



\$~36

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

+ **BAIL APPLN. 2809/2023**

**SHAKTI KUMAR PAWAR**

..... Petitioner

Through: Mr. N.K.Aggarwal, Advocate.

versus

**THE STATE (THE GOVT. OF NCT OF DELHI)** ..... Respondent

Through: Mr. Raghuinder Verma, APP for the  
State with Insp. Kamal Kohli,  
P.S.EOW.

Mr. Pawan Kumar, Advocate for the  
complainant.

**CORAM:**

**HON'BLE MR. JUSTICE RAJNISH BHATNAGAR**

**ORDER**

% **23.08.2023**

**CRL.M.A. 22649/2023 (exemption)**

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

**BAIL APPLN. 2809/2023 & CRL.M.A. 22648/2023 (for interim protection)**

1. This is a petition filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No. 217/2018 under Sections 406/420/120B IPC registered at Police Station EOW.
2. Issue notice. Learned APP for the State appears on advance notice and accepts notice
3. Ld. counsel for the petitioner submitted that the petitioner is the sole



bread earner of the family and is residing in a rented accommodation along with his wife and 3 minor children, who are dependent upon him for their livelihood. He further submitted that the petitioner is not named in the present FIR and there are no allegations in the FIR against the petitioner. He further submitted that the custodial interrogation of the petitioner is not required for the purpose of investigation of the present FIR as the said FIR was registered on 18.10.2018 and now the investigation has already been completed, and the chargesheet has also been filed. He further submitted that the petitioner is entitled to anticipatory bail as after registration of the present FIR on 18.10.2018, the petitioner was arrested on 28.10.2018, in relation to the investigation of another FIR No. 446/2018, registered at P.S. City Kotwah, District Dhanu, Chhattisgarh and said fact of the arrest was well within the knowledge of the officials of Delhi Police as during the investigation of said FIR, it has been revealed that the petitioner was arrested in respect of some bank transactions from his bank account, wherein payments were received in the bank account of the petitioner from one Joyjit Sarkar and thereafter, transferred to Pradeep Kumar and Shubi Thakur. The police officials have already conducted investigation in relation to those bank transactions after arrest of the applicant and a chargesheet has also been filed in the court, wherein the transactions in the name of the complainant of the present FIR are also mentioned. The petitioner has already been in custody because of those bank transactions, which have been carried out from his bank account without his knowledge and even otherwise, when the petitioner has already served custody for those bank transaction in the aforesaid FIR, if he is arrested again in the present FIR, it will cause double jeopardy to the petitioner. Ld. counsel for the



petitioner pointed out that the petitioner has never been called to join investigation by the IO, however, the petitioner is ready and willing to join the investigation.

4. On the other hand, it is submitted by the Ld. APP for the State assisted by the Ld. counsel for the complainant that this is the third anticipatory bail application filed by the petitioner before this Hon'ble Court and earlier vide Order dated 04.07.2023 and Order dated 26.07.2023, his anticipatory bail applications stood dismissed by this Hon'ble Court. He submitted that on 09.05.2023, NBWs were issued against the petitioner on two available addresses, which remained unexecuted, however, in the meanwhile, the petitioner approached Ld. CMM for cancellation of NBWs. While that application was pending before the Trial Court, fresh address of the petitioner was furnished and IO served notice under Section 41A Cr.PC on the said fresh address of the petitioner but he again remained unreachable and therefore, NBWs were issued. Subsequently, IO moved an application under Section 82 Cr.P.C. seeking issuance of proclamation against the accused-petitioner and Ld. CMM after taking notice of the NBWs remaining unexecuted, directed for issuance of proclamation under Section 82 Cr.P.C. and the matter was fixed for 24.08.2023. He further submitted that custodial interrogation of the petitioner is required to unearth the cheating conspired by petitioner along with his accomplices, for recovery of the cheated amount, to trace the siphoning of cheated amount and to ascertain the beneficiaries of the cheated amount. Lastly, Ld. APP for the State has vehemently opposed the present bail application on the ground that proceedings under Section 82 Cr.P.C. have already been initiated against the petitioner.



5. In *Harish Kathuria & Anr. vs. State (BAIL APPL. NO. 1135/2011)* decided by the Hon'ble High Court of Delhi on 18.08.2011, it was observed and held as follows:-

*"14. The power to grant anticipatory bail is concurrent both with the Court of Sessions and the High Court. As a matter of practice, the counsel files an application before the Court of Sessions and on not finding favour there, a second application is immediately filed in the High Court. Successive bail applications can be filed as has been held in the catena of judgments but then it has been observed that there must be change in circumstances which warrant fresh consideration of the application. Successive bail applications without there being any change in circumstances is not only to be deprecated but is in effect a gross abuse of the processes of law which must be visited with some amount of sanction by way of cost for wasting the time of the Court. There are cases of persons who are languishing in jail for wanting their appeals to be heard for want of time while as unscrupulous persons like the petitioners, who have embarked on a forum shopping or rather be called a bench hopping, are wasting the time of the Court.*

*15. Keeping in view the aforesaid facts, I feel that once the bail application is rejected by the court of sessions the accused may file second bail application in the High Court without there being any change in circumstances but after having availed of the aforesaid two remedies, the petitioner shall henceforth clearly indicate the number of anticipatory bail applications filed by him after taking into consideration the first two applications (one before the Court of Sessions and the other before the High Court). This number must be given irrespective of the forum in which it is filed. Secondly a paragraph should be specifically incorporated in the beginning or in the last of the application indicating clearly the change in circumstances which has necessitated the filing of the fresh anticipatory bail application after the rejection of the last one."*



6. In **G.R. Ananda Babu vs. The State Of Tamil Nadu & Anr.** [Criminal Appeal Of 2021 (Arising Out Of SLP (Crl.) No. 213 Of 2021], the Hon'ble Supreme Court has observed and held as follows:

*"As a matter of fact, successive anticipatory bail applications ought not to be entertained and more so, when the case diary and the status report, clearly indicated that the accused (respondent No. 2) is absconding and not cooperating with the investigation. The specious reason of change in circumstances cannot be invoked for successive anticipatory bail applications, once it is rejected by a speaking order and that too by the same Judge."*

7. **Suresh K.M vs. State of Kerala (BAIL APPL. NO. 2863 of 2023)** decided by the Hon'ble High Court of Kerala on 02.08.2023, it was observed and held as follows:-

*"7. The law regarding the grant of pre-arrest bail is well settled. Pre-arrest bail cannot be granted as a matter of course. Grant of pre-arrest bail to some extent interferes in the sphere of investigation of an offence, and hence, the court must be circumspect while exercising such power for the grant of anticipatory bail. The extraordinary power of the High Court and the Court of Session to grant pre-arrest bail under Section 438 of Cr.P.C could be exercised with a significant amount of prudence, care, and caution and only when a special case is made out, that too, recording reasons thereof. While exercising powers under Section 438, the Court is duty-bound to strike a balance between the individual's right to personal freedom and the investigational right of the police.*

*8. The order granting or refusing to grant a pre-arrest bail application is a final order, and the entertainment of a second application essentially leads to a review of the earlier order. However, a second or subsequent application for pre-arrest bail is not completely barred. It cannot be entertained in routine as well. An accused must establish the change in the circumstances sufficient to persuade the court to invoke its extraordinary jurisdiction to maintain the application for pre-arrest bail for the second time. A*



*material change in fact situation or law is sine qua non for a second application for pre-arrest bail."*

8. The law on the point as to whether subsequent applications seeking anticipatory bail can be filed or not is now well settled that though subsequent or successive applications seeking anticipatory bail are not completely barred, however, it is to be borne in mind that the same cannot be permitted in a routine manner, especially when proceedings under Section 82 Cr.P.C. have already been initiated against the petitioner.

9. In the instant case, the petitioner had earlier on two occasions approached this Court seeking anticipatory bail. On both the occasions, his bail applications were dismissed by this Court vide Orders dated 04.07.2023 and 26.07.2023. Moreover, it is not the case of the petitioner that since the dismissal of his previous bail applications, there is any change in circumstances owing to which he has preferred the present application which is his third anticipatory bail application.

10. From the perusal of the status report filed by the State dated 02.08.2023 before the Ld. Sessions Court, it is evident that Ld. CMM after taking notice of the NBWs remaining unexecuted, directed for issuance of proclamation under Section 82 Cr.P.C. and the matter was fixed for 24.08.2023. Relevant portion of the status report reads as follows:

*" During investigation, Insp. Mahabir Singh sent notices u/s 41A Cr.PC to accused Shakti Kumar Pawar on his two available addresses as per his bank account viz. (1) H. No. 50, 2nd Floor, SBI Colony, Rani Bagh, Shakur Basti, Pitampura, Delhi and (2) MG-1/105, IIIrd Floor, Vikas Puri, Near Mother Dairy, New Delhi-110018 to know the details of the receipts and purpose of money from the accused Joyjit Sarkar. It was revealed that H. 1 No. 50, 2nd Floor, SBI Colony, Rani Bagh, Shakur Basti, Pitampura, Delhi belongs to*



*one Sh. Kuwar Singh who had rented out the premise to accused Shakti Kumar Pawar, however, he has vacated this house 3-4 years back. The other house MG-1/105, IIIrd Floor, Vikas Puri, Near Mother Dairy, Delhi belongs to Smt. Anita Batla. She stated that her husband used to rent out the property and she has no details as to whom the flat was rented out. She does not know any Shakti Pawar. Her husband has also left her 3/4 years back and he is not traceable. Finding no way out, his NBW was taken from the Ld. CMM (New Delhi), Patiala House Courts. Sincere efforts were made to execute the NBW on the above mentioned two addresses and adjacent areas, but all in vain. Thereafter, a report was filed before the Ld. CMM apprising the non-execution of NBW against the accused Shakti Kumar Pawar on 30.05.2023. On the said date, counsel of accused Shakti Kumar Pawar appeared before the Ld. CMM and filed an application for cancellation of NBW. However, Ld. CMM fixed next date of hearing as 24.06.2023. Thereafter, another notice u/s 41A Cr.PC was sent to his new address through ASI Pradeep No. 203/EOW to join the investigation on 08.06.2023 i.e. today. Accused Shakti's sister met him there, who denied to receive the notice. Accordingly, ASI Pradeep pasted the said notice on the main gate of the said house. However, in spite of joining the investigation, accused has moved the present anticipatory bail.*

*On 26.06.2023, 82 proceedings against accused Shakti Kumar Pawar also got obtained from the Hon'ble court of Ld. CMM New Delhi District, Patiala House Court for 24.08.2023 and all proceedings have been completed regarding PO proceedings and the report will be submitted on given date ."*

11. Therefore, without going into the merits of this case, considering that the present application is the third anticipatory bail application filed by the petitioner before this Court and also, keeping in view that the proceedings under Section 82 Cr.P.C. have already been initiated against the petitioner, no ground for bail is made out, the bail application along with pending application is, therefore, dismissed.



12. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

**RAJNISH BHATNAGAR, J**

**AUGUST 23, 2023/ib**