

* HIGH COURT OF DELHI : NEW DELHI

Bail Application No. 2326/2009

% Judgment reserved on: **14th January, 2010**

Judgment delivered on: **22nd January, 2010**

Kapil Kumar,
S/o Sh. Sohan Lal Gupta,
R/o B-265/22,
Karnal Farm, Tigri,
New Delhi.

....Appellant.

Through: Mr. Vijay Aggarwal with Mr.
Gurpreet Singh and Mr. Vishal
Garg, Adv.

Versus

State
Through:
its Standing Counsel (Criminal)
High Court of Delhi.
New Delhi

....Respondent.

Through: Ms. Fizani Husain, APP for the
State.
SI Sridev Karam, PS Neb Sarai.

Coram:
HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may
be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported
in the Digest? | Yes |

V.B.Gupta, J.

This order shall dispose of application for grant of anticipatory bail filed
on behalf of the petitioner.

2. Prosecution case in brief is that, on 12th October, 2009, at about 9 PM, police received information regarding quarrel and fighting at B. No. 265/37, Colonel Farm House, Tigri, New Delhi. On reaching the spot police found that injured persons had been taken to Trauma Centre AIIMS, New Delhi by PCR Van. At the hospital, the injured Prempal and his brother Dharampal were found admitted.

3. Injured Prempal who was found to be fit gave his statement stating that his neighbour Gopal had come to his brother Amarpal's shop to buy cigarette at about 9 PM where Gopal quarreled over money with Amarpal and subsequently, Gopal called other family members to teach Amarpal a lesson. Amit (brother of Gopal) armed with a cricket bat, Kapil (brother of Gopal) armed with an iron rod and Sohan Lal (father of Gopal) came at the spot. Amar Pal and Prempal was caught hold by Sohan Lal and Gopal, Kapil and Amit started beating them. Amarpal immediately went inside his house and bolted the door from inside. In the meantime, Dharampal (brother of Prem Pal) also came at the spot and both Dharampal and Prempal sustained injuries on head and other parts of the body at the hands of the accused persons. After beating them, accused set the wooden thakth in front of the house of Amarpal on fire and went away. Accordingly, case under Section 308/436/34 IPC was registered against the accused persons.

4. It is contended by learned counsel for the petitioner that no offence under Section 308 IPC is made out against the petitioner as there is no allegation in the statement of the complainant that injuries were inflicted by the petitioner with

intention to cause death. Allegations made in the complaint are highly improbable and same cannot be relied upon prima facie.

5. All other co-accused persons who were arrested in this case have been granted bail. Petitioner is ready to join the investigation and injured have also been discharged from the hospital.

6. In support of its contentions, learned counsel for petitioner referred the following judgments;

- (i) *Ashok Kumar Gupta Vs. State, 2007 (141) DLT 94;*
- (ii) *Roop Madan Vs. State, 1997 AD (Cr.) DHC 195;*
- (iii) *Gurbaksh Singh Sibia Vs. State of Punjab. 1980 CRLJ 1125*
- (iv) *Amarinder Singh and Anr. Vs. State of Punjab and Ors.; Crim. MC No. 21713 M of 2007;*

7. On the other hand, it is contended by learned counsel for the State that petitioner has been named in the FIR. He assaulted the complainant on the head with an iron rod with the result that he sustained grievous injuries, as opined by the doctor. Custodial interrogation of petitioner is required and weapon of offence is to be recovered.

8. Other contention is that, petitioner is deliberately evading his arrest, as a result of which non bailable warrant has been issued against him. Under these circumstances, no ground is made out for granting anticipatory bail to the petitioner.

9. As per FIR, serious allegations have been made against the petitioner who has been named in the FIR. Petitioner was armed with an iron rod and he caused

serious injuries to the complainant. As per opinion of doctor injured sustained grievous injuries. The injuries are on head which is a vital part of the body.

10. Though, it is correct that co-accused persons have been granted bail in this case but it would be pertinent to point out that they submitted to the law of the land and joined the investigation.

11. Present incident is of 12th October, 2009. More than three months have been passed but petitioner, who is prima facie, involved in the commission of offence is absconding. Non bailable warrant has been issued to him. This goes on to show that he has scant respect for the rule of law.

12. None of the judgments cited by learned counsel for petitioner are applicable to the facts of the present case.

13. Supreme Court in a recent decision, ***HDFC Vs. J.J. Mannan @ J. M. John Paul and Anr.; 2009 (14) SCALE 724***, observed;

“The object of Section 438 Cr. P. C has been repeatedly explained by this Court and the High Courts to mean that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. But at the same time the provisions of Section 438 Cr. P. C. cannot also be invoked to exempt the accused from surrendering to the Court after the investigation is complete and if charge-sheet is filed against him. Such an interpretation would amount to violence to the provisions of Section 438 Cr. P. C., since even though a charge-sheet may be filed against an accused and charge is framed against him he may still not appear before the Court at all even during the trial. Section 438 Cr. P. C. contemplates arrest at the stage of investigation and provides a mechanism for an accused to be released on bail

should he be arrested during the period of investigation. Once the investigation makes out a case against him and he is included as an accused in the charge sheet, the accused has to surrender to the custody of the Court and pray for regular bail”.

14. Since, custodial interrogation of accused is required and weapon of offence is yet to be recovered, no ground is made out for granting anticipatory bail.

15. Before parting with, I must express my deep anguish at the functioning of police with regard to the execution of non bailable warrants. It is very rare that police in pursuance of non bailable warrants issued by various courts, ever execute the warrant, arrest the accused and produce him before the Court. It is a common knowledge that police officials use non bailable warrants issued by the Courts as a blank cheque and misuse the same. Whenever police wants to arrest any accused person then they don't need non bailable warrant. They will just pick up the accused during dead hours of night and detain him for interrogation.

16. In the present case, petitioner who has been named in the FIR from day one, is absconding for last three months. There is no reason to believe that police is not aware of the residential address of the petitioner, as petitioner has been filed bail applications in this court as well as in the court of sessions. There is nothing on record to show as to what prevents the police from arresting the petitioner, after dismissal of his earlier bail application as on 19th November, 2009. With such acts, police is deliberately weakening the prosecution case and due to inaction on the part of the police in not executing the warrants, the accused are having a free run, while victims of crime are always under constant fear. The only

inference which can be drawn under these circumstances is that, the police is hand in glove with the petitioner.

17. Recently, there were press reports in the media that more than Thirteen Thousand Proclaimed Offenders (P.O) are roaming freely in Delhi. It speaks volume about the functioning of the police and shows how inefficient and helpless is our police in apprehending the known criminals. Strong measures are required to be taken for proper execution of nonailable warrants issued by various courts from time to time. It is hoped that police will apprehend the petitioner at an earliest and shall see to it that he faces the trial in accordance with law.

18. With these observations, bail application of petitioner stands dismissed.

22nd January, 2010
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V.B.Gupta, J.