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

+ **BAIL APPLN. 3572/2024**

ABHISHEK YADAV

.....Petitioner

Through: Mr. Pawan Mehta, Mr. Manan
Sharma and Mr. Dushyant Bhargava,
Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Shoaib Haider, APP for State
with SI Paramjeet PS Ranhola and
ASI Dharamveer PS Ranhola, Delhi.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% **04.10.2024**

CRL.M.As.30014-15/2024 (exemption)

1. Allowed, subject to all just exceptions.
2. The applications are disposed of.

BAIL APPLN. 3572/2024

1. By way of present application, the petitioner/applicant seeks anticipatory bail in FIR No.733/2023 registered under Sections 308/325/323/34 IPC at PS Ranhola, Delhi.
2. At the outset, learned APP states upon instructions that the applicant has already been declared as Proclaimed Offender vide order dated 09.07.2024 and thus is ineligible to be released on anticipatory bail and in this regard has referred to the decisions in Lavesh v. State (NCT of Delhi), reported as **(2012) 8 SCC 730** and Srikant Upadhyay v. State of Bihar, reported as **2024 SCC OnLine SC 282**.
3. The power to grant anticipatory bail is exceptional in nature and must be utilised in a careful manner after assessing all the relevant facts and



circumstances. The law comes to aid to those who abide by it and a person who refuses to answer summons and join investigation shows a disregard for the authority of law. Since grant of pre-arrest protection can hamper the investigation and lead to miscarriage of Justice, the same must be done after due application of mind and utilisation of judicial discretion. It has been held in a catena of judgements by the Supreme Court that the relief of anticipatory bail is not available to someone who has been declared as a proclaimed offender.

4. The Supreme Court in Lavesh v. State (NCT of Delhi) (Supra) has held as follows:-

“12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as “absconder”. Normally, when the accused is “absconding” and declared as a “proclaimed offender”, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail.”

5. Recently, in the case of Srikant Upadhyay (Supra), the Supreme Court while reiterating the above position, has held as follows:

“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, Cr. P.C., 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.

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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. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant.”

6. In the present case, the applicant was declared as a Proclaimed Offender vide order dated 09.07.2024. Considering the import of the



decisions of the Supreme Court discussed hereinabove and the facts of the case, the applicant is not entitled to be released on anticipatory bail.

7. In view of the above, I find no ground to entertain the present application and the same is accordingly dismissed.

MANOJ KUMAR OHRI, J

OCTOBER 4, 2024/*rd*