



2024:DHC:9524



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

% **Date of order: 4<sup>th</sup> December, 2024**

+ **BAIL APPLN. 3917/2024**

**VIVEKANAND GIRI**

.....Petitioner

Through: **Mr. Ravinder Kumar, Gupta,**  
**Advocate (Through VC).**

versus

**STATE GOVT. OF NCT OF DELHI**

.....Respondent

Through: **Mr. Satish Kumar, APP for the State**  
**along with SI Dinesh Tyagi.**  
**Mr. S.C. Sagar, Mr. Naeem Ahmed**  
**and Mr. Shishu Pal Sharma,**  
**Advocates for Complainant.**

**CORAM:**

**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

### **ORDER**

#### **CHANDRA DHARI SINGH, J (Oral)**

1. The instant application under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter as the “BNSS”) has been filed on behalf of the applicant/petitioner seeking anticipatory bail in FIR No. 196/2024 dated 25<sup>th</sup> July, 2024 registered at Police Station – Preet Vihar for the offences punishable under Section 316(4) of the Bharatiya Nyaya Sanhita, 2023 (hereinafter as the “BNS”).

2. The brief facts of the case, as per the prosecution, are that the complainant runs a garment showroom in the name and style of “Bindals”,

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which is situated at V3S Mall, Laxmi Nagar, Delhi -110092. The applicant is an employee of the complainant and has been working as a Cashier in the said showroom for more than three years.

3. However, a complaint was filed by the complainant against the applicant for allegedly stealing the money since October, 2023, thereby committing an offence of criminal breach of trust. Accordingly, the aforesaid FIR was registered against the applicant.

4. Thereafter, the applicant filed an application for anticipatory bail before the Court concerned and vide order dated 9<sup>th</sup> September, 2024, the applicant was granted interim protection with the direction to join the investigation. However, vide order dated 28<sup>th</sup> September, 2024, the Court concerned dismissed the application for anticipatory bail.

5. Aggrieved by the same, the applicant has filed the instant application.

6. Learned counsel appearing on behalf of the applicant submitted that the applicant has been falsely implicated in a frivolous case and the aforesaid FIR has been registered only with an intention to harass him.

7. It is submitted that the applicant was illegally and unlawfully terminated from his employment and as a counterblast of the same, the instant FIR has been filed against the applicant.

8. It is submitted that the applicant has been attending the investigation as and when required by the investigative agency and has duly complied with the terms of the notice served under Section 179 of the BNSS.



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9. It is submitted that the applicant has no criminal antecedents and is a respectable citizen of the society. Furthermore, since the applicant is duly cooperating in the investigation, no custodial interrogation is required.

10. It is submitted that the applicant is a permanent resident of Delhi and is a native of Bihar, therefore, there are no chances of him absconding from the country. Learned counsel for the applicant undertakes that the applicant shall abide by all the terms and conditions imposed upon him by this Court while granting him anticipatory bail. He further undertakes that the applicant shall not tamper with the evidence and threaten the witnesses in any manner.

11. Therefore, in view of the foregoing submissions, it is prayed that the instant application may be allowed.

12. *Per contra*, learned APP appearing on behalf of the State vehemently opposed the instant application submitting to the effect that the offences levelled against the applicant are serious in nature.

13. It is submitted that the applicant has been misappropriating funds amounting to Rs. 25,22,204/- (approximately) since October, 2023 till July, 2024 i.e., over a span of 10 months.

14. It is submitted that the applicant was granted interim protection by the Court concerned vide order dated 12<sup>th</sup> September, 2024, subject to the applicant joining the investigation. However, despite the said direction, the applicant failed to cooperate with the investigation by providing misleading answers to the questions posed.



15. It is submitted that the applicant has forged certain bills in order to misappropriate funds, however, two out of the said bills were not discovered, hence, custodial interrogation of the applicant is required.

16. It is submitted that the investigation is at a nascent stage and the *prima facie* evidence indicate that the applicant is involved in commission of the offence as mentioned in the aforesaid FIR.

17. It is submitted that the conduct of the applicant in evading the summons as well as the misuse of the interim protection granted to him vide order dated 12<sup>th</sup> September, 2024 shows that there is a high probability of him evading the arrest and become a flight risk.

18. In light of the aforementioned submissions, it is prayed that the instant application, being devoid of any merit, is liable to be dismissed.

19. Heard learned counsel for the parties and perused the record.

20. Before advertng to the facts of the case, it is imperative to understand the law with respect to the anticipatory bail. It is a trite law that while granting anticipatory bail to the accused, the ramifications of such liberty should not compromise the veracity of the investigation. The said principle is encapsulated by the Hon'ble Supreme Court in the case of ***State of A.P. v. Bimal Krishna Kundu*, (1997) 8 SCC 104**, wherein it 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.*



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21. The settled position of law state that the power to grant anticipatory bail is an exceptional power and should be exercised only in exceptional cases and not as a matter of course.

22. At this juncture, it is pertinent to peruse the order dated 28<sup>th</sup> September, 2024, wherein the Court concerned took note of the forged bills as well as the CCTV footage, which indicated that the behaviour and conduct of the applicant showcase that the applicant was hiding crucial information regarding the misappropriation of funds. Accordingly, the anticipatory bail application was dismissed vide the said order.

23. Adverting to the facts of the instant case, upon perusal of the Status Report filed by the State, it is observed that the applicant has allegedly misappropriated funds of Rs. 25,22,204/- from the complainant over a span of 10 months. The allegations levelled against him are serious and grave in nature and therefore, investigation with respect to the same needs to be completed in a time bound manner.

24. However, taking the same into consideration and giving a benefit of doubt, the applicant was given interim protection vide order dated 12<sup>th</sup> September, 2024 by the Court concerned, thereby, directing the applicant to join the investigation.

25. Despite joining the investigation, the applicant has not cooperated with the investigative agency as it has been vehemently submitted by the learned APP and also noted by the Court concerned that the applicant has concealed information which is material for the investigation.



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26. It is further observed that the chargesheet has not been filed in the given case as the investigation is still at a nascent stage and the primary evidence i.e., alleged forged bills are necessary to be acquired by the investigative agency in order to file the chargesheet. However, the applicant has not revealed anything pertaining to the forged bills, thereby, causing impediments to the investigation.

27. Furthermore, taking into consideration the past conduct of the applicant in evading summons and misusing the interim protection granted to him vide order dated 12<sup>th</sup> September, 2024, it is made out that the applicant may not cooperate with the investigation and evade the arrest if enlarged on anticipatory bail. Moreover, there is serious apprehension that the applicant may also tamper with the evidence.

28. Therefore, given the foregoing discussions as well as the law laid down by the Hon'ble Supreme Court, this Court is not inclined to grant anticipatory bail to the applicant.

29. Accordingly, the instant anticipatory bail application stands dismissed along with other pending applications, if any.

30. It is made clear that the observations made herein, touching upon the merits of the case, are purely for the purpose of deciding the question of granting anticipatory bail to the applicant, which shall not be construed as an expression of observations on the merits of the case.



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31. The order be uploaded on the website forthwith.

**CHANDRA DHARI SINGH, J**

**DECEMBER 4, 2024**

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*Click here to check corrigendum, if any*

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