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

Date of decision: 04.02.2025

+ BAIL APPLN. 291/2025

AKHILESHWAR KUMAR

.....Petitioner

Through: Mr. Sandeep Sharma, Senior
Advocate with Mr. Ranjan Kumar,
Advocate

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Laksh Khanna, APP for the State
SI Rajender Singh, P.S. Kotla
Mubarakpur

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CRL.M.A. 3526/2025 (under Section 528 of Bharatiya Nagarik Suraksha Sanhita Act, 2023 on behalf of the Applicant Akhileshwar Kumar seeking early hearing)

This is an application filed by the Petitioner seeking preponement of the hearing in the main petition.

The application is allowed and with the consent of the parties, the main petition is taken up for hearing.

Accordingly, the date of 04.03.2025 stands cancelled.

BAIL APPLN. 291/2025

1. The present application has been filed under Section 482 read with Section 528 of Bhartiya Nagarik Suraksha Sanhita, 2023 ('BNSS') seeking



grant of anticipatory bail to the Applicant in FIR bearing no. 346/2024 under Sections 319(2)/318(4)/61(2) of Bharatiya Nyaya Sanhita, 2023 ('BNS Act').

Brief Facts

2. The case of the prosecution as borne out from the status report is that the FIR bearing no. 346/2024 was registered on the statement of Sh. Ravinder Sharma i.e. the complainant.

2.1. In the FIR, it is stated that the complainant was in contact with the Applicant for several business offers and during one such conversation, the Applicant made an offer to him that he can arrange to sell him Gold, which is 30% discounted rate compared to market value and this Gold arrives in India via the Nepal route. In the FIR, the complainant identified the Applicant as Sanjay and provided three different mobile numbers on which he spoke with the Applicant.

2.2. It is further stated that, thereafter, as per the discussions with the Applicant, the complainant along with his nephew Aman on 03.10.2024 had come at South Ex-1, Near Metro Station, Gate No. 3 in Aman's car to buy the said Gold at 30% discounted rate from one Deepak for Rs. 11 lakhs. It is stated that Deepak met the complainant and took him to an office in South Ext. where the Complainant handed over Rs. 11 lakhs to Deepak. It is stated that Deepak showed the complainant the Gold which was in a bag and thereafter, complainant was informed by Deepak that the Gold will be delivered at the car. It is stated that, thereafter, complainant along with his nephew Aman and Deepak as well as an associate of Deepak were walking back towards the car. The bag containing Rs. 11 lakhs was in the hand of



Deepak and the bag containing Gold was in the hand of the associate of Deepak.

2.3. It is stated that while the complainant was walking back to the car, two men on a pulsar motorbike came towards them and they were dressed up in the uniform of the Police Man. It is stated that the man riding the pillion also appeared to be holding a pistol. It is stated that the man riding the pillion took away the bag containing the Gold from the associate of Deepak. And, both Deepak and the Complainant's nephew Aman ran away and at this point, the two men on the motor cycle also chased Deepak and eventually Rs. 11 lakhs of the complainant were robbed.

2.4. It is submitted in the status report that after investigation, police officials have identified Deepak as accused known as Badshah Khan and the associate, who was carrying the bag of Gold as accused Arif Khan. The police have identified the two men who were dressed up as police men and riding the motor cycle as Sukhbir alias Kallu and Manoj alias Pahalwanji. The pistol which Manoj alias Pahalwanji was wearing has been identified as a toy gun.

2.5. It is stated that after receiving the complaint, CCTV footage of the area was examined and after investigation, the police identified the involvement of the aforesaid four men during the incident on 03.10.2024 as well as one Bobi Khan, Sifarish Khan and the Applicant herein. The police have, thus, found that there were atleast 7 persons involved in the conspiracy to loot the Rs. 11 lakhs of the Complainant.

2.6. It is stated that thereafter during investigation the looted money to the extent of Rs. 6,72,800 and the auto rickshaw used in the crime scene was



recovered at the instance of accused Badshah alias Deepak. It is stated that looted money to the extent of Rs. 3,500 was recovered at the instance of accused Manoj alias Pehlwanji. It is stated that Pulsar bike used in the commission of crime was recovered at the instance of accused Sukhbir alias Kallu were recovered.

2.7. It is stated that the three accused Badshah, Manoj and Sukhbir, who carried out the crime were duly identified by the complainant during TIP.

2.8. It is stated that during interrogation of the accused Badshah alias Deepak, the said accused disclosed that the Applicant herein i.e. Akhileshwar alias Sanjay is the kingpin, who had enticed the Sh. Ravinder Sharma i.e. complainant to buy gold at the discounted rate through the phone calls from Bihar. It is stated that the Applicant, thereafter, directed the complainant towards Sifarish Khan and Badshah to get Rs. 11 Lakhs of the Applicant robbed. It is stated that the accused Badshah alias Deepak has disclosed that he had deposited part of looted money in the bank account(s) of Applicant/accused and his son Vishal Srivastava.

2.9. The status report encloses Annexure-1, which shows that on 03.10.2024 a sum of Rs. 5,94,000/- was deposited in the accounts of Applicant/accused and his son Vishal Srivastava in five (5) tranches.

2.10. It is stated that the IO has discovered evidence in the form of mobile calls between Applicant herein and the complainant before and after the incident. The said call recording with the Applicant were recorded by the complainant and have been placed with the case file. It is stated that for this purpose, the Applicant's voice samples are required. It is stated that the CDRs of the complainant and the mobile numbers used by the Applicant as



well prove the case of the complainant. It is stated that all the three mobile numbers of the Applicant/accused provided by the complainant at the relevant time of incident show their location at Barharwa Kalan, Kotwa, Bihar.

2.11. It is stated that the Call Detail Records (CDR's) of the Applicant's mobile number prove his connect with the accused persons namely Badshah Khan alias Deepak and Sifarish Khan.

2.12. It is stated that the co-accused person Sifarish Khan was absconding and has since been arrested on 15.11.2024 and it was revealed that the motorcycle used in committing the robbery belongs to Sifarish Khan and a fake number plate was used to commit robbery.

2.13. It is stated that the main charge-sheet has been filed before the Trial Court against the accused Badshah, Manoj, Sukhbir and Sifarish Khan

2.14. It is stated that accused Bobi Khan and Arif Khan are absconding and are avoiding arrest and proclaimed offender proceedings have been initiated.

2.15. It is stated that Non-Bailable Warrants (NBW) against the Applicant has been obtained.

Arguments of the Applicant/accused

3. Learned Senior counsel appearing on behalf of the Applicant stated that the Applicant has been falsely implicated only on the basis of the CDR's and disclosure statement of accused persons namely Badshah alias Deepak and Sifarish Khan. However, such disclosure statements are not admissible per se.

3.1. He states that name of the Applicant has not been mentioned in the FIR and he has no role in alleged robbery and conspiracy to rob the



complainant since at the time of the incident the Applicant was at his native place in Bihar.

3.2. He states that Applicant and the accused Sifarish Khan have been acquainted with each other for many years. He states that the circumstances in which Applicant received money in his bank account on 03.10.2024 was that the Applicant had entered into an agreement to purchase a property from Sifarish Khan for a total consideration of Rs.45,00,000/- and in pursuance of the said agreement the Applicant paid an advance amount of Rs.9,00,000/-. However as Sifarish Khan failed to execute the required property documents, therefore, Sifarish Khan refunded a partial amount of Rs.5,94,000/- on 03.10.2024 and a further payment of Rs. 95000/- as well was made on 04.11.2024 to the Applicant.

3.3. He states that the police has already marked a lien on the Applicant's bank account and therefore, the money deposited in the account is secured.

3.4. He states that Applicant had advance Rs. 9,00,000/- to accused Sifarish Khan in cash.

3.5. He states that no documentary proof has been filed against the Applicant to support the allegation that Applicant was involved in committing the robbery.

3.6. He states that there is no criminal antecedent against the Applicant and as such there are no chances of the Applicant for fleeing or tampering with any evidence if she is admitted to bail.

3.7. He further states that the Applicant undertakes to make himself available as and when directed by this Court or as required by the police officials /IO.



Arguments of the Respondent/state

4. In reply, Mr. Khanna, learned APP opposes the bail application of the Applicant. He states that the present case is a case involving commission of an offence of robbery and the allegations levelled in the FIR against the Applicant are very serious and grave in nature. He states that a day light robbery was staged by the accused and two of the accused were dressed as Police Men.

4.1. He states that the Applicant is the main conspirator of this crime. He states that the CDR analysis of the Applicant's mobile number and accused Badshah and Sifarish Khan show mobile calls immediately before and after the robbery was committed. He states that the amount of Rs. 5,94,000/- was deposited in the account of the Applicant on the same day when robbery was committed i.e. 03.10.2024 between 3 P.M. to 5 P.M.

4.2. He states that CDR analysis reveals the direct involvement of Applicant in the operation, therefore, his custodial interrogation is required to take the voice samples and analyze the entire conspiracy with respect to the crime of robbery committed.

4.3. He states that as per the report of the investigation the co-accused persons i.e., Bobi Khan and Arif Khan is still yet to be traced, therefore, he pleads that pre-arrest bail should not be granted.

4.4. He states previously as well the anticipatory bail application of the Applicant filed before the ASJ-05, South-east District, Saket Courts, New Delhi (Trial Court) has already been dismissed vide order dated 27.12.2024.

Analysis and conclusion

5. This Court has heard the submission of the parties.

6. Before advertng to the facts of the present case it would be



imperative to refer to the judgment of the Supreme Court on the subject matter of anticipatory bail wherein in the case of **Sumitha Pradeep v. Arun Kumar**¹ while dealing with the conflicting aspect of need for custodial interrogation and anticipatory bail held that even in the cases where custodial interrogation is not required, however, the Court cannot overlook the test of whether prima facie case has been made out against the accused by the prosecution. The relevant paragraph reads as under:

“In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

(Emphasis supplied)

7. Further it is well settled that the power exercisable under Section 482 of BNSS for granting anticipatory bail is extraordinary in character and is to be exercised only in exceptional cases, where it appears to the Court that the person may be falsely implicated or there are reasonable grounds for holding that the person, who is accused of the offence is not likely to otherwise

¹ (2022) 17 SCC 391.



misuse his liberty. (Re: **State of Madhya Pradesh v. Pradeep Sharma**²)

8. Learned senior counsel for the Applicant has contended that since admittedly the Applicant was in Bihar when the robbery occurred, he cannot be arrested on the mere disclosure statements of the accused and the CDR connectivity.

9. This Court is not persuaded by the submissions of the Applicant. The Applicant has not denied that the receipt of sum of Rs. 5,94,000/- from accused Badshah Khan on 03.10.2024 in his bank account and his son's bank account. The Applicant has not disputed that the CDRs of his admitted mobile number on 03.10.2024 shows frequent calls between him and accused Badshah Khan and accused Sifarish Khan.

10. The explanation offered by the Applicant that the amount of Rs. 5,94,000/- was a refund of the advance of Rs. 9 lakhs earlier paid to Sifarish Khan in pursuance to an alleged ATS dated 10.05.2024 is not prima facie proved, as the Applicant has failed to place on record any evidence of payment of Rs. 9 lakhs to Sifarish Khan.

11. On the other hand, the complainant has duly identified the Applicant as Sanjay in the FIR and has furnished three mobile numbers on which the complainant spoke with the Applicant. The CDRs of said mobile numbers placed the accused Sanjay alias the Applicant herein in Bihar. The disclosure statement of the accused Badshah Khan and Sifarish Khan naming the Applicant as the master mind and the following deposit of Rs. 5.94 lakhs in the account of Applicant and his son on the date of the robbery, are all facts which justify the case of the prosecution for seeking Applicant's

² 2014 (2) SCC 171



custodial interrogation.

12. Considering the above and having regard to fact non-bailable warrants have also been issued against the Applicant, therefore, this court is of the view that the allegations are serious which warrants custodial interrogation of the Applicant to unravel the entire conspiracy and to find and arrest other persons who helped the accused in the commission of crime occurred on 03.10.2024.

13. In view of the aforesaid circumstances, no ground for anticipatory bail is made out. The petition is accordingly, dismissed along with the pending applications.

14. The next date of hearing i.e., 04.03.2025 stands cancelled.

MANMEET PRITAM SINGH ARORA, J
FEBRUARY 4, 2025/msh/ms

Click here to check corrigendum, if any