



2024:DHC:7830



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

% *Date of Decision: 07th October, 2024*

+ BAIL APPLN. 3605/2024 & CRL.M.A. 30114/2024

ISLAM

.....Applicant

Through: Mr. Bhanu Kaushik, Mr.
Tarique Alam & Mr. Faiz
Alam, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Ajay Vikram Singh,
APP for the State.
SI Vikas Deep

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J (Oral)**

1. The present application is filed seeking pre-arrest bail in FIR No.18/2024 dated 17.01.2024, registered at police station Crime Branch, for offence under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. The FIR was registered on a secret information about the active drug supplier. The information was received regarding a drug peddler, namely, Atif, who was alleged to be trafficking drugs. It was informed that he would come to deliver huge quantity of drugs to one of his receivers. Subsequently, the accused Atif was apprehended and one kilo of heroin was recovered from the bag he was carrying.

3. It is alleged that the accused Atif disclosed that the contraband was given to him by one person, namely, Ashraf. The accused Ashraf, was thereafter, arrested and a raid was

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conducted at his house and at his instance, 490 gm of heroin was recovered from his house. On the disclosure statement of Ashraf, the name of the applicant was disclosed as one of the receivers of the contraband.

4. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case.

5. He submits that the applicant has been falsely implicated in the present case solely based on the disclosure statement of co-accused, which, as per the landmark judgment *Tofan Singh v. State of Tamil Nadu : 2020 INSC 620*, is not admissible as evidence without corroboration.

6. The learned Additional Public Prosecutor for the State opposes the grant of any relief to the applicant since the allegations against the applicant are serious in nature and the custodial interrogation of the applicant is necessary to unearth the chain of drug syndicate.

7. He submits that the grant of pre-arrest bail in cases involving narcotics drugs ought not to be granted in a routine manner.

8. It is to be kept in mind that 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.

9. 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

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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 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."

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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.”

10. 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.

11. It is undisputed that the investigation in regard to the role of the applicant is at a nascent stage. The name of the applicant is disclosed by one of the accused persons as being one of the receivers of the contraband. The police is yet to investigate the said aspect.

12. The relief of pre-arrest bail is a legal safeguard intended to protect individuals from potential misuse of power of arrest. It plays a crucial tool in preventing harassment and unjust detention of innocent persons. However, the court must carefully balance the individual's right to liberty with the interests of society, especially in cases involving serious offences under the NDPS Act. While the presumption of innocence and the right to liberty

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conjunction with the gravity of the offence, its societal impact, and the need for a comprehensive and unobstructed investigation.

13. In cases involving the recovery of commercial quantity of narcotic substances, Courts must exercise caution in granting bail, let alone pre-arrest bail. Granting pre-arrest bail in such circumstances could hinder the investigation and undermine the broader interests of justice.

14. Even though, at this stage, the implication of the applicant is based primarily on the disclosure statements of the co-accused, the investigating agency needs to be given a fair play in the joints to investigate the matter in the manner they feel appropriate.

15. It is trite that grant of pre-arrest bail in cases involving NDPS is a serious issue and at the initial stages of investigation undisputedly, the police will only be able to get to know the name of the persons involved at that stage. It is not expected with the police to have every evidence in their possession at initial stages. The same requires further investigation. Thus, denying pre-arrest bail at this stage is imperative to ensure that the investigation is not thwarted and that the broader interests of justice are protected.

16. In view of the above, this Court does not consider it apposite to entertain the present application at this stage.

17. The application is, therefore, dismissed.

AMIT MAHAJAN, J

OCTOBER 7, 2024

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