

Shikha Tiwari vs State Nct Of Delhi on 7 February, 2022

Author: Chandra Dhari Singh

Bench: Chandra Dhari Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ BAIL APPLN. 4442/2021
SHIKHA TIWARI

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Through: Mr. Arvind Varma, Sr. Advocate wi
Ms. Aakanksha Kaul, Mr. Adit
Khorana, Ms. Akshita Goyal,
Mr. Manan Popli, Mr. Gaurav Jain,
Mr. Rajiv K. Virmani, Ms. Smridhi
Sharma, Ms. Mahima Chauhan,
Mr. Anand Neetu, Ms. Shubhakriti
Gaur, Mr. Shubham Pa
Advocates

versus

STATE NCT OF DELHI

Through: Mr. Avi Singh, ASC for
Mr. Karan Dhalla, Advo

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH
ORDER

% 07.02.2022 (THROUGH VIDEO CONFERENCING)

1. The instant application under Section 438 read with 482 of the Code of Criminal Procedure, 1973, (hereinafter "Cr.P.C.") has been filed on behalf of the petitioner seeking anticipatory bail for grant of bail in the event of her arrest by the police in F.I.R. No. 140/2017 dated 28th August, 2017 registered at Police Station EOW for the offences punishable under Sections 406/420/120B of the Indian Penal Code, 1860 ("hereinafter IPC").

2. Mr. Arvind Varma, learned senior counsel appearing on behalf of the petitioner submitted that the petitioner is single parent and has two minor children. It is submitted that the husband of the petitioner/co-accused, Mr. Piyush Tiwari, used to obtain the petitioner's signatures on various documents and blank cheques for one or the other pretexts. He started abusing and assaulting her and also had extramarital affair. It is contented that on 4th June, 2015, when the petitioner came to know about the extramarital affair of her husband, she left her matrimonial house along with her two minor children and started living at her present address, i.e., A-ISOI, Omex Forest Spa, Sector 93B, Noida, Uttar Pradesh.

3. It is submitted by the learned senior counsel for the petitioner that on 8th December, 2016, Mr. Anil Aggarwal filed a complaint seeking registration of FIR for cheating of Rs. 7 crores under

Sections 406/420/467/471/34 of the IPC.

4. On 28th August, 2017, the FIR bearing No. 140/2017 was registered under Section 406/420/120B of the IPC at EOW Police Station against (1) Shubhkamna Buildtech Pvt. Ltd. (2) Shubhkamna Advert TechHomes Pvt. Ltd. (3) Piyush Tiwari (4) Shikha Tiwari.

5. Learned senior counsel for the petitioner submitted that the petitioner has never been the Director of the accused Company and she has never been involved with the day-to-day affairs of the company. The petitioner has not signed the Memorandum of Understanding (hereinafter "MoU") in the alleged matter as the signatory of the MoU of the project named Shubhkamna Advert TechHomes. It is submitted that the petitioner had no knowledge with respect to the alleged project. It is, further, submitted that the petitioner is an indigent person and was not even aware about the complaint or the MoU.

6. Learned senior counsel for the petitioner submitted that this Court has granted interim bail in the instant case vide order dated 20 th December, 2021. After getting the interim protection, the petitioner has appeared before the Investigating Officer on 7th January, 2022. It is further submitted that the entire evidence in the instant matter is documentary evidence, which has already been recovered by the Investigating Agency.

7. Learned senior counsel for the petitioner submitted that the petitioner is a lady and having two small sons and is ready to cooperate with the investigation as well as the trial in the instant matter.

8. On instructions, learned senior counsel for the petitioner undertakes that Bank Account No. 48880200000051 of the Bank of Baroda and Bank Account No. 60153052537 of the Bank of Maharashtra shall not be operated by the petitioner and she shall maintain all the money in these bank accounts till further orders or directions of the concerned Court, she shall appear continuously before the Investigating Agency and shall abide by any condition imposed by this Court while granting the anticipatory bail.

9. Per contra, Mr. Avi Singh, learned Additional Standing Counsel (hereinafter "ASC") for State vehemently opposed the instant bail application and submitted that the petitioner has not come with clean hands before this Court. It is argued by the learned ASC for State that the petitioner has suppressed the material facts and concealed some important facts as well.

10. Learned ASC for the State submitted that there are seven FIRs pending against the petitioner and the group of companies. The companies, which the petitioner is a beneficiary of, have defrauded several investors. The said company, i.e., M/s. Shubhkamna Buildtech Pvt. Ltd. is maintaining nineteen accounts in different banks and the petitioner is an authorised signatory in two of these banks, i.e., Bank of Baroda and Bank of Maharashtra.

11. Learned ASC for the State has also relied on the Special Audit Report and submitted that the alleged company accepted unsecured loans of about Rs. 10.62 Crores and paid loans to directors and their relatives including co- accused Piyush Tiwari to the tune of more than Rs. 1.18 Crores and

accused Shikha Tiwari, petitioner herein, to the tune of Rs. 1.70 Crores. This is purely a diversion and misappropriation of funds but Mr. Avi Singh, learned ASC for State fairly conceded that the petitioner is not a director but only a signatory of the MoU.

12. Learned ASC for the State has also relied on the contentions made in the Status Report and submitted that in the present matter after considering the entirety of the matter the petitioner is not entitled for the anticipatory bail.

13. The petitioner filed a rejoinder reply to the Status Report filed. Mr. Arvind Varma, learned senior counsel appearing on behalf of the petitioner in his rejoinder, submitted that petitioner has been charged in seven FIRs and also relied upon the contentions made in paragraph 11 of the said reply and submitted that as per the chart given in paragraph 11 of the reply, in the FIR No. 07/2017, No. 08/2017 and No. 66/2017, there are no allegations against the petitioner and she has not been named as accused in the said FIRs. It is further submitted that the FIR bearing No. 140/2017 i.e the present FIR, the interim protection has already been granted by this Court vide order dated 20th December 2021 and the petitioner has joined the investigation. These facts are not denied by the learned ASC for the State. In FIR bearing No. 141/2017, the regular bail has been granted by the trial Court vide order dated 27th August, 2019. In FIRs bearing No. 205/2019 and No. 46/2020 the petitioner is languishing in jail.

14. It is also submitted that the petitioner is charged for offences under Sections 406/420/120B of the IPC and the maximum punishment for the offence is seven years. It is further submitted that she is a 43-year-old lady having two minor children. There are no allegations against the petitioner that she has violated any condition of the interim bail and she has cooperated with the investigation however, learned ASC for the State vehemently opposed the argument advanced by the learned senior counsel for the petitioner by referring the status report and submitted that she has not cooperated with the investigation and not answered the query of the investigating officer. In reply, Mr. Arvind Varma, learned senior counsel for petitioner submitted that the petitioner cannot be forced to give reply on the evidence or material against herself during the investigation.

15. Learned senior counsel for the petitioner submitted that since she has cooperated with the investigation and has also undertaken to cooperate with the investigation during the trial in future and also looking to the nature of the offence and maximum punishment of the offence, she is entitled for anticipatory bail under Section 438 of the Cr.P.C.

16. Heard learned counsel of the parties and perused the record.

17. This Court has perused the Status Report filed by the State as well as the reply filed in response to the Status Report and other contentions made in the application as well as other material on record.

18. It is admitted fact that there are allegations against the petitioner for misappropriation of the funds as well as the cheating with the investors. There is an alleged misappropriation of funds amounting to Rs. 7,00,00,000 (Rs. Seven Crores only) when the FIR was registered and after the

investigation it was revealed that the misappropriation of funds amounted to Rs. 46,00,00,000 (Forty-Six Crores only) till date, and the investigation is still going on.

19. The petitioner has been separated from the co-accused in 2015 and she has filed a divorce petition in 2019. After getting the interim protection by this Court vide order dated 20th December, 2021, she has appeared before the investigating officer. The entire evidence in the instant matter is by the nature of the documentary evidence which has already been collected by the investigating officer.

20. The Hon'ble Supreme Court has noted the significance of the principle "bail is the rule and jail is the exception" in several cases before it. In the matter of Arnab Manoranjan Goswami v. State of Maharashtra (2021) 2 SCC 427, Hon'ble Supreme Court observed as under: -

"More than four decades ago, in a celebrated judgment in State of Rajasthan v. Balchand [State of Rajasthan v. Balchand, (1977) 4 SCC 308 : 1977 SCC (Cri) 594] , Krishna Iyer, J. pithily reminded us that the basic rule of our criminal justice system is "bail, not jail" [These words of Krishna Iyer, J. are not isolated silos in our jurisprudence, but have been consistently followed in judgments of this Court for decades. Some of these judgments are: State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2) and Sanjay Chandra v. CBI, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397] . The High Courts and courts in the district judiciary of India must enforce this principle in practice, and not forego that duty, leaving this Court to intervene at all times. We must in particular also emphasise the role of the district judiciary, which provides the first point of interface to the citizen. Our district judiciary is wrongly referred to as the "subordinate judiciary". It may be subordinate in hierarchy but it is not subordinate in terms of its importance in the lives of citizens or in terms of the duty to render justice to them. High Courts get burdened when courts of first instance decline to grant anticipatory bail or bail in deserving cases. This continues in the Supreme Court as well, when High Courts do not grant bail or anticipatory bail in cases falling within the parameters of the law. The consequence for those who suffer incarceration are serious. Common citizens without the means or resources to move the High Courts or this Court languish as undertrials. Courts must be alive to the situation as it prevails on the ground--in the jails and police stations where human dignity has no protector. As Judges, we would do well to remind ourselves that it is through the instrumentality of bail that our criminal justice system's primordial interest in preserving the presumption of innocence finds its most eloquent expression. The remedy of bail is the "solemn expression of the humaneness of the justice system".

Tasked as we are with the primary responsibility of preserving the liberty of all citizens, we cannot countenance an approach that has the consequence of applying this basic rule in an inverted form. We have given expression to our anguish in a case where a citizen has approached this Court. We have done so in order to reiterate principles which must govern countless other faces whose voices should not go unheard."

21. Further, the case of Gurubaksh Singh Sibbia v. State of Punjab (1980) 2 SCC 565 has been serving as an encyclopedia for the cases in relation to anticipatory bail. Therein, the court also called for a similar approach when it observed:

"26. Section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over-generous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned."

22. A three-judge bench of the Hon'ble Supreme Court in the case of Nathu Singh v. State of U.P. (2021) 6 SCC 64 has called for a liberal interpretation in the cases relating to grant of anticipatory bail, when it observed:

"19. At first blush, while this submission appears to be attractive, we are of the opinion that such an analysis of the provision is incomplete. It is no longer *res integra* that any interpretation of the provisions of Section 438 CrPC has to take into consideration the fact that the grant or rejection of an application under Section 438 CrPC has a direct bearing on the fundamental right to life and liberty of an individual. The genesis of this jurisdiction lies in Article 21 of the Constitution, as an effective medium to protect the life and liberty of an individual. The provision therefore needs to be read liberally, and considering its beneficial nature, the courts must not read in limitations or restrictions that the legislature have not explicitly provided for. Any ambiguity in the language must be resolved in favour of the applicant seeking relief."

23. Hence, it is evident from the observations of the Hon'ble Apex Court that while considering anticipatory bail, the liberty of the alleged offender alongwith with the facts and circumstances of the case must be borne in mind. The petitioner herein is a 43-year-old lady who is living with her two minor children and has been granted bail in similar matters.

24. Keeping in mind the instructions undertaken by the learned senior counsel for the petitioner and the nature of the offence, facts and other material on record, this Court is inclined to grant anticipatory bail. It is directed that the petitioner on the event of arrest, be released on bail on her furnishing personal bond in the sum of Rs.1,00,000/- (Rupees One Lakh only) with two solvent surety of like amount to the satisfaction of the Investigating Officer subject to the conditions as follows:-

(a) she shall under no circumstances leave India without prior permission of the Court concerned;

(b) she shall appear before the Investigating Officer of the case as and when required;

(c) she shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;

(d) she shall provide his mobile number and keep it operational at all times;

(e) she shall drop a PIN on the Google map to ensure that his location is available to the Investigating Officer; and

(f) she shall commit no offence whatsoever during the period she is on bail.

(g) in case of change of residential address and/or mobile number, the same shall be intimated to the Investigating Officer/ Court concerned by way of an affidavit.

25. Copy of this order be sent to Superintendent Jail for compliance.

26. It is made clear that above observations made by this Court while allowing the instant application shall have no effect on the proceedings of the Court below.

27. The application stands disposed of.

CHANDRA DHARI SINGH, J FEBRUARY 7, 2022 gs/ms