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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3626/2024**
ROGER JOHNPetitioner

Through: Mr. Alex Joseph and Mr. Sumit Mangla, Advocates.

versus

THE STATE GOVT OF NCT OF DELHIRespondent
Through: Mr. Amit Ahlawat, APP.
SI Narendra Kr., P.S. Mehrauli, New Delhi.
Mr. M.P.S. Kasana and Mr. Gitesh Chopra, Advocates for Complainant.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
% **20.01.2025**

1. The present bail application is filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023¹ (erstwhile Section 439 of the Code of Criminal Procedure, 1973²), seeking grant of regular bail in FIR No. 231/2024 filed under Section 381 of the Indian Penal Code, 1860³, registered at Police Station Mehrauli. Subsequently, on 29th March, 2024, in pursuance of the present FIR, a chargesheet was filed under Sections 381/411/120B/34 of IPC.

2. The case of the prosecution, in brief, is as follows:

¹ "BNSS"

² "CrPC"



2.1. The investigation in the present case was initiated on 29th March, 2024, pursuant to a written complaint filed by Mr. N. Raja Shank, Manager of Akash Ganga. He alleged that one Ms. Sheena Sebastian⁴, along with her husband, i.e., the present Applicant, had committed theft on 28th March, 2024 in the Complainant's farm house and they subsequently ran away from the spot, at around 05:30 AM. The co-accused was employed as a house-help and was serving the occupants for the past 11 years.

2.2. On receipt of the complaint, SI Narender Kumar, had visited the spot and conducted preliminary enquiry, which revealed that the incident of theft had been committed by the co-accused. This was discovered on 28th March, 2024, at around 07:30 PM by the owners/occupants of the house, when upon opening the locker in the farm house, it was found that valuable gold items, jewellery, cash amounting to approximately INR 4 Lakhs and important documents, including title deeds, were missing.

2.3. After making enquiry from the staff including the security guard, Mr. Laxman Pal, and the attendant, Ms. Shakuntala, it was revealed that the co-accused had hurriedly left the farm house with possession of 3 bags. When the co-accused was exiting the premises, she informed the guards that she's leaving for Kerala and also left a voice message to the attendant *via* WhatsApp. The security guard further confirmed that the Applicant had come to pick her up in a Car (a Maruti Ritz, having registration number as DL-2CAL- 7035) which was parked at a distance from the farm house. The IO tried contacting the co-accused as well as the present Applicant, however both their mobile phones were switched off. Accordingly, the present FIR

³ "IPC"

⁴ "the co-accused"



was registered, and further investigation was then carried out.

2.4. During the course of investigation, the statement of the security guard, as well as other staff, was recorded under Section 161 of the CrPC, wherein they re-confirmed the earlier narrative. Further, the CCTV footage from the main entry gate of DLF Chhatarpur revealed that the Applicant had indeed visited the premises in the afore-mentioned Maruti Ritz. In the CCTV footage of the concerned premises, both the co-accused and the Applicant could be seen with bags as reported earlier by the Complainant. The mobile No. of accused persons were put under surveillance to ascertain their locations.

2.5. Meanwhile, on 31st March, 2024, a supplementary statement was submitted, wherein it was alleged by the Complainant that cash amounting to INR 97 Lakhs and certain other gold/precious articles, were also missing.

2.6. On 2nd April, 2024, based on the Call Detail Records⁵ and on the basis of information received from a secret informant, the Applicant was apprehended. He disclosed the commission of offence and taken into custody. At the instance of the Applicant, a bag containing cash amounting to INR 1,09,50,000/- and some jewellery items were recovered from the office of one Mr. Reji Mathew, who is stated to be a friend of the Applicant, and the same were then seized via Seizure Memo dated 3rd April, 2024. Additionally, the car used by the Applicant was also taken into police custody. Upon being confronted with the evidence recovered, the Applicant disclosed that in collusion and in conspiracy with his wife, committed the theft.

2.7. A statement under Section 164 of CrPC of Mr. Reji Mathew was also



recorded, through which he confirmed that bags containing jewellery and recovered cash were kept in his office by one Mr. Jose Kuttey, on the directions of the accused persons who had misled them. Raids were conducted at the residential premises of the co-accused and subsequently, a notice under Section 41A CrPC was issued which was affixed at the residential address of the co-accused, but she failed to comply with the said notice.

2.8. On 3rd May, 2024, Non-Bailable Warrant was issued against the co-accused by the Metropolitan Magistrate, Saket Court. The Metropolitan Magistrate, Saket Court also conducted the TIP proceedings of recovered articles and the order records that the Complainant has identified the recovered articles.

2.9. The co-accused has been in judicial custody since 3rd April, 2024. She surrendered before the Saket Courts on 16th August, 2024.

3. In this background, the counsel for Applicant makes the following submissions in support of his request for grant of bail:

3.1. The Applicant has been in custody since 3rd April, 2024 and no recovery was effected from his possession. The investigation has been completed and chargesheet has also been filed. Hence, no fruitful purpose remains now for keeping the Applicant in custody.

3.2. The Applicant and his wife, i.e., the co-accused, have a minor child, who is currently in the custody of the sister-in-law of the Applicant. Since both of them are in judicial custody, there is no one present to take care of their child. This coupled with the fact that the Applicant's wife has already surrendered, their child would be forced to grow in an environment without

⁵ "CDR"



any biological parent, if the Applicant is not enlarged on bail.

3.3. The Applicant does not have any criminal antecedents and has been falsely implicated in the present case. He also undertakes that he will not make any direct/indirect inducement or threat too the witnesses in any manner.

4. Mr. Amit Ahlawat, APP for the State, strongly opposes the bail application and submits as follows:

4.1. The present Applicant, being a permanent resident of Kerela, and not having any permanent address at Delhi, poses a flight risk.

4.2. There is sufficient incriminating material recovered from the Applicant and his wife, the co-accused, which clearly establishes the offences alleged to have been committed by them.

4.3. The co-accused is in conspiracy with the Applicant and has been engaged in systematic stealing. In this regard, since the bank account statement of the co-accused revealed multiple transactions with Muthoot Finance, notice was served to the Manager of Muthoot Finance of Katwaria Saria Branch. The reply to the said notice revealed that out of the gold items which were stolen by the Applicant's wife, some of it has been deposited as security and she has also availed loan amount of INR 23,48,500/- against pledge of the gold ornaments. The remaining stolen items have been appropriated by the co-accused. The money received as loan by the accused, has since been siphoned and misappropriated.

4.4. The allegations against the accused are serious in nature. The Applicant has conspired with his wife to commit this theft and is likely to influence the witnesses and tamper with evidence, if he is released on bail. He also asserts that co-accused has been denied anticipatory bail in respect



of the present FIR by the ASJ, Saket Court on 7th May, 2024.

5. The Court has considered the facts of the case and the aforementioned contentions. The object of granting bail is neither punitive nor preventative. The primary aim sought to be achieved by bail is to secure the attendance of the accused person at the trial.⁶ While considering the application for grant of bail, certain factors have to be kept in mind like the likelihood of offence being repeated, tampering of evidence, possibility of the accused absconding etc.⁷

6. In the instant case, the investigation is complete and the chargesheet stands filed. The recoveries have already been effected. The primary accused is the wife of the Applicant. The specific role of the Applicant has to be ascertained on the basis of evidence led during trial. It has also been noted that the Applicant is in custody since 3rd April, 2024. At this stage, this Court cannot form an opinion regarding the merits of the case as the same shall be determined at trial, on the basis of the evidence led by the parties. Further, since the wife of the Applicant has surrendered, the Applicant's release on bail will ensure the well-being and care of the minor child. Although the prosecution apprehends that the Applicant is a flight risk and is likely to influence the witnesses, the Court can impose specific conditions to mitigate such apprehensions while enlarging him on bail.

7. In view of the foregoing, this Court is inclined to grant bail to the Applicant. Therefore, the Applicant is directed to be released on bail on furnishing a personal bond for a sum of INR 50,000/- with two local sureties of the like amount, subject to the satisfaction of the Trial Court, on the

⁶ See also: *Sanjay Chandra v. CBI*, (2012) 1 SCC 40; *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51.



following conditions:

- a. The Applicant shall cooperate in any further investigation as and when directed by the concerned IO;
- b. The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- c. The Applicant shall not contact the Complainant or any witnesses attached to the present case;
- d. The Applicant shall under no circumstance leave the territory of Delhi NCR without the permission of the concerned IO;
- e. The Applicant shall appear before the Trial Court as and when directed;
- f. The Applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- g. The Applicant shall, upon his release, give his mobile number to the concerned IO/SO and shall keep his mobile phone switched on at all times.
- h. The Applicant shall report to the concerned PS on first, second and fourth Friday of every month;
8. In the event of there being any FIR/DD entry / complaint lodged against the Applicant; it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

⁷ *Anil Mahajan v. Commissioner of Customs & Anr.*, 2000 SCC OnLine Del 119.



9. 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.

10. The bail application is allowed in the afore-mentioned terms.

SANJEEV NARULA, J

JANUARY 20, 2025/as