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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 1191/2011

VIKRAM BHAREE

..... Petitioner

Through

Mr. Rahul Raj Malik, Adv.

versus

STATE

..... Respondent

Through

Mr. Manoj Ohri, APP for State with
ACP Ved Parkash Surya PS
Seemapuri, Inspector Devendra
Kumar PS GTB Enclave.

+ BAIL APPLN. 1192/2011

POOJA BAHREE

..... Petitioner

Through

Mr. Rahul Raj Malik, Adv.

versus

STATE

..... Respondent

Through

Mr. Manoj Ohri, APP for State with
ACP Ved Parkash Surya PS
Seemapuri, Inspector Devendra
Kumar PS GTB Enclave.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

21.10.2011

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By this petition the Petitioners seek anticipatory bail in case FIR No.
176/2011 under Section 506 IPC and Section 3 SC/ST POA Act registered at
PS G.T.B. Enclave.

BAIL APPLNS. 1191 & 1192/2011

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the digital data is as per the physical
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As regards the maintainability of the present petition learned counsel for the Petitioner states that taking the complaint on the face value the allegations of derogatory words having been uttered in the public view are not made out. In view of the fact that essential ingredients of Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short SC&ST POA Act) are not made out, the present anticipatory bail application is maintainable. Reliance is made on *Sajjan Kumar Vs. The State and Anr. 2006 (2) JCC 1157*.

Learned counsel for the Petitioner contends that the Petitioners are neighbours and on 14th July, 2011 there was a dispute between the same parties on the issue of parking. A PCR call was made and the matter was referred to the Delhi Government Mediation Centre where the parties settled on 23rd July, 2011. However, a complaint was made to the Police on 18th July, 2011 on which though matter was compromised, FIR was registered on 27th July on a fresh improved the statement of the complainant dated 26th July, 2011.

According to the learned counsel for the Petitioner the complainant misbehaved with the mother of the Petitioners. While coming out of the Mediation Centre the complainant threatened the Petitioners and their family

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members that they would soon have the taste of their connections. On this threat by the complainant, the mother of the Petitioners suffered a heart attack on the 23rd July, 2011 and she died at 11.00 AM on the 24th July, 2011. It is contended that the above-mentioned FIR has been registered malafidely in order to harass and humiliate the Petitioners and their deceased mother who died before the FIR was registered. Further, the basic ingredients of Section 3(1)(x) of the SC&ST POA Act are not made out in the complaint lodged by the complainant on the 18th July, 2011 with the Police. However, the Police to help out the complainant malafidely has taken the statement of some persons to show that it was in public view.

Learned APP on the other hand contends that after recording the statement of the complainant, the statement of one independent witness was recorded who stated that she was present at the time when abusive words were used. Hence no case for anticipatory bail is made out.

I have heard learned counsel for the parties. It may be noted that between the parties there was a dispute with regard to the parking on the 14th July, 2011 which matter was referred to the Delhi Government Mediation Centre. The parties appeared before the Delhi Government Mediation Centre and the matter was settled on the 23rd July, 2011. However, the

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complainant on 18th July, 2011 gave a written complaint to the Commissioner of Police stating about the dispute on the 14th July with regard to the parking and about the alleged incident on 16th July, 2011 when she had gone to look after the work progress in her flat. It is alleged she saw Seema Bahree throwing something in their courtyard. On seeing it was found to be the excreta of a dog. On the complainant expressing her displeasure on it all the three family members came down to her courtyard and started beating her with fists blows and the Petitioners stated that "Only excreta of the dog has been put, what is the problem for you in cleaning it, you throw it out, this is your work, wherefrom Chure Chamar have come, they do not know". Thereafter, Seema Bahree and her son threatened her.

A perusal of the complaint dated 16th July, 2011 received at P.S. G.T.B. Enclave on 18th July, 2011 shows that the alleged incident took place when the complainant had gone to inspect her flat and allegedly the Petitioners and their mother came to their courtyard. There is no mention of any third person besides the Petitioner, their mother and the complainant at the said time. Thus, on the perusal of this complaint which is the first in time, no public view is made out. Thereafter, the statement of complainant was recorded on the 26th July, 2011 by the Police. In the said statement also

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she reiterated all this, however, she further stated that this incident was witnessed by Smt. Santosh which fact was not stated in the complaint dated 18th July, 2011. Further it is not possible that both the Petitioners would have simultaneously stated these words together as alleged in the complaint.

This Court while issuing notice on the 25th August, 2011 had noted the contention that spot inspection was carried or not. Nothing in this regard has been mentioned in the status report. Though the learned APP orally stated that spot inspection was carried out however it is not clear from the status report whether the courtyard was inside the house or outside to infer about the public view.

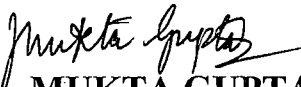
In view of the fact that in the initial complaint no case of public view was made out and thus Section 3(1)(x) of the SC&ST POA Act was not attracted, the anticipatory bail application is maintainable. In view of the facts of the case and also the fact that the dispute of parking was settled between the parties on the 23rd July, 2011 wherein the complainant did not raise any such issue, I am inclined to grant anticipatory bail to the Petitioners.

It is therefore directed that in the event of arrest the Petitioners will be released on bail on their furnishing a personal bond in the sum of Rs.

25,000/- each with one surety each of the like amount subject to the satisfaction of the Arresting Officer/ SHO.

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Both the petitions are disposed of. Order dasti.


MUKTA GUPTA, J

OCTOBER 21, 2011
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