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

+ **BAIL APPLN. 4854/2024**

AFTAB @ PARVEEN

.....Petitioner

Through: Mr. Vishal Chauhan, Mr. Divyanshu
Suman, Advocates (through VC)

versus

THE STATE (GOVT. OF NCT OF DELHIRespondent

Through: Mr. Sanjeev Sabharwal, APP for State
with ASI Yashveer Singh, P.S.:
Karawal Nagar.

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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15.01.2025

1. The present application has been filed under Section 482 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeking grant of anticipatory bail in E-FIR No. 80099018/2024 registered under Section 305/3(5) of the Bhartiya Nyaya Sanhita, 2023 (BNS) at Police Station (P.S.) Karawal Nagar.

2. As per the case of the prosecution on 07.09.2024, complainant Ram Shankar Rathore apprehended two (2) persons namely (i) Suhail and (ii) Sahil alias Sameer at complainant's house bearing no. B-153, Ground Floor, Old B-15B, Khasra No. 6/15/1, Gali No.2, West Kamal Vihar, Delhi, as they were attempting to commit theft of the Radio Remote Unit (RRU) in the mobile tower installed on the terrace of this house. The said two (2) persons



along with one (1) motorcycle without rear number plate and one *pithoo* bag (Bag-pack) containing tools for breaking-in, were handed over to the police.

3. The complainant identified accused-Suhail as the person/thief who had earlier committed theft of another RRU in same house on 27.08.2024.

4. The e-FIR No. 80099018/2024 was found registered in P.S.: Gokulpuri and it was transferred to P.S.: Karawal Nagar based on jurisdiction. It is this FIR pertaining to the incident of theft on 27.08.2024 which is a subject matter of this application.

5. It is stated that accused-Suhail during his interrogation disclosed that the Applicant/accused-Aftab was with him on 27.08.2024 and the RRU unit after the theft was taken away by co-accused Aftab alias Parveen.

6. It is stated that the prosecution is in possession of CCTV footage of the incident dated 27.08.2024 wherein the Applicant/accused herein is seen as a pillion rider on the motorcycle carrying a bag along with co-accused Suhail.

7. It is stated that technical analysis of CDR¹ of the mobile number of co-accused Suhail and the Applicant revealed that they were in constant contact with each other on the date of the incident of theft i.e. 27.08.2024. And their location at relevant time was near the house of the complainant.

8. It is stated that RRU is a highly expensive instrument used in mobile towers installed on buildings.

8.1. It is stated that the Investigation Officer (IO) conducted raid at the residence of the Applicant/accused to recover the RRU; however, the stolen RRU has not been recovered and the Applicant/accused has evaded the Police. It is stated that the mobile number of the Applicant/accused has been

¹ Call Detail Record.



switched off since 07.09.2024 i.e. the incident of attempted theft in the same house. It is stated that in these circumstances I.O. obtained Non-Bailable Warrant (NBW) from the Trial Court vide order dated 24.09.2024.

8.2. It is stated that in fact proclaimed offender proceeding under Section 84 of the BNSS (Section 82 Cr.P.C.) have been initiated against the Applicant/accused and the public notice has been placed on record.

9. Learned counsel for the Petitioner states that the Petitioner is a young adult of 24 years and has been falsely implicated in the captioned FIR as he was not in Delhi on the date of alleged incident.

9.1. He states that the accused who were arrested on the date of incident i.e., 07.09.2024 have already been granted regular bail on 13.09.2024 and 24.09.2024 respectively.

9.2. He states that all the offences which have been alleged in the captioned FIR against the Applicant are punishable with/or less than seven years of imprisonment.

9.3. He states that there are no criminal antecedents of the Applicant herein and there is no possibility of the Applicant/accused fleeing away. He states that the Applicant/accused is willing to appear before the Trial Court on each and every date of hearing.

10. In reply, learned APP for State states that during interrogation with respect to the incident of attempted theft which happened on 07.09.2024, co-accused Suhail disclosed that on an earlier occasion he along-with Applicant/accused herein had stolen the RRU from the same premises on 27.08.2024.

10.1. He states that in the CCTV footage dated 27.08.2024 recovered from the said premises as mentioned above it can be seen that the applicant herein



is riding the bike carrying the stolen RRU on 27.08.2024. He states that the said RRU has not been recovered so far and therefore, the custodial interrogation of the applicant is necessary and mandatory to unearth the offence committed.

10.2. He states that the CDR analysis of the mobile number of the co-accused Suhail and Applicant herein revealed that co-accused Suhail was in constant touch with the Applicant on the date of incident i.e., 27.08.2024.

10.3. He states that co-accused-Suhail further disclosed that on 07.09.2024, it was at the instance of Applicant herein that he along with co-accused Sahil alias Sameer came to steal another RRU from the same premises.

10.4. He states that the Applicant is still absconding and is not co-operating in the investigation, which is prejudicing the investigation.

10.5. He states that notices to the Applicant/accused to join the investigation were pasted at his residential address however the Applicant failed to join the proceedings. He states that proceedings under Section 84 of the BNSS (Section 82 Cr.P.C.) against the applicant herein is pending and is listed for hearing on 05.03.2025

10.6. He states that repeated offender like the applicant herein should not be granted the benefit of anticipatory bail.

10.7. He states that RRU is a highly expensive instrument and it contains gold and silver metal. He states that the RRU unit is scavenged and the precious metal is extracted, melted and sold. He states this is the rationale behind the theft.

11. This Court has heard the learned counsels for the parties and perused the record.



12. Before adverting to the facts of the present case it would be imperative to refer to the judgments of the Supreme Court on the subject matter of anticipatory bail.

12.1. The Supreme Court in **Prasanta Kumar Sarkar v. Ashish Chatterjee**², and **State of Uttar Pradesh v. Amaramani Tripathi**³, and **Deepak Yadav v. State of Uttar Pradesh**⁴, carved out the conditions to be considered by Court while granting bail, which are summarized as under:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behavior, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by the grant of bail.

12.2. Further the Supreme Court in the case of **Sumitha Pradeep v. Arun Kumar**⁵ 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, 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:

“12..... In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation

² (2010) 14 SCC 496

³ (2005) 8 SCC 21

⁴ (2022) 8 SCC 559

⁵ (2022) 17 SCC 391.



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)

13. In the facts noted above, the State has contended that an RRU has been stolen on 27.08.2024 and the CDR analysis as well as CCTV footage of the said date places the Applicant/accused firmly at the scene of the incident at house/building from which the RRU was stolen. The RRU has not been recovered and the notices pasted at the residence of the Applicant/accused in September, 2024 asking him to join the investigation have not been heeded and/or complied with.

14. This Court is therefore, satisfied that the State has made out a prima facie case for seeking custodial interrogation of the Applicant/accused and therefore this Court does not find any merit in this application seeking anticipatory bail.

15. Accordingly, the present application on behalf of the Applicant/Aftab seeking anticipatory bail in E-FIR No. 80099018/2024 registered under



Section 305/3(5) of the Bhartiya Nyaya Sanhita, 2023 (BNS) at Police Station Karawal Nagar, is dismissed.

16. Pending application stands disposed of.

17. It is made clear that this Court has not dealt with the merits of the case and has restricted itself to the question of whether anticipatory bail can be granted to the Applicant or not. The observations made hereinabove shall nowhere affect the merits of the case during trial.

18. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any wauthority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

JANUARY 15, 2025/sk/mt

Click here to check corrigendum, if any