

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **BAIL APPLN. 1687/2010 and CRL.M.A. 16406/2010**

Decided on 23.11.2010

IN THE MATTER OF :
BHUPENDRA KUMAR

..... Petitioner

Through: Mr. Sunil K.Mittal and
Mr.Abhishekh Sharma, Advocates

versus

STATE

..... Respondent

Through: Mr. Navin Sharma, APP

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

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| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioner under Section 438 read with Section 482 of the Cr.P.C. for grant of anticipatory bail in FIR No.119/2010 lodged against him by Head Constable Ravinder Kumar, registered with PS IP Estate, ITO under Sections 109/436/147/148/149/186/353/332/427/120B/34 IPC.

2. Learned APP for the State points out an order dated 07.10.2010 passed in Bail Application No.1653/2010 filed by the petitioner, to state that an identical application for grant of anticipatory bail had been moved by him earlier, but the said petition was dismissed by a Single Judge, as being

devoid of merits. He submits that there are no new facts that have been pointed out in the present petition, seeking the same relief.

3. On 20.10.2010, counsel for the petitioner had stated that though the aforesaid Bail application was dismissed by a Single Bench of this Court on 7.10.2010, but as a matter of fact, the petitioner is seeking a review of the said order as the same is silent on certain aspects so pointed out in the course of arguments. Having regard to the aforesaid submission, this matter was directed to be placed before the same Bench, subject to orders of Hon'ble the Chief Justice.

4. However, vide order dated 29.10.2010, the Single Bench returned the matter to be listed as per the roster Bench with the observation that it was an independent bail application filed by the petitioner and merely because the petitioner's submissions were not incorporated in the earlier order dated 7.10.2010, the present petition could not be heard by the said court.

5. Vide order dated 01.11.2010, a status report was called for from the State, which has been handed over today, with an advance copy to the counsel for the petitioner. The same is taken on the record. As per the status report, on 4.9.2010 at 5PM one PCR call was received regarding a quarrel in Prayas Observation Home. When the IO of the call, Head Constable Ravinder Kumar reached Prayas Observation Home, he came to know that the juveniles therein were raising slogans in favour of the petitioner, who is appointed as the Superintendent there and they were using abusive language against the Principal Magistrate of JJB-II. On the said date, the Principal Magistrate, JJB-II was present at the Home but left after a while. Then the Secretary of the Observation Home arrived there and

with the help of the Member Magistrate, tried to stop the juveniles, but they did not bother and kept on sloganeering.

6. It is stated that thereafter, the petitioner came from his office and asked the children to stop hooting, whereupon the children stopped making a noise. The petitioner then entered the Observation Home stating that he would convince the juveniles to maintain peace, but as soon as he entered the Home, the juveniles got violent and started damaging the doors, windows, electronic items, computer, furniture etc., in the Observation Home. It is further stated that the petitioner had instigated the juveniles to raise slogans in his favour and to cause the aforesaid damage. In fact all the records and documents in the Prosecution Branch, Ahlmad room and counsellings room were burnt to ashes on the date of the incident. As per the status report, the whole incident was orchestrated at the instigation of the petitioner. Ultimately, the police entered the Observation Home after obtaining permission from the Member Magistrate, JJB-II and overpowered 10 JCLs, who were getting violent and causing damage. 14 JCLs were found detained in a hall.

7. It is submitted that the petitioner instigated a few juveniles and used them for his own selfish purpose, by briefing them to cause disruption in an enquiry being conducted against him for his removal from the position of Superintendent. It is further stated that FIR No.118/2010 dated 4.9.2010 was also registered against the petitioner on the direction of the Principal Magistrate, JJB-I under Section 33 J.J. Act and under Sections 323/34 IPC at PS IP Estate. The Status Report mentions that the Principal Magistrate has specifically mentioned that the petitioner challenged the Board by stating that "let the Board try to remove him and he would see what the boys will

do to them". Learned APP for the State submits that in the given facts and circumstances of the case, the custodial interrogation of the petitioner is required and at present he is not joining the investigation.

8. Counsel for the petitioner denies the aforesaid position and submits that the status report filed by the State is an improvement on the allegations leveled against the petitioner in the FIR, wherein it was only stated that he had instigated 10 JCLs to damage the government property and injure the Head Constable on duty. He submits that Section 436 IPC has been added later on, which was originally not there in the FIR. He further submits that on the date of the incident, the petitioner was not even present at the scene as he was on leave and upon the asking of the Secretary of the Observation Home, he had come to the Home. Lastly, he states that till date, the petitioner has not been summoned by the Investigating Officer for his interrogation.

9. Learned APP rebuts the aforesaid contentions and submits that the statement to the effect that the petitioner has not been summoned for interrogation is incorrect and fact of the matter is that the petitioner is absconding and all efforts made to visit his house have not borne any results. He further submits that the Status Report is based on the investigation carried out from the date of the incident till date and cannot be termed as an attempt to improve upon the contents of the FIR.

10. This Court has heard the counsels for the parties. Having regard to the fact that the present petition has been filed within less than two weeks of the earlier petition for bail preferred by the petitioner, which was duly rejected vide order dated 07.10.2010 and as no new facts have been placed on the record by the petitioner to justify the filing of a fresh petition

in such a short span of time and also taking into consideration the contents of the status report and the gravity of the allegations leveled against the petitioner, this Court is not inclined to entertain the present petition.

11. The prayer for grant of anticipatory bail to the petitioner is rejected. The petition is dismissed, alongwith the pending application.

NOVEMBER 23, 2010
mk/rkb

(HIMA KOHLI)
JUDGE