

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

% **Date of Order: 10th March, 2022.**

+ **BAIL APPLN. 720/2022, CRL.M.(BAIL) 244/2022 & CRL.M.A. 4040/2022**

SH. MUKHTER AHAMED

..... Petitioner

Through: Mr. Ravi Kapoor and Mr. Jitender Kumar, Mr. Rishav Ambastha, Mr. Amandeep Singh and Mr. Gazi Gulfam, Advs.

Versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Amit Gupta, APP.

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

1. This is the second bail application filed by the applicant under Section 438 Cr.P.C. for bail in the event of arrest in FIR No.0011/2022, P.S. New Delhi Railways Station for offences under Sections 379/411 IPC and Sections 2, 33 & 42 of the Indian Forest Act, 1927.

2. Mr. Ravi Kapoor, learned counsel for the applicant submitted that one Arif had been arrested by the police with a log of red sandalwood/red sanders who named the applicant as having booked his train tickets. According to the learned counsel, this was the only incriminating circumstance against the applicant which could be easily explained. According to him, Arif was a freelancer who used to take leather and other goods from the applicant to sell in various parts of the country to earn a living and it is due to this connection that the tickets were booked on the

mobile phone of the wife of the applicant. It is further submitted that the FIR had been registered for an offence under Sections 379/411 IPC but what was stated in the Status Report filed by the prosecution was that the log of red sandalwood/red sanders had been smuggled and that Arif has been found without a transit permit to move the wood from Vishakhapatnam to Delhi. There was no reference to theft. The learned counsel submitted that under Sections 2, 33 and 42 of the Indian Forest Act, 1927, no case would be made out against the applicant and in any case, the punishment prescribed was only imprisonment for six months or fine. Thus the applicant could not be arrested.

3. The learned counsel further pointed out that the incident is stated to have taken place on 3rd February, 2022 at 2.00 PM but there was a delay in registration of the FIR which occurred only at 6.00 PM. The delay raises further suspicion, inasmuch as the Railway Time Table shows the train to have arrived at Delhi at 8.30 AM whereas the FIR records that Arif was found at 2.00 PM in suspicious circumstances with the log of red sandalwood/red sanders. Thereafter, no notice had been issued to the applicant asking him to join investigation, till the time he moved an application for anticipatory bail before the learned Sessions Court. According to him, the *mala fide* is writ large on the action of the police, which is evident from the fact that when notice was issued on the said application filed on 8th February, 2022 for a response on 9th February, 2022, the Investigating Officer ('IO' for short) sent a notice under Section 41A IPC demanding the appearance of the applicant before him at 11.00 AM on 9th February, 2022. It was further argued that a notice under Section 41A

IPC is issued only when the IO is satisfied that no arrest was required and yet a contradictory stand has been taken in the Status Report where the IO has sought custodial interrogation. It was submitted that the applicant had clean antecedents and there was no accusation or record of his having indulged in any similar activities. Thus, he may be granted anticipatory bail.

4. Mr. Amit Gupta, the learned APP for the respondent/State has opposed the grant of bail on the ground that the applicant has not participated in investigations, though a month has gone by and even after his first application for anticipatory bail was dismissed by the learned Sessions Court on 10th February, 2022. The learned APP for the respondent/State further submitted that non-bailable warrants have been sought for by the IO and issued by the learned Trial Court and that an application for cancellation of non-bailable warrants had also been moved in the interregnum. The learned APP further submitted that the judgment of the Supreme Court in ***Arnesh Kumar Vs. State of Bihar*** (2014) 8 SCC 273 does not lay down the law that in all offences punishable with imprisonment for less than seven years, no custodial interrogation was possible. It was submitted that the requirements of fair investigation were also to be considered. It was further submitted that Arif, during his interrogation had stated that he was an employee of the applicant whereas now, it was being claimed that Arif was a freelancer and had only a business connection with the applicant. Six tickets had been booked through the wife of the applicant and mere business relationship does not explain this fact. It was necessary to investigate as to the role of the applicant as smuggling and theft of red sandalwood/red sanders was a serious matter. The learned APP has relied on the decisions of

Co-ordinate Benches of this court in *Bhanu Prakash Singh v. State (G.N.C.T. of Delhi)*, 2021 SCC OnLine Del 3018, and *Rajender Singh v. State*, 2021 SCC OnLine Del 4449, in support of his contentions that where investigations required custody, the judgment in *Arnesh Kumar (supra)* would not come in the way.

5. Heard submissions and perused the record.

6. There is no gainsaying that even if under the Indian Forest Act, offences under Sections 2, 33 and 42 are punishable with light punishment, smuggling of red sandalwood/red sanders is to be seen in the larger context of environmental degradation, apart from destruction of invaluable trees. The Forest Act permits cutting and felling of trees, but a permit is required for the same. The greed of some people leads them to cut more trees than are permitted. The deforestation that occurs as a result of wanton cutting and felling of trees has long term effects, including global warming, climate change, food shortages and so on. Forests are to be held in trust by the current generation for future generations. Therefore, the punishment alone does not reflect the seriousness of the crime. The argument about the use of words such as, “theft” and “smuggling” in the FIR and in the Status Report are indeterminate. Theft has occurred when the log was removed without permission from the forest where the tree grew. Further transportation from Vishakhapatnam to Delhi has occurred without permit, thus behind the back of the authority authorizing such transit. Theft and smuggling are clearly made out. Thus, the offences also under Sections 379 & 411 IPC.

7. When the wife of the applicant has provided the railway tickets not just for one person but for six persons, the explanation offered, of Arif being

a freelancer, with whom the applicant had business dealings, alone seems an extremely inept attempt by the applicant to distance himself from Arif. Business dealings do not include facilitation of travel by trains. Moreover, it does not explain why six persons were provided tickets to go to Vishakhapatnam. The allegation is that they were all given canvas bags containing logs. It is necessary for the investigating agencies to trace out all links in this smuggling and theft of red sandalwood/red sanders.

8. It is also to be noted that the applicant has been most reluctant to join investigations. The Investigating Officer is thus unable to move forward in tracing out the links. In **Arnesh Kumar (supra)**, the following observations had been made: -

“7.1 From a plain reading of the aforesaid provision, it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police office; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.”

9. Thus, when it is clear that it is necessary to arrest the accused for

proper investigation of the offence or preventing the accused from causing evidence to disappear or even to prevent the person from committing further offences, including of similar nature, the police officer can make an arrest. Of course, these conclusions have to be fact based. As pithily put in *Arnesh Kumar (supra)*, the questions — *Why arrest? Is it really required? What purpose it will serve? What purpose it will achieve?* — would help in determining whether the facts disclosed would require a police officer to arrest the person. In the present case, the IO has to find out all the links in this smuggling of red sandalwood/red sanders, extent of theft and smuggling and persons involved and ultimately, the role of the applicant as the king-pin of the entire activity on account of which he financed the travel expenses of the persons he had sent to Vishakhapatnam from Delhi.

10. This is not a case in which the applicant deserves pre-arrest bail. The anticipatory bail application is accordingly dismissed along with all the pending applications.

11. The order be uploaded on the website forthwith.

ASHA MENON, J.

MARCH 10, 2022

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