



2024 : DHC : 4045



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

% *Date of Decision: 17th May, 2024*

+ BAIL APPLN. 1782/2024, CRL.M.A. 15378/2024,
CRL.M.A. 15379/2024 & CRL.M.A. 15380/2024

SURAJ KUMAR Applicant

Through: Mr. Adarsh Kumar Tiwari,
Mr. Vinit Pathak, Mr.
Ashutosh Mani Tiwari,
Mr. Anchit Mathur & Mr.
Amritesh Anand, Advs.

versus

STATE OF NCT OF DELHI Respondent

Through: Mr. Ajay Vikram Singh,
APP for the State with Mr.
Rachel Mangla, Mr. Rohit
Lakra & Mr. Sahil
Varshney, Advs.
SI Vishal, PS- Ashok
Vihar

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. (Oral)

1. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 (CrPC) read with Section 482 of the CrPC seeking pre-arrest bail in FIR No. 164/2024 dated 01.05.2024, registered at Police Station Ashok Vihar, for offences under Sections 365/323/34 of the Indian Penal Code, 1860 (IPC).
2. The FIR was registered on a complaint at the behest of Mr. Rajesh/ complainant alleging that the applicant and the



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complainant had known each other for quite some time, since the complainant had aided the applicant in obtaining a loan on an earlier occasion. It is alleged that the applicant was planning to take some plot on lease in Jharkhand, and had approached the complainant to provide consultancy services in order to obtain a loan for the same. It is alleged that the applicant had paid ₹1,50,000/- to ₹2,00,000/- to the complainant for the said purpose, however, the loan could not be sanctioned due some lack in documentation. It is alleged that the complainant and the applicant got in to a heated argument and thereafter they both stopped talking to each other.

3. On 22.04.2024, that is the date of the alleged incident, at around 05:00 p.m., when the complainant along with his nephew and one person, namely, Sunil Kumar, were going to visit branch of Bank of Baroda at Ashok Vihar, the applicant along with two other persons came and pulled over their car (white colour Brezza), bearing registration no. DL12CR6025, and pushed his nephew, due to which he fell. It is alleged that the applicant was thereafter forcibly made to sit inside the car along with Sunil Kumar. It is alleged that the said car was driven by the applicant. It is alleged that the other accused persons slapped the complainant at the instance of the applicant and threatened him of dire consequences if he didn't pay the demanded money.

4. It is alleged that the complainant was then taken to the applicant's factory at Mundka where the applicant demanded ₹18,00,000/- from the complainant and further extended threats.

5. It is further alleged that while the complainant was at the



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factory, three other persons also came namely, Mohan Budhiraja, Arvind and Surrender and heated arguments took place between them and the complainant. It is alleged that the applicant demanded ₹5,00,000/- to be deposited in his account immediately.

6. It is alleged that the complainant got scared and requested his friend – Anand Kedia to arrange for the said amount and after sometime when the alleged amount was credited into the bank account of the applicant's company, namely, Unnati Enterprises, the applicant was allowed to leave the factory.

7. The learned counsel for the applicant submits that the applicant is falsely implicated in the present case.

8. He submits that present incident arises out of a minor altercation, and even if the allegations are taken at the highest no offence under section 365 of the IPC is made out.

9. He submits that the complainant and Sunil came on their own to the applicant's office and made the payment of ₹5,00,000/-.

10. He submits that there is a delay of seven days in registration of the FIR since the offence as alleged took place on 22.04.2024, was reported on 23.04.2024 and the FIR was registered on 01.05.2024.

11. He submits that after filing of the complaint the applicant was called by the investigating officer to join the investigation officer on 23.04.2024 to which he went and left the police station at around 11:00 p.m.

12. The learned Additional public Prosecutor appearing on
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advance service submits that the allegations against the applicant are serious in nature. He submits that the investigation is at nascent stage, and the custodial interrogation of the applicant is necessary since the applicant can be seen in the CCTV footage along with the co-accused persons abducting the complainant.

13. He submits that the applicant had visited the Police Station during the course of initial enquiry and thereafter left without informing anyone and had switched off his mobile phone.

14. He submits that there are allegations with respect to the applicant extending threats, and since the investigation is at a nascent stage, there is an apprehension that the applicant might try to influence the witnesses or might tamper with the evidence.

15. I have heard learned counsel for the parties.

16. It is to be kept in mind that the considerations governing the grant of pre- arrest bail are materially different than those to be considered while adjudicating the application for grant of regular bail, as in the latter case, the accused is already under arrest and substantial investigation is carried out by the investigating agency.

17. It is trite law that the power to grant a pre-arrest bail under Section 438 of the CrPC is extraordinary in nature and is to be exercised sparingly. Thus, pre-arrest bail cannot be granted in a routine manner. The Hon'ble Apex Court, in the case of *State of A.P. v. Bimal Krishna Kundu : (1997) 8 SCC 104*, held as under:

“8. A three-Judge Bench of this Court has stated in Pokar Ram v. State of Rajasthan [(1985) 2 SCC



597 : 1985 SCC (Cri) 297 : AIR 1985 SC 969] : (SCC p. 600, para 5)

“5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal.”

9. *Similar observations have been made by us in a recent judgment in State v. Anil Sharma [(1997) 7 SCC 187 : 1997 SCC (Cri) 1039 : JT (1997) 7 SC 651] : (SCC pp. 189-90, para 8)*

“The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest.”

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12. We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on “the career of millions of students”, learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the



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Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order.”

18. It is settled law that the custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the CrPC [*State v. Anil Sharma : (1997) 7 SCC 187*]. Granting pre-arrest bail to the applicant would undoubtedly impede further investigation. An order of pre-arrest bail cannot be granted in a routine manner so as to allow the applicant to use the same as a shield.

19. I have perused the CCTV footage which was obtained during the course of the investigation. It is apparent that the victim/ complainant has been forced to sit in a car by 3 – 4 people. The victim has also been slapped and pushed into the car. It can be seen that one person tried to intervene and was also pushed. The victim can clearly be seen resisting the attempt of the accused persons to push him inside the car.

20. The learned counsel for the applicant has also relied upon certain photographs apparently taken from the CCTV footage of the factory premises where the complainant was taken. It is argued that the atmosphere was cordial and the victim was thereafter taken to the Taxi in which he left the factory premises.

21. Given the nature of allegations with respect to the offences as alleged, there is a justified concern regarding the applicants’ potential to influence over the witnesses.

22. The investigation conducted thus, so far does not indicate



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that the applicant is sought to be falsely implicated. The material presented by the prosecution establish a *prima facie* involvement of the applicant. The investigation is at a nascent stage and the investigating agency needs to be given a fair play in the joints to investigate the matter in the manner they feel appropriate.

23. The learned counsel for the applicant has also argued that the allegations made, even if taken at the highest, do not point towards commission of any offence.

24. This argument, in the opinion of this Court, is meritless. It is clear that the victim has been compelled by use of force to sit in the car and forcibly taken to the factory of the applicant. The argument that the complainant was not abducted with intent to be secretly and wrongfully confined and thus, is not punishable, is also meritless. It is apparent that the complainant was compelled by use of force and was pushed into the car and was, therefore, confined in the car wrongfully.

25. The present application is accordingly dismissed.

26. 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.

AMIT MAHAJAN, J

MAY 17, 2024
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