

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

Judgment reserved on: 28.07.2022

Date of decision: 02.08.2022

+ BAIL APPLN. 2139/2022

NEELAM CHAUHAN

..... Applicant

Through: Mr.Jai Prakash, Advocate.

Versus

THE STATE GOVT. OF NCT OF DELHI Respondent

Through: Mr.Shoaib Haider, APP for State with
SI Sachin Dhama, Police Station
Shalimar Bagh.

+ BAIL APPLN. 2166/2022

SUNIL KUMAR

..... Applicant

Through: Mr.Jai Prakash, Advocate

Versus

THE STATE GOVT. OF NCT OF DELHI Respondent

Through: Mr.Shoaib Haider, APP for State with
SI Sachin Dhama, Police Station
Shalimar Bagh.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J

1. The applicants, vide their respective second bail applications seek the grant of anticipatory bail in relation to FIR No.582/2021, PS Shalimar Bagh under Sections 420/406/120B of the Indian Penal

Code, 1860 with their previous bail applications seeking the grant of anticipatory bail bearing Bail Appln. No.1908/2022 and Bail Appln. No.1910/2022 of the applicants named Sunil Kumar and Neelam Chauhan respectively seeking the grant of anticipatory bail having been declined by this Court vide order dated 08.07.2022 on the grounds that there was a recovery of an alleged amount of Rs.80 Lakhs of gold jewellery and Rs.30 Lakhs in cash to be still recovered from them.

2. The status report that the State has submitted dated 23.07.2022 in BAIL APPLN. 2166/2022 filed by the applicant- Sunil Kumar states to the effect that the custodial interrogation of the said applicant is required for the recovery of cash and jewellery, both amounting to Rs.1.10 Crores. *Inter alia*, the State has submitted that the applicant/accused is absconding and intentionally avoiding the investigation of the case and was not found residing at his permanent address House No.327, Banjara Basti, Haiderpur, Shalimar Bagh, Delhi as mentioned in the bail application, the proceedings under Section 82 of the Cr.P.C. had been initiated against the applicant vide order dated 14.07.2022 and that the applicant had joined the investigation of the case only on directions of this Court.

3. As per the status report dated 23.07.2022 submitted under the signatures of the SHO, PS Shalimar Bagh by the State in BAIL APPLN. 2139/2022 filed by the applicant- Neelam Chauhan (who is the wife of Sunil Kumar, the applicant of BAIL APPLN. 2166/2022), identical contentions and submissions as raised in the status report qua her spouse Sunil Kumar, have been detailed.

4. The averments in the FIR No.582/2021, PS Shalimar Bagh under Sections 420/406/120B of the Indian Penal Code, 1860 lodged on the complaint of Shashi Bala alleges to the effect that the late husband of Shashi Bala, the complainant used to run a small jewellery shop under the name and style of 'Amba Jewellers', with its address at 323/2, Shalimar Village, Near CC Block Market, Delhi-110088, and that he expired in the year 2012 and thereafter, the shop and her two children have been the responsibilities of Shashi Bala, the complainant. *Inter alia*, the complainant submitted that her late husband also used to manage several committee groups and after taking over the shop, she too slowly and gradually had started some committee groups and over a period of time, several persons got associated with the said committee groups. *Inter alia*, she stated through the FIR that the existing members of these committee groups often used to introduce their relatives and friends to be included as fresh members, and in this manner, one Meena Rathore W/o Sh. Sanjay Rathore, introduced Neelam Chauhan i.e. the applicant of BAIL APPLN. 2139/2022 to be included in certain committee groups in the year 2014-15 and over a period of time, the said Neelam Chauhan became a member in several committees and in each committee, she used to book 2-3 slots in the names of her relatives but the complainant had never met any of those relatives and that the complainant used to book all those 2-3 slots in the name of Neelam Chauhan only and the monthly payments against those slots were made by Neelam Chauhan.

5. It has been stated in the FIR that everything was smooth and that over the years, Neelam Chauhan (applicant of BAIL APPLN. 2139/2022) had won the complainant's trust and even used to bring her fresh customers. *Inter alia*, the complainant has submitted that during this period, she gave Neelam Chauhan (applicant of BAIL APPLN. 2139/2022) cash loans ranging between Rs.5-10 lakhs on three different occasions and the same were repaid by her and that by the year 2019, Neelam Chauhan and her family members had become very close to her and had gained her confidence. The complainant has further stated that in the year 2019, Neelam Chauhan joined six of her committee groups and in as many as four such groups, she had booked four (4) or more slots in the same pattern as before and when the complainant had wondered as to how she would manage to pay such huge instalments and had asked Neelam Chauhan not to book so many slots, she nevertheless induced the complainant by saying that her husband (accused Sunil Kumar, the applicant of BAIL APPLN. 2166/2022) needed an investment in a property, which would reap huge financial benefits and she would have enough resources to manage the instalments and had somehow persuaded the complainant to allow her to join these committee groups.

6. *Inter alia*, the complainant submitted through the FIR that the said Neelam Chauhan (applicant of BAIL APPLN. 2139/2022), her husband Sunil Chauhan (applicant of BAIL APPLN. 2166/2022) and her brother-in-law Mahesh Chauhan approached the complainant sometime in the month of March, 2019, and requested the complainant to give them a cash loan of Rs. 30 lakhs. The complainant has

submitted through the FIR that she told them that neither she could arrange such a huge amount in cash nor could the same be given in cash as there was a government cap on the cash transactions. The complainant further submitted that the accused persons named Neelam, Sunil i.e. the applicants of BAIL APPLN. 2139/2022 and BAIL APPLN. 2166/2022 respectively and Mahesh literally begged the complainant to arrange the said amount as it was a question of the survival of their property deal and that they were as per their representations, expected to make a huge financial profit from the same. *Inter alia*, it has been stated through the FIR that these three persons told the complainant that they had to pay in cash against the property and required the amount in cash only and somehow, the complainant agreed to arrange the said amount owing to their continuous and desperate inducement and also due to the complainant's long standing association with them.

7. The complainant has submitted further through the FIR that her daughter had saved some money from her income and she, the complainant also had about Rs. 15 lakhs in cash, which had been left behind by her late husband, which she had given on soft loans to her relatives and on their repeated inducement, she had somehow arranged the sum of Rs. 30 lakhs in cash and had given it to them and that against the receipt of the said amount of Rs. 30 lakhs, Neelam Chauhan (applicant of BAIL APPLN. 2139/2022) executed an acknowledgment receipt in her own handwriting on a e-stamp paper dated 27.03.2019 and also issued two blank unsigned cheques bearing nos.265175 and 265176 towards security and assured that the said

amount of Rs.30 lakhs would be repaid as soon as possible and thereafter, on the pretext of investing in the property, Smt. Neelam Chauhan realized all the committees, wherein she was a member, over a period of time. *Inter alia*, the complainant stated through her complaint that though, she was not very comfortable in letting Neelam Chauhan realize all those committees but each time, she stated that the money was required to mature the property deal and as soon as the deal was matured, she would make good all her commitments towards those committee groups.

8. As per the FIR, during this period, Neelam Chauhan (applicant of BAIL APPLN. 2139/2022) approached the complainant with a business offer and represented that she could arrange sale of old jewellery at attractive prices, wherein they could make a reasonable commission and induced by the applicant-Neelam Chauhan's honey laced persuasion, she, the complainant, agreed to arrange old jewellery from her clients and relatives and in the process, the complainant persuaded about 9-10 ladies to sell their old jewellery and these 9-10 ladies delivered their jewellery to be sold sometime in February-March, 2020 and the complainant had handed over those jewellery articles worth about Rs. 80-85 lakhs approximately to Neelam Chauhan for approval from the prospective buyers. The complainant has submitted through the FIR that since, it was a huge amount of gold that was being handed over to Neelam Chauhan, the complainant insisted on a receipt and though, Neelam Chauhan was reluctant to execute the receipt but on the insistence of the complainant, the applicant- Neelam Chauhan agreed to execute the receipt on

10.03.2020, whereafter, a lockdown was announced by the government and the said Neelam Chauhan neither paid the money against the said jewellery nor did she return the same. The complainant has submitted that after the lockdown was lifted, she started pursuing Neelam Chauhan to either pay or return the jewellery and also started pressurizing her to return the cash amount of Rs.30 lakhs taken in March, 2019 and on the persistent follow up of the complainant, Neelam Chauhan, Sunil Chauhan (applicant of BAIL APPLN. 2139/2022 and applicant of BAIL APPLN. 2166/2022 respectively) and Mahesh Chauhan started ignoring the calls of the complainant and started giving vague and evasive replies and by then, she sensed that they had misappropriated the jewellery articles and had no intention to return the same. The complainant has submitted through the FIR that she threatened the applicants herein named Neelam Chauhan and Sunil Kumar as well as Mahesh Chauhan with legal action and sensing her resolve to initiate legal proceedings against them, they again induced the complainant to give them some more time and on the complainant's insistence, Neelam Chauhan again executed a handwritten receipt dated 31.08.2020, wherein she categorically acknowledged her liability to the tune of Rs.1,10,00,000/-. The complainant has further submitted that in the said receipt there was an inadvertent error wherein Neelam has written the amount towards gold as Rs. 30 lakhs and cash loan of Rs. 80 lakhs, whereas it was vice-a-versa.

9. The complainant has further submitted that Neelam Chauhan also executed a promissory note admitting all her liabilities and as per

the commitment, Neelam Chauhan was to pay Rs. 5 lakhs in September, 2020, but she did not pay and from September, 2020, Neelam Chauhan even stopped paying the monthly instalments towards the committees, which had already been realized by her. The complainant thus submitted that in this manner, Neelam Chauhan (applicant of BAIL APPLN. 2139/2022) had defaulted to pay the monthly instalments of these committees to the tune of about Rs.25 lakhs. The complainant further stated through the FIR that she had tried her level best to induce good sense in Neelam Chauhan, Sunil Chauhan and Mahesh Chauhan but it was all in vain and the other committee members were after the life of the complainant to pay their dues and that Neelam Chauhan, Sunil Chauhan (applicant of BAIL APPLN. 2139/2022 and applicant of BAIL APPLN. 2166/2022 respectively) and Mahesh Chauhan had categorically refused to return the money taken as loan as well as the jewellery articles despite specific demands and had started extending life threats to the complainant and her daughter.

10. The complainant has thus submitted that Neelam Chauhan, Sunil Chauhan (applicant of BAIL APPLN. 2139/2022 and applicant of BAIL APPLN. 2166/2022 respectively) and Mahesh Chauhan had dishonest intentions right since March, 2019, when they had approached her for a cash loan of Rs.30 lakhs and that they had never intended to repay the said amount and in furtherance of their criminal conspiracy, they induced the complainant time and again, wherein they took jewellery articles worth Rs. 80-85 lakhs and neither paid for the same nor returned the same despite specific demands and further

had not paid the instalments of the committee groups wherein they had already withdrawn/realized the committee. *Inter alia*, the complainant submitted through the FIR that the applicants had not only cheated her but had cheated certain other persons also and were desperately trying to dispose of their immovable assets and flee. The complainant thus submitted that the applicants and Mahesh had entered into a deep rooted conspiracy and had have cheated the complainant, with fraudulent and dishonest intentions, for a cumulative sum of more than Rs. 1,35,00,000/-

11. As observed hereinabove, vide proceedings dated 08.07.2022, the Bail Appln. No.1908/2022 filed by Sunil Kumar and Bail Appln. No.1910/2022 filed by Neelam Chauhan had been rejected vide order dated 08.07.2022 of this Court. It had been observed in the said order to the effect:-

“The applicants vide the present applications seek the grant of anticipatory bail in relation to FIR No.582/2021, Police Station Shalimar Bagh, under Sections 420/406/120B of the of the Indian Penal Code, 1860, submitting to the effect that they have been falsely implicated in the instant case, and that, in fact, Neelam Chauhan the wife of Sunil Chauhan was the member of the committee and she has been falsely implicated in the instant case along with her spouse in relation to allegations of her having received gold jewellery amounting to Rs.80 to Rs.85 lakhs, whereas in fact, a legal notice date 27.10.2019 had also been served by the applicants through their counsel to the complainant in relation to misuse of security cheques.

It is submitted on behalf of the applicants that signatures of the applicants have already been taken, that the applicants have also joined the investigation as

and when required by the Investigating Agency and the contention of the State that a promissory note dated 31.08.2020 had been executed by the wife of Sunil Chauhan i.e., Neelam Chauhan the applicant of BAIL APPLN. 1910/2022 cannot be believed.

On behalf of the State, the learned APP for State submits that though the specimen signatures and documents have been received from the applicants, nevertheless, there are statements under Section 161 of the Cr.P.C., 1973 of witnesses i.e., of women who have given their articles of jewellery to Neelam Chauhan, the wife of the applicant Sunil Chauhan, which are categorical and the gold jewellery worth of Rs. 80 Lakhs and Rs.30 lakhs in cash, qua the total liability of Rs.1,10,00,000/- are yet to be recovered.

Inter alia, it is submitted through the status report that the applicants are not residing at the given address and are not found at their residential address despite multiple visits and have been absconding. It is submitted on behalf of the applicants however that they reside at their permanent address.

On a consideration of the submissions that have been made on behalf of either side and the factum that the recovery of the alleged amount of Rs.80 lakhs of gold jewellery and Rs.30 lakhs of cash is yet to be recovered from the applicants, there is no ground for grant of anticipatory bail. The applications are rejected.

The applications BAIL APPLN. 1908/2022 and BAIL APPLN. 1910/2022 are disposed of accordingly.”

12. Through the present applications, i.e. BAIL APPLN. 2139/2022 and BAIL APPLN. 2166/2022, the applicants submit that the FIR was registered in the year 2020 on the basis of the complaint of the complainant in the year 2019 as mentioned in the ground (A) of the

application. To similar effect is the submission made in ground (A) of BAIL APPLN. 2139/2022 filed by the applicant- Sunil Kumar.

13. Qua this submission, it is essential to observe that the FIR was registered on 14.07.2021 on the basis of information received on 14.07.2021 on a complaint dated 01.01.2021. The contention thus, raised in ground (A) of the applications is *prima facie* incorrect.

14. *Inter alia*, it has been submitted on behalf of the applicants that there is nothing on the record to substantiate the averments made in the FIR, which is of four pages, well designed, well planned and well drafted and has been so created to falsely implicate the applicants. The applicants further submit that the offences allegedly committed by the applicants are punishable with sentences below seven (7) years and thus, in terms of the verdict of the Hon'ble Supreme Court, the applicants are entitled to be released on bail and ought not to be incarcerated.

15. The offence punishable under Section 420 of the Indian Penal Code, 1860 is punishable with imprisonment of either description for a term which may extend to 10 years as also to fine. The offence punishable under Section 406 of the Indian Penal Code, 1860 is punishable with imprisonment of either description for a term which may extend to three (3) years or with a fine or with both.

16. The applicants submit that in view of the verdict of the Hon'ble Supreme Court in "*Arnesh Kumar Vs. State of Bihar*" (2014) 8 SCC 273, there is no occasion for arrest of the applicants who have joined the investigation of the case. Reliance is also placed on behalf of the applicants in relation thereto on the verdict of the Hon'ble High Court

of Madhya Pradesh in ***“Sunil @ Sonu Agarwal Vs. The State of Madhya Pradesh”*** in MCRC No.7665/2022.

17. Reliance was also placed on behalf of the applicants on the verdict of the Hon’ble Supreme Court in ***“Siddharam Satlingappa Mhetre Vs. State of Maharashtra & Ors.”***, a verdict dated 02.12.2020 in Criminal Appeal No.2271/2010 to contend to the effect that personal liberty and freedom have essentially to be protected and an individual is presumed to be innocent till found guilty in Court and to contend further to the effect that exercise of discretion under Section 438 of the Cr.P.C., 1973 has to be done with caution and prudence, wherein, the principles that personal liberty is a very precious fundamental right which can be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case, needs to be borne in mind.

18. Reliance was also placed on behalf of the applicants on the verdict of the Hon’ble Supreme Court in ***“Gurbaksh Singh Sibbia and Ors. Vs. State of Punjab” (1980) 2 SCC 565*** to contend to similar effect.

19. Reliance was also placed on behalf of the applicants on the verdict of the Hon’ble High Court of Bihar in ***“Hari Kumar Jha Vs. State of Bihar”*** in ***Cr. Misc. No.21131/2010***, a verdict dated 20.01.2011 to contend to the effect that a person despite being accused of a non-bailable offence, can be granted anticipatory bail where there is no chance of misuse of privilege of bail by him, where there is no scope of his absconding and no scope of tampering with the evidence and where the accused is good face himself for trial and thus, it has

been submitted on behalf of the applicants that the applicants be released on anticipatory bail.

20. During the course of submissions made, a further submission was also made on behalf of the applicants placing reliance on the verdict of the Hon'ble Supreme Court in "**SATENDER KUMAR ANTIL VERSUS CENTRAL BUREAU OF INVESTIGATION & ANR.**" in **MISCELLANEOUS APPLICATION NO.1849 OF 2021 IN SPECIAL LEAVE PETITION (CRL.) No.5191 OF 2021**, a verdict dated 11.07.2022, a perusal of which indicates that there are directions therein of the Hon'ble Supreme Court to the effect:-

"73. In conclusion, we would like to issue certain directions. These directions are meant for the investigating agencies and also for the courts. Accordingly, we deem it appropriate to issue the following directions, which may be subject to State amendments.:

a) The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.

b) The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41A of the Code and the directions issued by this Court in Arnesh Kumar (supra). Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

c) The courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. Any non-compliance would entitle the accused for grant of bail.

d) All the State Governments and the Union Territories are directed to facilitate standing orders for the procedure to be followed under Section 41 and 41A of the

Code while taking note of the order of the High Court of Delhi dated 07.02.2018 in Writ Petition (C) No. 7608 of 2018 and the standing order issued by the Delhi Police i.e. Standing Order No. 109 of 2020, to comply with the mandate of Section 41A of the Code.

e) There need not be any insistence of a bail application while considering the application under Section 88, 170, 204 and 209 of the Code.

f) There needs to be a strict compliance of the mandate laid down in the judgment of this court in Siddharth (supra).

g) The State and Central Governments will have to comply with the directions issued by this Court from time to time with respect to constitution of special courts. The High Court in consultation with the State Governments will have to undertake an exercise on the need for the special courts. The vacancies in the position of Presiding Officers of the special courts will have to be filled up expeditiously.

h) The High Courts are directed to undertake the exercise of finding out the undertrial prisoners who are not able to comply with the bail conditions. After doing so, appropriate action will have to be taken in light of Section 440 of the Code, facilitating the release.

i) While insisting upon sureties the mandate of Section 440 of the Code has to be kept in mind.

j) An exercise will have to be done in a similar manner to comply with the mandate of Section 436A of the Code both at the district judiciary level and the High Court as earlier directed by this Court in Bhim Singh (supra), followed by appropriate orders.

k) Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are

expected to be disposed of within a period of six weeks with the exception of any intervening application.

l) All State Governments, Union Territories and High Courts are directed to file affidavits/ status reports within a period of four months.”,

Apparently, this verdict relates to the aspects *inter alia* of compliances of Sections 41 and 41A of the Cr.P.C., 1973 observing to the effect that any non-compliance thereof would entitle the accused for grant of bail.

21. It is essential to observe that the said provisions come into play at the time of arrest of a person and the requirement of calling upon a person to appear before the police officer on his having credible information or where there is a reasonable suspicion of that person having committed a cognizable offence. The said provisions of law have undoubtedly to be adhered to by the Investigating Agency in the event the police officer considers it essential to arrest the accused persons. This is so as no arrest should be made because it is lawful for the police officer to do so as the police officer has to justify to the arrest apart from his power to do so as laid down in *Siddharam Satlingappa Mhetre* (supra).

22. In the instant case, the status reports that have been placed on record by the State allege categorically to the effect that the custodial interrogation of the applicants is required for the recovery of cash and gold jewellery both together amounting to approximately Rs.1.10 Crores and as observed vide order dated 08.07.2022 of this Court in Bail Appln. No.1908/2022 and Bail Appln. No.1910/2022, there is no ground for grant of anticipatory bail to the applicants at this stage, in

as much as, as per the prosecution version, there are statements of witnesses recorded i.e. of women who had given their articles of jewellery to Neelam Chauhan (applicant of BAIL APPLN. 2139/2022) W/o Sunil Kumar (applicant of BAIL APPLN. 2166/2022) which are categorical in relation to the gold jewellery worth Rs.80 Lakhs and Rs.30 Lakhs in cash. It is essential to observe further that the stated legal notice dated **27.10.2019** filed on behalf of the applicant-Neelam Chauhan (applicant of BAIL APPLN. 2139/2022) W/o Sunil Kumar (applicant of BAIL APPLN. 2166/2022) relied upon on behalf of the applicants states an enrolment No.D/1927/20 of one of the Advocates, which is inexplicable, and cannot be overlooked.

23. The second anticipatory bail applications i.e. BAIL APPLN. 2139/2022 and BAIL APPLN. 2166/2022 filed by the applicants named Neelam Chauhan and Sunil Kumar respectively are thus, declined.

24. However, in the event of any arrest being made of the applicants, the Investigation Officer shall ensure adherence to the provisions of Section 41(1) and 41A of the Cr.P.C., 1973.

ANU MALHOTRA, J.

AUGUST 02, 2022
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