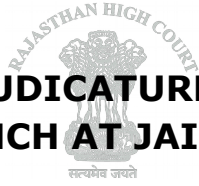




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous Bail Application No. 4627/2022

Dilip Sharma S/o (Late) Shri Hanuman Prasad Sharma, aged about 47 Years, R/o Plot No. 100, R.K. Puram Colony, Foy Sagar Road, Ajmer

----Accused-Petitioner

Versus

State of Rajasthan, Through P.P.

----Respondent

Connected With

S.B. Criminal Miscellaneous Bail Application No. 4562/2022

Dilip Sharma S/o (Late) Shri Hanuman Prasad Sharma, aged about 47 Years, R/o Plot No. 100, R.K. Puram Colony, Foy Sagar Road, Ajmer

----Accused-Petitioner

Versus

State of Rajasthan, Through P.P.

----Respondent

S.B. Criminal Miscellaneous Bail Application No. 4918/2022

Dilip Sharma S/o (Late) Shri Hanuman Prasad Sharma, aged about 47 Years, R/o Plot No. 100 R.K. Puram Colony, Foy Sagar Road, Ajmer

----Accused-Petitioner

Versus

State of Rajasthan, Through P.P.

----Respondent

For Petitioner(s)	:	Mr. S.S.Hora Mr. Amar Kumar Mr. Prahlad Sharma Mr. Uddeshya Vijayvargya
For Respondent(s)	:	Mr. Madhav Mitra-Sr. Advcoate Mr. Babulal Nasuna-PP Mr. Javed Khan Mr. Veerendra Singh Mr. KartikeyJohary Mr. Rahul Agarwal Mr. Mahaveer Singh-SHO (CI), P.S.



Ganj, Ajmer
Mr. Chottelal, SHO (CI), P.S. Civil
Lines, Ajmer

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Order

Reserved on

02/04/2024

Pronounced on

15/04/2024

1. Since all these bail applications are arising out of different FIRs involving the same facts and questions of law, hence with the consent of counsel for the parties, all these bail applications are taken up together and are being decided by this common order.

2. Counsel submits that for the same cause and similar nature of allegation, four different FIRs were registered against the petitioner wherein allegation has been levelled against the petitioner that he has concocted and forged certain *pattas* which were never issued by the Ajmer Development Authority (for short, 'ADA'). Counsel submits that the petitioner was arrested in the FIR No. 169/2021 registered with Police Station Ganj Ajmer on 24.05.2021 wherein he remained at Police Station for a period of one week and thereafter, he was granted bail on 11.03.2022. Counsel submits that the petitioner was very much available with the Investigating Agency at the time of his arrest in the said case. Counsel submits that prior to arrest of the petitioner by the orders of the Superintendent of Police, investigation of all the four FIRs was clubbed but even then the petitioner was not arrested in the other three FIRs bearing Nos. 314/2021, 163/2021 and 204/2021 registered with three different Police Stations namely Krishanganj Ajmer; Ganj Ajmer; and Civil Lines, Ajmer. Counsel submits that



an accused like the petitioner cannot be allowed to be arrested in subsequent FIRs merely because the recovery is likely to be effected at his instance. Counsel submits that once the petitioner was arrested in connection with the FIR No. 169/2021 registered with Police Station Ganj, Ajmer, the entire investigation was done. Counsel submits that except one *patta* no other document was recovered at his instance and now he cannot be allowed to be arrested in three other FIRs only because the Police wants to arrest for the purpose of recovery of other documents. Counsel submits that lodging of repeated FIRs for the same allegations amounts to abuse of the process of law. Counsel submits that as per Section 269 SS and 269 ST of the Income Tax Act, the maximum amount, in cash, can be given of Rs. 2,00,000/- only but herein the instant case, more than Rs. 67 Lakhs is alleged to have been given by the complainant, therefore, by any stretch of imagination it cannot be believed that such huge amount in lakhs was given to the petitioner in cash. Counsel submits that the prosecution/investigating agency is not clear about the creator of the forged documents. Hence under these circumstances, the custodial interrogation of the petitioner is not required. Counsel submits that though the petitioner has appeared for his interrogation, as per the interim order passed by this Court and he has been interrogated by the Investigating Officer on several occasions but nothing concreted has been collected by the Investigating Agency from his interrogation. Hence under these circumstances also, his arrest is no more required in other three FIRs. Counsel submits that still the petitioner is ready for his interrogation, if required by the Investigating Officer. Counsel





submits that under these circumstances, indulgence of anticipatory bail be granted to the petitioner. In support of his contentions, he has placed reliance upon the following judgments:-

(1) **Jawahar Singh Vs. State of Rajasthan**, reported in **1989 WLN (UC) 396**.

(2) **Uday Chand and Ors. Vs. Sheikh Mohd. Abdullah, Chief Minister, J and K Ors.** reported in **1983 (2) SCC 417**.

(3) **Daljeet Singh Vs. State of Rajasthan**, reported in **1990 WLN (UC) 29**.

(4) **T.T. Antony Vs. State of Kerala and Ors.** reported in **2001(6) SCC 181**.

(5) **Radhey Shyam Vs. State of Haryana and Ors.**, reported in **2022 SCC online SC 1935**.

(6) **Abhishek Singh Chauhan Vs. Union of India and Ors.**, reported in **2022 SCC Online SC 1936**.

(7) **Satinder Singh Bhasin Vs. State of UP and Anr.** (Writ Petition(s) Criminal No. 197/2021).

(8) **Nilesh Dinkar Paradkar Vs. State of Maharashtra**, reported in **2011 (4) SCC 143**.

(9) **Amitbhai Anilchandra Shah Vs. CBI**, reported in **2013(6) SCC 348**.

(10) **Hemant Zaveri Vs. State of Maharashtra** (Special Leave to Appeal (Crl.) No. 3452/2020).

(11) **Abhishek Kumar Vs. State of Delhi** (Criminal Appeal No. 360/2022)

(12) **Varun Meena Vs. State of Rajasthan** (S.B. Criminal Misc. Bail Application No. 12368/2016).



3. Per contra, learned Public Prosecutor as well as learned Senior Counsel appearing for the complainant opposed the arguments raised by counsel for the petitioner and submitted that in the FIR No. 163/2021, the co-accused Vinit Mahawar was granted bail by this Court under Section 439 Cr.P.C., after completion of investigation and after submission of chargesheet against him. Counsel submits that while submitting the chargesheet in the FIR No. 163/2021, a conclusion has been drawn by the Investigating Agency that after fabricating the documents, the petitioner Dilip Sharma has destroyed the evidence as well as still photographs used in preparation of the forged *pattas* and documents. Counsel submits that under these circumstances, Section 201 IPC was added and chargesheet has been submitted accordingly for the offence under Section 201 with the other offences punishable under Sections 406, 420, 467, 468 and 471 IPC. Counsel submits that the petitioner has challenged the validity of all the four FIRs before this Court by way of filing S.B. Criminal Misc. Petition Nos. 1364/2022, 1362/2022 and 1360/2022 wherein interim protection was granted to him but he has misused the said liberty and threatened the material witness- Sandeep Kumar Sharma, whose statement was recorded under Section 164 Cr.P.C. Counsel submits that while enjoying the interim protection, the petitioner also threatened the complainant to face dire consequences upon lodging of the FIR against him. Counsel submits that on account of the aforesaid action of the petitioner, two criminal complaints under Section 107/116(3) Cr.P.C were submitted against the petitioner before the Court of Additional District Magistrate (City), Ajmer, who issued a notice to





the petitioner after finding a prima facie case against him and directed him to maintain peace and tranquility for a period of six months. Counsel submits that apart from the above, the petitioner sought help of two other persons namely Rishabh Sharma and Vishal so as to threaten the complainant of facing dire consequences for lodging FIRs and not settling the dispute. Counsel submits that on the basis of the aforesaid complaint, again a complaint under Sections 107 and 116 Cr.P.C. was registered against the petitioner, wherein the statements of other persons namely Rishabh and Vishal were recorded and they have admitted that the petitioner asked them to threaten the complainant. Counsel submits that considering these facts and circumstances, the interim protection order, so passed in favour of the petitioner, was vacated by the Co-ordinate Bench of this Court vide order dated 30.03.2022. Counsel submits that during the course of investigation, statements of two other witnesses Vinay Kumar and Sandeep have been recorded which also indicate the involvement of petitioner in the alleged crime. Counsel submits that in S.B. Civil Misc. Writ Petition No.3164/2009 filed by keshav Nagar Grah Nirman Sahakari Samiti Ltd, the petitioner has prepared a fabricated application for taking the additional facts and documents on record and this application was shown to the complainant. Counsel submits that when this fact was verified by the Investigating Agency from the Registrar of this Court, by issuing a notice under Section 91 Cr.P.C., it came into the notice that no such application was submitted on record in S.B. Civil Writ Petition No.3164/2009. Counsel submits that aforesaid application was containing the same impression of the Court Commissioner





Gautam, whose statements were recorded under Section 161 Cr.P.C. and he has denied his signature on the said application. Counsel submits that the petitioner has prepared a forged document of this Court which was not the part of original record of S.B. Civil Writ Petition No.3164/2009. Counsel submits that a separate FIR should have been registered against the petitioner for the above incident. Counsel submits that recently one more FIR has been lodged against the petitioner bearing No. 117/2024 on 01.04.2024 which indicates that there was an audio conversation of the petitioner with some other mediator wherein the conversation of the petitioner is there and in the said conversation he has admitted that he is ready to return the amount of Rs. 42 Lakh instead of the amount of Rs. 50 Lakh. Counsel submits that looking to the gravity of the matter, the petitioner does not deserve any indulgence of bail. Hence the bail applications filed by the petitioner under Section 438 Cr.P.C. are likely to be rejected. In support of their contentions, they have placed reliance upon the following judgments:-

- (1) **P. Chidambaram Vs. Central Bureau of Investigation**, reported in **2019 (4) RCR(Cri.) 177** and
- (2) **Naveen Singh Vs. The State of Uttar Pradesh and Anr.** reported in **2021 AIR (SC) 1428**.

4. In rejoinder, counsel for the petitioner submitted that the petitioner has been targeted in these matters. Counsel further submitted that till date, the petitioner has not received any receipt of the complaint filed against him under Section 107/116 (3) Cr.P.C. Counsel submitted that immediately after lodging of two FIRs bearing Nos. 314/2021 and 163/2021 these complaints under



Section 107/116 (3) Cr.P.C. have been submitted to influence the Court for taking adverse action against the petitioner. Counsel submits that the petitioner has not prepared any application and submitted the same on record of the S.B. Civil Writ Petition No.3164/2009. Counsel submits that when this fact came into the knowledge of the petitioner, he immediately submitted counter in the form of public notice in the newspaper and immediately thereafter, FIR was registered against the petitioner where after investigation, FR has been submitted on merits and the same has been submitted because the material relates to defamation of the petitioner. Hence the petitioner is entitled to get benefit of pre-arrest.

5. In surrejoinder, counsel for the complainant has submitted that petitioner is a habitual offender against whom two other FIRs of the identical nature were lodged, hence indulgence of bail may not be granted to the petitioner.

6. Counsel for the petitioner submitted that after settlement in those matters, Final Report has been submitted by the Police.

7. Heard and considered the submissions made by the respective counsels and perused the material available on the record.

8. At the outset, this Court proposes to take a quick look at the consideration of anticipatory bail. There are a line of decisions of the Hon'ble Supreme Court that have underscored the fact that while deciding an anticipatory bail, the Court ought to refrain from undertaking a detailed analysis of the evidence, the focus being on the prima facie issues including consideration of some reasonable grounds that would go to show if the accused has committed the



offence or those facts that would reflect on the seriousness of the offence. The self-imposed restraint on delving deep into the analysis of the evidence at that stage is for valid reasons, namely, to prevent any prejudice to the case set up by the prosecution or the defence likely to be taken by the accused and to keep all aspects of the matter open till the trial is concluded.

9. In the case of **Prasanta Kumar Sarkar Vs. Ashis Chatterjee & Anr.** reported in **2010 (14) SCC 496**, the Hon'ble Apex Court had highlighted the factors that ought to be borne in mind while considering the anticipatory bail application and it has been held in para 9 as under:-

"9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are: (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail."



10. Similarly in the case of **Masroor Vs. State of U.P. and Anr.** reported in **2009 (14) SCC 286**, the Hon'ble Supreme Court has observed that the Courts ought to refrain from mechanically granting bail and absence of relevant considerations will make such an order susceptible to interference. It has been held in para 13 as under:-

"13. Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence."

11. Hon'ble Apex Court in the case of **Nimmagadda Prasad V/s CBI** reported in **2013(7) SCC 466** has observed that while deciding the bail application, the Court has to keep the nature of evidence and nature of accusation in the mind and then, decide the bail application accordingly. It has been held in para 24 as under:-

"While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for





believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

12. While considering an application for grant of anticipatory bail, no doubt, the Court has to take into consideration the personal liberty of the accused as a relevant factor, however, at the same time it is the duty of the Court to take into account the nature of the offences involved and the charges levelled against the persons alleged.

13. Reverting back to facts of the instant case that it is not in dispute that the co-accused Vinat Mahavar was arrested in FIR No. 163/2021 and he was granted regular bail under Section 439 CrPC vide order dated 15.03.2022.

14. Serious allegations have been levelled in all the FIRs that the fabricated and forged *pattas* and documents have been created and lakhs of rupees have been taken for handing over these *pattas* to the victims. In order to ascertain the truth, the matter is required to be investigated by the Investigating Agency.

15. Considering the fact that with regard to similar nature of allegations of creation of forged, fabricated *pattas* and documents, five FIRs have been lodged against the petitioner and keeping the aforesaid in the mind and also considering the nature of allegation and gravity of the matter, this Court does not deem it proper to accept these bail applications.



[CRLMB-4627/2022]

16. Accordingly, all these bail applications stand rejected.

(ANOOP KUMAR DHAND),J

Ashu/11-13

