

**IN THE COURT OF PUNEET MOHAN SHARMA,
VACATIONS JUDGE (UID NO.PB0167)
SHAHEED BHAGAT SINGH NAGAR**

**Date of Institution: 27.12.2018
Date of Decision: 29.12.2018**

CRN No.PBSB01004894-2018

Ashok Kumar s/o Prem Chand Vs. State of Pb.

FIR No. 137 Dated 25.12.2018.

U/ss 379,411 of IPC

P.S. Kathgarh.

Present: Sh. N.K.Arora, Advocate, counsel for applicant/
accused Ashok Kumar.

Sh. Bharat Bhushan, Addl. PP for the State .

Bail Application U/S 438 of Cr.P.C.

ORDER:

1 Heard. Vide this order, I shall dispose of bail application U/S 438 Cr.P.C. for grant of anticipatory bail filed by applicant Ashok Kumar in FIR No.137 dated 25.12.2018, U/s 379 & 411 of IPC, P.S. Kathgarh, being Vacations Judge.

2 Briefly, the facts of the case are that the present case was

(Puneet Mohan Sharma, ASJ,SBS Nagar UID No.PB0167)

registered on the statement of Jyoti wife of jabbarvir Singh wherein she stated that her husband Jabbarvir Singh and his other family members were away from the house on account of registration of attempt to murder case. Accused Joga Singh, who is from her relations and his friend Ashok Kumar used to visit their house. In the morning of 05.12.2018 their trolley was stolen by some unknown persons and she has belief that the same has been stolen by Joga Singh, Ashok Kumar and Shakti Singh during the intervening night of 04/05.12.2018. On the basis of the statement of the complainant, the present FIR has been registered. Now apprehending his arrest, applicant Ashok Kumar moved this application U/S 438 of Cr.P.C.

3 Notice of this bail application was issued to the state but no reply has been filed.

4 I have heard ld. counsel for the applicant/accused and Ld. Addl.P.P for the state and gone through the record produced by the Investigating Officer of the case.

5 Ld. counsel for the applicant/accused contended that the applicant/accused has been falsely implicated in the present case as no theft has been committed by him nor he was present at the spot. Ld. counsel further argued that the applicant/accused has been named in this case on the basis of suspicion and in the end prayed for releasing the

applicant/accused on anticipatory bail.

6 On the other hand, Ld. Addl.P.P for the state opposed the bail application and contended that the investigating agency require the custodial interrogation of the applicant to reach at the roots of the case and recovery of part of consideration amount and prayed for dismissal of the bail application.

7 The applicant was not seen by anyone while committing the offence but named on the basis of the suspicion by the complainant that the trolley was parked in the open area of their house, which was stolen by some unknown person during the intervening night of 04/05.12.2018. Thus clearly, the applicant is being named for the alleged offence on the basis of mere suspicion and also on the basis of mere statement of co-accused during the investigation. Perusal of the police file shows that as per agreement dated 19.12.2018 between co-accused Joga Singh and one Jagtar Singh, the trolley in question has been sold by co-accused Joga Singh to said Jagtar Singh for Rs. 85,000/- and said consideration amount was received by him from Jagtar Singh. Now the investigating Agency relies upon confessional statement of co-accused Joga Singh vide which he has stated that the consideration amount has been divided amongst applicant and non applicants Joga Singh and Shakti Singh. However, in

view of the agreement dated 19.12.2018, original of which is on the police file, the amount in question was received by co-accused Joga Singh. Furthermore, recovery of trolley has already been made. Therefore, this Court is of the view that custodial interrogation of the applicant is not required. Moreover, the veracity and the weightage of this kind of evidence would only be adjudicated at the time of trial. The applicant is also ready to join the investigation. As such, I do not find any reason to decline the relief of anticipatory bail to the applicant/accused. Accordingly, the application filed by the applicant U/S 438 of Cr.P.C is allowed with the direction to join the investigation within 10 days and in the event of arrest of the applicant/accused, he shall be released on bail to the satisfaction of Investigating Officer/Arresting Officer subject to compliance of provisions U/S 438 (2) Cr.P.C. The observations made by this Court while deciding this bail application are only for the limited purpose of adjudication of the present bail application and, as such, are not to be construed as an expression on the merits of the case (criminal trial). Record be returned. Papers/bail application be consigned to the record room.

Pronounced:
29.12.2018
(mahesh)

(Puneet Mohan Sharma)
Vacations Judge (UID PB0167)
Shaheed Bhagat Singh Nagar.