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

\+ BAIL APPLN. 3621/2024

PANKAJ PANDEY .....Applicant

Through: Mr. K.K. Tiwari, Advocate.

versus

STATE OF NCT OF DELHI .....Respondent

Through: Mr. Naresh Kumar Chahar, APP for the State.
Mr. Sunil Kumar & Mr. Amit Singh, Advocates for Complainant.
SI K.L. Kuldeep (P.S. Kashmiri Gate).

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **16.12.2024**

1. The present application is filed seeking pre-arrest bail in FIR No. 376/2019 dated 23.12.2019, registered at Police Station Kashmeri Gate, for offences under Sections 279/337 of the Indian Penal Code, 1860 ('**IPC**').

2. The present FIR was registered on the statement of the complaint, namely, Shashi Bala alleging that on 05.12.2019, when she was going to her office, the applicant hit the right side of her scooty with his motorcycle. It is alleged that due to the same, the complainant fell down and suffered an injury on her right leg. Public gathered at the spot and forced the applicant to take victim to the hospital. The applicant initially promised to pay all the treatment expenses. Later on, when the complainant asked the applicant to pay the treatment expenses, he refused to make the necessary payments.

3. On 13.01.2020, during the course of the MACT trial, it

was observed that the insurance policy provided by the applicant was fake and fabricated. The status report mentions that supplementary chargesheet is to be filed in relation to the same.

4. A notice under Section 91 of the Code of Criminal Procedure, 1973 (‘**CrPC**’) was served on Reliance General Insurance Company which stated in its reply that no insurance policy was found to be registered in relation to the offending vehicle. In this regard, Sections 420/468/471 of the CrPC were added in the present case.

5. During the course of investigation, the concerned Sub Inspector tried to approach the applicant at his residential address, however, he could not be traced. The applicant was served a notice to join the investigation on the mobile number available with the Investigating Officer. Instead of joining the investigation, the applicant approached the learned Sessions Court.

6. On being granted interim protection, the applicant joined the investigation and stated that he had secured the policy through Mohd. Shafique Ansari. Further, Mohd. Shafique Ansari was interrogated who stated that he was running a bike service shop and he used to provide the customers to one Sudhir in return of a nominal amount of ₹50/- to ₹100/- per customer. On being interrogated, Sudhir denied all allegations.

7. The learned counsel for the applicant submits that the applicant is innocent and he has been falsely implicated in the present case.

8. He submits that the concerned insurance policy was taken by the applicant from Mohd. Shafique Ansari, and he was surprised to learn that the insurance policy was fake. He submits

that a complaint was made in this regard by the applicant as well. He submits that the applicant has no reason to keep a forged insurance policy for his vehicle as the same will give no benefit to the applicant.

9. He submits that the applicant has not concealed any material facts and he has regularly joined the investigation since the insertion of Sections 420/468/471 of the IPC as well.

10. He submits that the applicant had no intention to evade trial or the MACT proceedings and he had filed a detailed affidavit before both the concerned Courts regarding his change of address.

11. He submits that the applicant is in the process of preferring a challenge to the decision of the learned MACT.

12. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposed the grant of any relief to the applicant.

13. He submits that serious injuries have been caused to the complainant and the learned MACT has given categorical findings that the applicant was driving in a rash manner which caused 42% disability to the victim.

14. He further submits that although the applicant joined the investigation, however, he has not cooperated.

15. He submits that the insurance policy of the offending vehicle was found to be fake and investigation is required in this aspect. He submits that the applicant got the offending vehicle released on the strength of the fake policy He further submits that the applicant had neither informed the concerned Investigating Officer nor brought it to the notice of the Courts that he had changed his address.

16. The learned counsel for the complainant also opposes the grant of bail to the applicant. He submits that an award of ₹18,46,663/- has been awarded in favour of the complainant in the MACT trial, however, the said amount has not been paid by the applicant.

17. I have heard the counsel and perused the record.

18. 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 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.

19. It is trite law that the power to grant a pre-arrest bail under Section 482 of the BNSS 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)*
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> > *"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."*
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> ***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)*
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> > *"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.*"

20. It is the case of the prosecution that the applicant was driving in a rash manner due to which the complainant sustained serious injuries. It is alleged that the applicant got his vehicle released on *superdari* by producing a fake insurance certificate, due to which, Sections 420/468/471 of the IPC were added to the present case. It is stated that a supplementary chargesheet will be filed in this regard.

21. Although it is contended on behalf of the applicant that the award passed by the learned MACT is erroneous and the applicant is in the process of challenging the same, however, at this stage, it cannot be ignored that the applicant *prima facie* seems to be responsible for the incident which led to the complainant's 42% disability.

22. The complainant has not been able to even get the awarded amount due to the insurance policy being fake. The right of the victim to get justice cannot be said to be weaker than the right of

the accused.

23. Insofar as the fake insurance policy is concerned, it is argued on behalf of the applicant that he had taken the policy in good faith and was unaware that the same was fake. It is stated that the investigation in this regard is not yet concluded and the supplementary chargesheet is yet to be filed.

24. The nature of allegations are serious. While the arguments and defences will be seen during the arguments before the learned Trial Court, at this stage, the complicity of the applicant in forging the fake insurance policy cannot be ruled out.

25. 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 justice. While the presumption of innocence and the right to liberty are fundamental principles of law, they must be considered in conjunction with the gravity of the offence, its societal impact, and the need for a comprehensive and unobstructed investigation.

26. Considering the material on record, it cannot be held at this stage that the investigation is being carried out with the intention to injure or humiliate the applicant. *Prima facie*, the facts do not indicate false implication of the applicant.

27. 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 of pre-arrest bail [Ref. ***State v. Anil Sharma*** **: (1997) 7 SCC 187**]. Granting anticipatory bail to the applicant would undoubtedly impede further investigation. An order of bail cannot be granted in a

routine manner so as to allow the applicant to use the same as a shield.

28. It is also pointed out that the applicant had changed his address without duly intimating the Concerned Courts or the Investigating Officer in the present case. While it is argued that the applicant had filed an affidavit in this regard on 11.09.2024, however, it appears that the same was done only after interim protection was granted to the applicant on 30.08.2024, after a notice was served on the applicant through his WhatsApp to join investigation as he couldn't be found on his residential address.

29. In view of the aforesaid discussion, granting pre-arrest bail to the applicant would undoubtedly impede the investigation. In the opinion of this Court, the applicant has not established a *prima facie* case for grant of pre-arrest bail.

30. The present application is accordingly dismissed.

31. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

AMIT MAHAJAN, J

DECEMBER 16, 2024/*'Aman'*