

State Vs. Neeraj

CNR No.: DLCT01-003359-2024

SC No. 147/2024

FIR No.: 587/2023

U/S: 302/120B/34 IPC & 25/27/29 Arms Act

PS.: Nabi Karim

03.08.2024

Present: Mr. Ankit Aggarwal, Ld. Addl. PP (substitute) for the State.

Mr. A. P. Singh, Ld. Counsel for the applicant, namely, Neeraj.

ORDER

1. The present application has been filed under Section 438 of the Code of Criminal Procedure, 1973 (hereinafter referred to as '*Cr.P.C.*') on behalf of accused, namely, Neeraj (hereinafter referred to as the '*applicant/accused*'), seeking anticipatory bail.

2. Learned Counsel for the applicant submitted that the applicant is innocent and has been falsely implicated in the present case by the police officials of concerned Police Station. In this regard, Ld. Counsel further submitted that the applicant has nothing to do with the alleged offence, with which he has been charged with. In this regard, it was submitted that a bare perusal of the contents of the FIR in question would reveal that the allegations levelled against the applicant are completely vague, baseless, and fabricated, premised on the concocted story. It was further submitted that name of the applicant was nowhere mentioned in the FIR in question. Further, as per Ld. Counsel, the FIR in question was lodged when the accused CCL 'R @ K' came to the PS Nabi Karim and produced one blood stained knife to the duty officer stating that he along with his accomplice Aakash @ Kaku, killed Amit @ Bewda. Ld. Counsel further

submitted that the applicant had not been named by the said CCL 'R @ K' as his accomplice. Ld. Counsel further submitted that the accused Akash @ Kaku and Bhanu @ Kunal are already in judicial custody. Ld. Counsel further submitted that the applicant has been termed as 'wanted accused' in the charge-sheet on totally false and frivolous grounds and there is no incriminating evidence against the applicant to connect him with the present offence. Further, as per Ld. Counsel, the deceased used to demand protection money from the applicant, however, on the night of 25/26.10.2023, the said issue was settled between the applicant and deceased through intervention of one Ajit and thereafter, the applicant went from there, however, the police has implicated the applicant in the present offence. It was further stated that the deceased used to threaten/quarrel with Monu *i.e.* the brother of accused Bhanu, which fact acted as an impetus for accused Bhanu to commit murder of the deceased. Ld. Counsel further submitted that the deceased has been murdered by the co-accused persons in order to save their leader Robin due to some previous enmity and the applicant has nothing to do with the said offence. Ld. Counsel further submitted that the police has used the call data record of the applicant with accused Bhanu, as evidence against the applicant showing that the applicant had contacted Bhanu on the night of the murder, however, in this regard, it was submitted that the said Bhanu was a friend of applicant and on the said night, the applicant had called him in order to call him to join the locality function/ Mata ki Chowki. Further, as per Ld. Counsel, the CCTV footage relied upon by the police clearly shows that the applicant was not involved in the commission of alleged offence, as the applicant could only be seen while counting money and the arguments took place

between Monu and deceased and not between the applicant and deceased and further it can clearly be seen that the accused CCL 'R @ K' and Akash @ Kaku had knives in their hands. Further, as per Ld. Counsel, the applicant is nowhere seen in the video recording pertaining to the alleged murder recorded by the CCL Ritik in his phone while committing the murder and all these facts clearly indicates towards the non involvement of the applicant in the alleged offence. Ld. Counsel further submitted that no weapon of murder was ever recovered from the applicant and that one knife was surrendered by accused CCL 'R @ K' to the police while the other knife was recovered at the instance of accused Akash @ Bhanu. Ld. Counsel further submitted that the disclosure statement and the supplementary disclosure statements of the co-accused persons clearly demonstrate that right from the stage of planning of the murder, till its execution, the applicant was nowhere involved in the said offence. Further, as per Ld. Counsel, the complete name of the applicant is only Neeraj and he has no connection with 'Khujjal'. Even otherwise, as per the Ld. Counsel, not even *prima facie* case is established against the applicant herein. Further, as per the Ld. Counsel, the applicant is neither a previously convicted person nor a habitual offender and he has clean antecedents having deep roots in the society, as such, there are no chances of the applicant tampering with the prosecution case or fleeing from justice. Lastly, it was submitted by the Ld. Counsel that the applicant is ready to join the investigation as well as willing to abide all the terms and conditions imposed by this Court while granting bail, including co-operating the investigating authorities and making himself available for investigation/further investigation, as and when called for. In support of his contentions, Ld. Counsel has placed

reliance upon decisions in *Anil Mahajan v. Commissioner of Customs*, (2000) 2 JCC Delhi 302; *Parminder Singh & Anr. v. The State (Delhi)* 2022 (1) JCC 312 Headnote; *Gurmukh Singh Sibia v. State of Punjab*, 1980 CCLJ, 1125; and *Courts on its own motion v. State of NCT of Delhi*, (2004) 1 JCC 308 (Delhi)

3. *Per contra* Ld. Addl. PP for the State vehemently opposed the present application on the ground that the applicant was actively involved in the commission of offence in the instant case, being a grave offence. As per the Ld. Addl. PP for the State, the applicant has been absconding and failed to join in the investigation, consequent to which, he has been declared a proclaimed offender by Ld. MM, Tis Hazari Courts, Delhi *vide* order dated 01.07.2024. Further, Ld. Addl. PP for the State submitted that the applicant has played an active role in the commission of present offence and his custodial interrogation is required in this case. It was further submitted that in case bail is granted to the applicant, there are chances that the complainant would be exposed to threat, coercion and/ or undue influence. Further, as per the Ld. Addl. PP for the State, there is a reasonable likelihood of applicant's tampering/causing disappearance of evidence in the matter, besides, his involvement in multiple cases.

4. The arguments of Ld. Counsel for applicant/accused and that of Ld. Addl. PP for the State, heard as well as case record(s) have been thoroughly perused.

5. At the outset, this Court iterates the settled law¹ that determination of anticipatory bail entails the establishment of an equilibrium so as to ensure that no prejudice is caused to the free, fair and full investigation, on one hand, as well as there is

¹ *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694 and *Pratibha Manchanda v. State of Haryana*, (2023) 8 SCC 181.

prevention of harassment, humiliation and unjustified detention of the accused, on the other hand. Incontestably, liberty of an individual is valuable right, however, it is trite law² that such a protection cannot be absolute and there may be instances where the collective interest of the community may predominate the right³ of personal liberty of an individual. Ergo, it is quite understandable that several factors are required to be considered while granting or refusing bail⁴. Concomitantly, though, there is no prescribed strait jacket formula regarding such relevant factors, however, it is a settled law⁵ that where there are sufficient reasons to have reasonable apprehension that the accused would flee from justice and/or tamper with prosecution evidence, such an accused can be refused bail, in order to ensure a fair trial of the case. Similarly, the superior courts⁶ have persistently cautioned that such a discretion vested in court(s), *“should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise.”* It is equally trite law⁷ that at the stage of determination of anticipatory bail, courts are required to be conscious of the fact that interrogation of an accused, while in custody, is qualitatively different from that undertaken while the accused is enjoying protection under an order of a Court against his arrest and that an order of anticipatory bail cannot be permitted to be used as a shield. Concomitantly, this Court is cognizant of avowal of the superior court(s)⁸, affirming that where an accused has, *“failed to join the investigation on false pretexts or sham/farce excuses*

² *Masroor v. State of U.P.*, (2009) 14 SCC 286

³ *Shahzad Hasan Khan v. Ishtiaq Hasan Khan*, (1987) 2 SCC 684

⁴ *Gurcharan Singh v. State (Delhi Admn.)*, (1978) 1 SCC 118

⁵ *Anil Mahajan v. Commissioner of Customs*, 84 (2000) DLT 854

⁶ *Bhadresh Bipinbhai Sheth v. State of Gujarat & Anr.*, (2016) 1 SCC 152.

⁷ *Ashwani Kumar v. State*, 2022 SCC OnLine Del 4642.

⁸ *Monu Kapoor v. Directorate of Revenue*, 2019 SCC OnLine Del 11829

despite being given opportunities and/or is not fully cooperating with the investigating agency, the anticipatory bail application of such accused should be rejected, solely on this ground.” In fact, in this regard, reference is made to the decision of the Hon’ble Supreme Court in ***Srikant Upadhyay v. State of Bihar, 2024 SCC OnLine SC 282***, wherein the Hon’ble Court *inter alia* declared as under;

“25. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant.

26. The factual narration made hereinbefore would reveal the consistent disobedience of the appellants to comply with the orders of the trial Court. They failed to appear before the Trial Court after the receipt of the summons, and then after the issuance of bailable warrants even when their co-accused, after the issuance of bailable warrants, applied and obtained regular bail. Though the appellants filed an application, which they themselves described as “bail-cum-surrender application” on 23.08.2022, they got it withdrawn on the fear of being arrested. Even after the issuance of nonbailable warrants on

03.11.2022 they did not care to appear before the Trial Court and did not apply for regular bail after its recalling. It is a fact that even after coming to know about the proclamation under Section 82 Cr. P.C., they did not take any steps to challenge the same or to enter appearance before the Trial Court to avert the consequences. Such conduct of the appellants in the light of the aforesaid circumstances, leaves us with no hesitation to hold that they are not entitled to seek the benefit of pre-arrest bail.”

(Emphasis supplied)

6. Therefore, wary of the principles hereinunder noted, this Court outrightly observes that the primary contention of the Ld. Counsel for the applicant is that he has been wrongly roped into the present proceedings and that his presence on the spot as well as correspondence with accused Bhanu has been wrongly read against him. However, in this regard it is outrightly asserted that a detailed scrutiny of the evidence or evaluation of their truth/veracity cannot be undertaken at the stage of bail. Needless to mention that in the instant case, the allegations levelled against the applicant are quite serious in nature *inter alia* including that the applicant is asserted to have been in regular contact with the accused Bhanu through phone, whereby the applicant became an active participant of the conspiracy which was hatched to kill the deceased on the fateful day. In fact, the applicant is asserted to have disclosed the location of the deceased, whereupon the co-accused Aakash @ Kaku and CCL ‘R @ K’ followed the deceased and killed him. Further, the custodial interrogation of the applicant is stated by the IO to be required for unearthing the entire conspiracy as well to retrieve his mobile phone to ascertain the exact role and participation of the applicant in the conspiracy/ commission of offence.

7. Concurrently, from a perusal of the records of the present case, it is observed by this Court that the applicant

deliberately avoided cooperation and/or joining the investigation of the present case consequent to which, NBWs were issued against him followed by notice in terms of Section 82 Cr.P.C., eventually leading to him being declared a proclaimed offender by Ld. MM, Tis Hazari Courts, Delhi *vide* order dated 01.07.2024. Needless to mention that the applicant neither opted to appear before the Court nor challenged the order under Section 82 Cr.P.C., rather belatedly moved the present application only when charge-sheet was filed against co-accused persons, thereby evading arrest or appearance before the concerned Court in the entire process. From the applicant's conduct, it is quite apparent that he was deliberately avoiding joining the investigation, disentitling him from any relief or indulgence at this stage in light of the aforesaid dictate of the Hon'ble Supreme Court in *Srikant Upadhyay v. State of Bihar (supra.)*.

8. Consequently, in conspectus of the above and further keeping in view the nature and gravity of the offence; severity of the punishment which may be inflicted on conviction; past conduct of the applicant of not joining the investigation/cooperating in the investigation process, consequent to which notice under Section 82 Cr.P.C. and subsequent proclamation was issued against him and considering the requirement of custodial interrogation as submitted by the IO, this Court does not deem it fit to grant anticipatory bail to the applicant at this stage. At this stage, this Court deems it further pertinent to observe that though it holds highest regard for the decision relied upon by the Ld. Counsel for the applicant, in support of his contention, however, the same would not come to the aid of the applicant, in the manner as proposed, as the facts, circumstances as well as the charges levelled against the applicant are clearly

distinguishable. Needless to mention, the question of grant or refusal of bail depends upon a determination of several factors, which, ultimately depends upon the specific/ unique facts and circumstances of each case before the Court.

9. Accordingly, the present application under Section 438 Cr.P.C. for anticipatory bail *qua* the applicant Neeraj is ***dismissed***.

10. It is clarified herein that the observations made in the present order are only limited for the purpose of deciding the present application of the applicant herein and would have no bearing on the factual matrix of the present case.

11. A copy of the present order be given ***dasti*** to the Ld. Counsel for the applicant, namely, Neeraj. Further, a **copy of this order** be also given to **the concerned IO**, for record purpose(s).

Abhishek Goyal
ASJ-03, Central District,
Tis Hazari Courts, Delhi
03.08.2024