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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3785/2024 & CRL.M.A. 31436/2024**

SHAILU

.....Petitioner

Through: Mr. Piyush Beriwal, Mr.
Akhil Kumar Choubey,
Mr. Rohit & Mr. Hitesh
Jain, Advs.

versus

STATE GOVT. OF NCT OF DELHIRespondent

Through: Mr. Sunil Kumar Gautam,
APP for the State.
SI Jitendra AATS /SED.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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28.10.2024

CRL.M.A. 31437/2024 & CRL.M.A. 31438/2024 (for exemption)

1. Exemptions allowed, subject to all just exceptions.
2. The applications stand disposed of.

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3. The present application is filed seeking pre-arrest bail in FIR No.80056897/2024 dated 31.05.2024, registered at e-Police Station Okhla Industrial Area, South East, for offence under Sections 379 of the Indian Penal Code, 1860 ('IPC').

4. The FIR was registered pursuant to a complaint that 2549 mobile phones of Samsung were stolen from a Truck while it was enroute to Indira Gandhi Airport, New Delhi from Dadri, Greater Noida.

5. During the course of the investigation, on the basis of information from an informer, one Jaykesh was apprehended on 03.08.2024 from Aligarh, Uttar Pradesh and 50 mobile phones

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were recovered from him.

6. On investigation, accused Jaykesh disclosed that the mobile phones were given to him by the applicant. He disclosed that the applicant at that time was accompanied by one Avnish, Satyveer, Sunil and Abhishek. Pursuant to the disclosure, accused Abhishek was arrested and he disclosed that out of the stolen mobile phones, 100 mobile phones were taken by the applicant as his share.

7. On being asked, it is pointed out by the Investigating Officer that accused Satyaveer was also arrested and he had disclosed that co-accused persons, including the applicant, were involved in the commission of the crime and they had all taken their respective shares. The accused Satyaveer was driving the truck at the time of incident.

8. The learned counsel for the applicant submits that the applicant is sought to be implicated solely on the basis of disclosure statements of the accused persons.

9. He submits that it is a settled law that the disclosure statement is not admissible as evidence without any corroboration.

10. He further submits that the allegations at best can be of the applicant receiving stolen property which is punishable for a maximum imprisonment of three years only.

11. *Per contra*, the learned Additional Public Prosecutor for the State submits that serious allegations of theft have been made against all the accused persons.

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

13. The law in regard to the grant of pre-arrest bail is well-settled. In the case of ***Siddharam Satlingappa Mhetre v. State of Maharashtra : (2011) 1 SCC 694***, the Hon'ble Supreme Court ***BAIL APPLN. 3785/2024***

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dealt with the issue of pre-arrest bail, and the balance that needs to be maintained while granting the same to an accused and further laid down the factors that must be taken into consideration while dealing with pre-arrest bail and held as under:

“...112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

iii. The possibility of the applicant to flee from justice;

iv. The possibility of the accused's likelihood to repeat similar or the other offences.

v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Penal Code, 1860, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;



x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail...”

14. In the present case, serious allegations have been made that a large number of mobile phones were stolen from a Truck while it was enroute to the Airport. It appears that the driver of the Truck himself was involved in the crime and he had conspired with all other accused persons to steal the phones. It is alleged that pursuant to the theft, the stolen property was divided amongst the accused persons.

15. It is argued that the disclosure made by the accused persons cannot be read against the applicant as the same is inadmissible. While the disclosure made by the co-accused persons while in custody may not be admissible as evidence, however, considering that the investigation is at the nascent stage, in the opinion of this Court, full liberty needs to be given to the investigating agency to investigate the matter in the manner they feel is appropriate.

16. The allegations, at this stage, do not seem to be made solely for the purpose of falsely implicating the applicant. No reason has been stated as to why the co-accused persons would falsely implicate the applicant. Large amount of stolen property is yet to be traced.

17. Moreover, 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 Code of Criminal Procedure, 1973 (akin to Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023)



[Ref. *State v. Anil Sharma* : (1997) 7 SCC 187].

18. In view of the above, no case is made out for grant of prearrest bail. The application is, therefore, dismissed. Pending application also stands disposed of.

19. 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

OCTOBER 28, 2024
“SK”