clearly describe the conduct of the applicant's relatives, wherein they manhandled the police officials, thereby obstructing the officials in reaching and tracing the applicant for interrogation in the give case.

25. Furthermore, upon perusal of the Status Report filed on behalf of the State, it is observed that the alleged money has still not been recovered due to non-cooperation of the applicant in investigation. Moreover, the offences levelled against the applicant are serious in nature and investigation is in the initial stages, therefore, custodial interrogation of the applicant is required for completion of the investigation.

26. In the instant case, the applicant herein is involved in a serious offence of committing criminal breach of trust by wrongfully taking the applicant's alleged money, as mentioned above. Therefore, while dealing with such cases, the alleged amount of money is to be recovered by the investigating agency, which it failed to do so due to the non-cooperation of the applicant. Further, the investigating agency, despite non-appearance of the applicant, has pursued the matter by issuing NBWs and initiation of proceedings under Section 82 of the Code against the applicant, for the recovery of the alleged money and completion of the investigation.

27. Furthermore, the conduct of the applicant in non-cooperating with the investigation as well as that of the applicant's relatives, clearly indicates that they tried to restrict the police officials in tracing the applicant.



28. Therefore, in view of the seriousness of the offence, non-recovery of the alleged money, non-cooperation of the applicant in the investigation coupled with the conduct of the applicant's relatives, this Court is not inclined to grant anticipatory bail to the applicant herein.

29. In view of the above facts and circumstances, this Court does not find any merit in the instant petition and accordingly, the instant petition is dismissed along with the pending applications, if any.

CHANDRA DHARI SINGH, J

NOVEMBER 18, 2024
gs/mk/ryp

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