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THE HIGH COURT OF DELHI AT NEW DELHI

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Crl.M.C. No. 3153/2011

Date of Order: 7.12.2011

BHUPENDER SINGH & ORS.

..... Petitioner

Through: Mr. Pradeep Jain, Advocate.

Versus

STATE & ANR.

..... Respondent

Through: Ms. Fizani Husain, APP.

WITH

Crl.M.C. No. 1670/2011

SUSHANT CHANDANA

..... Petitioner

Through: Mr. Rajesh Harnal, Advocate.

Versus

STATE & ANR.

..... Respondent

Through: Ms. Fizani Husain, APP.

AND

Crl.M.C. No. 3123/2011

ANIL MODI

..... Petitioner

Through: Mr. Rajesh Harnal, Advocate.

Versus

STATE & ANR.

..... Respondent

Through: Ms. Fizani Husain, APP.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (Oral)

1. These three petitions are directed against the order dated 30.4.2011 of learned ASJ, Rohini Courts, Delhi.
2. The petitioners are arrayed as accused persons in case FIR No. 172/2011, under Sections 307/34 IPC, P.S. Model Town. They were granted bail by the learned M.M. vide order dated 21.4.2011. The complainant challenged the said order in revision before the learned ASJ, who vide impugned order dated 30.4.2011, cancelled the bail of all the petitioners and thereby set aside the order dated 21st April, 2011 of learned M.M. The petitioners filed bail applications No. 721/2011 and 736/2011 before this court and vide orders dated 24th May, 2011 and 27.5.2011, they were granted anticipatory bail by this court. Subsequently, on 13th September, 2011, they withdrew the said bail applications and as per the liberty granted by this court, they have filed the present petitions.
3. The present FIR was registered on the complaint of Rupesh Chaudhary. Besides the petitioners, the other persons arrayed as accused are Rajinder Singh, Jaspal Singh Aneja and Gurjeet Singh Aneja. All the three of them are on anticipatory bail granted by this court vide order dated 3.6.2011.
4. The allegations are that on 20th April, 2011 at about 9.20 p.m., the complainant had come to his new house D-14A/20, Model Town II with his uncle Ajay and two friends and when they were returning, they found accused Jaspal, Gurjeet, Anil Modi and Rajender Singh alongwith 8-10 persons standing on the corner of the road. On seeing the car of the

complainant, accused Gurjeet took out his pistol and all of them came towards their car. Gurjeet tried to open the door of his car, which he (complainant) locked from inside. Accused Jaspal and Anil Modi came in front of the car and tried to stop it whereupon Ajay, who was driving the car accelerated the speed. On this, all of them exhorted Gurjeet to fire at the complainant. Gurjeet fired twice towards the complainant's direction but they all escaped unhurt. Some one hit their car with something from behind. The complainant alleged that all of them attacked them with the intention to kill them.

5. The petitioners were produced before the learned M.M. on 21st April, 2011. He noticed some lapses on the part of the Investigating Officer i.e. the arrest memo did not find mention of the time and place of arrest of the petitioners, the case diaries had not been prepared, the vehicle in which the complainant had been sitting at the time of incident had not been seized, the investigation was not completed within 24 hours of the arrest of the accused persons and the statement of the witnesses had not been recorded. Taking note of these facts, the learned M.M. released the petitioners on bail on the conditions that they shall not commit the similar offences, they would take part in the investigation as and when required, and further they would not intimidate witnesses or cause the disappearance of evidence and shall not leave the territory of Delhi without informing the concerned SHO.

6. The learned ASJ cancelled the bail orders of the learned M.M. mainly on the ground that the learned M.M. did not have the power to grant bail to

the petitioners in the offence under Section 307 IPC. The learned ASJ was of the view that it was not only that the offence under Section 307 IPC was exclusively triable by the Court of Sessions, but that the accused persons while attempting to commit murder have also caused hurt to the complainant in terms of the definition of “hurt”. He was of the view that as per Section 319 IPC, ‘hurt’ includes bodily pain, disease and infirmity. While recording that there was no bodily pain or disease suffered by the complainant in the incident, he was of the view that the complainant could be said to have suffered infirmity at the hands of the accused persons. Learned ASJ relied upon the case of **Jashanmal Jhamatmal Vs. Brahmanand Sarupanand**, AIR 1944 Sind 19 Page 21, wherein it was upheld as under:

“Infirmity denotes an unsound or unhealthy state of body or mind and clearly a state of temporary mental impairment or hysteria or terror would constitute infirmity, within the meaning of that expression in Section 319 IPC”.

7. The learned ASJ proceeded to observe that when a person has been fired at twice, at the exhortation of the aggressive party, he would certainly be terrorized, shocked and suffer temporary mental impairment and further that the definition of “injury” as given in Section 44 IPC also includes any harm of the mind. He observed that it cannot be said that because there was no physical injury inflicted upon the complainant, no harm can be said to have been caused to him by firing at him. Based on these observations, he opined that the complainant certainly suffered infirmity within the meaning of Section 319 IPC and so it can be said that hurt was caused to him. Based

on this premise, he arrived at a conclusion that the offence committed by the petitioners was punishable either with life imprisonment or imprisonment upto 10 years or fine and so, the M.M. had no jurisdiction to grant bail under Section 437(1)(i) CrPC to the petitioners unless the case falls under any of the provisos. He opined that since there was nothing to bring the case within any of the provisos, the order of bail passed by the learned M.M. was without jurisdiction. Accordingly, he ordered cancellation of bail granted to the petitioners.

8. I have heard learned counsel for the petitioners and also APP for the State and perused the records. The question that arises for consideration here is as to whether in the given facts and circumstances, the M.M. was competent and had jurisdiction to grant bail in an offence under Section 307 IPC which is non-bailable and exclusively triable by the Court of Sessions. The Section under which a Magistrate has the authority to grant bail in such cases is Section 437 CrPC. The relevant part thereof reads thus:

“437. When bail may be taken in case of non-bailable offence.

[(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a court other than the High Court or Court of Session, he may be released on bail, but-

- (i) Such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;*
- (ii) Such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence.”*

9. The last proviso of Sub-Section 1 of Section 437 CrPC is also relevant. It reads thus:

“Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment of life, or imprisonment for seven years or more, be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor”.

10. There is no dispute with regard to the legal proposition that ordinarily a Magistrate does not grant bail in the sessions triable cases which are punishable with imprisonment for life or death penalty unless the matter is covered by any of the provisos under Section 437 CrPC. If the offences are exclusively triable by the Court of Sessions and are not punishable with life imprisonment or death then the M.M. can also grant bail provided the public prosecutor has been given the opportunity of being heard.

11. In the given facts and circumstances, there is also no dispute that the offence allegedly committed was not punishable with death penalty. Therefore, the only question that would remain to be examined is whether the offence allegedly committed by the petitioners was punishable with life imprisonment or with lesser imprisonment.

12. Section 307 IPC makes the offence of attempt to commit murder punishable with life imprisonment upto to 10 years or fine. The latter part of this Section provides that if the hurt is caused to any person by such act, the offender shall be liable either to imprisonment of life or to such punishment as is hereinbefore mentioned. Making a plain and literal interpretation of this provision, it would be seen that in the act of attempt to murder falling

within the first part of Section 307 IPC, the punishment prescribed was imprisonment upto 10 years and fine. However if the hurt was caused in the act of commission of offence of attempt to murder, then the imprisonment could be for life or to 10 years and fine.

13. There is no dispute that if the complaint of the petitioners falls within the first part, then the imprisonment was to be 10 years and fine and Magistrate was competent to grant bail. However, if there was hurt caused to any person by such act, the imprisonment was to be for life or 10 years.

14. The learned ASJ has taken note of the definition of “hurt” as provided in Section 319 IPC which includes bodily pain, disease or infirmity. Admittedly, there being no bodily pain or disease suffered by the complainant in the incident, the question that requires consideration is whether infirmity would also constitute the hurt within the ambit of Section 307 IPC. There is no doubt that bodily pain, disease and infirmity would constitute hurt and is punishable under Section 321 IPC. The question for consideration would be as to whether the type of “hurt” as defined in Section 319 IPC would be enough to bring the case within the ambit of later part of Section 307 IPC. To my mind, this would be importing into Section 307 IPC, an extraneous definition of ‘hurt’. The type of hurt which was described and was to bring the case within the second part of Section 307 IPC and make the offences punishable with life imprisonment was not of the type of hurt which is defined in Section 319 IPC or the injury which is elaborated in Section 44 of IPC. If this was so, then in every case of attempt

to murder, the victim would complain to be in an unhealthy state of body and mind and state of temporarily mental impairment or even hysteria. If it was the intention of legislature to bring into the ambit all kinds of hurt and injury, which included bodily pain, disease, infirmity, impaired status of mind, hysteria, then there was no need to have distinction in the punishment in the first part and second part of the Section 307 IPC. For seeing as to what was the type of hurt which was envisaged in second part of Section 307 IPC, one can see illustration 'C' appended to the said section. The said illustration reads thus:

“(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of] this section”.

15. In the aforesaid illustration, the word “wounds” has been intentionally used to impress upon and clarify the type of hurt that would come within the ambit of second part of Section 307 IPC. It is the hurt that would result in wounds which would be within the ambit of second part of Section 307 IPC. In other words, it is not every type of hurt that is envisaged in Sections 319 IPC or 44 IPC, but only the type of hurt which has resulted in infliction of some physical injury which would bring the case within the purview of second part of Section 307 IPC and make the offence punishable with life imprisonment.

16. By importing the definition of hurt and injury as described in Sections 319 and 44 IPC into the definition of “hurt” covered under Section 307 IPC, the court would be substituting its views with those of the

legislature. The principle of statutory interpretation is well settled. Where the words of the statute are clear and unambiguous, the provision should be given its plain and normal meaning, without adding or rejecting any words. Departure from the literal rule, by making structural changes or substituting words in a clear statutory provision, under the guise of interpretation will pose a great risk as the changes may not be what the legislature intended or desired. Wisdom of legislature cannot be replaced by the views of the judge. Since Section 307 IPC read in the guidance of its illustration does not leave any ambiguity, the plain and normal meaning has to be given to the words used in this section. Further, since there was neither any confusion nor any absurdity or repugnancy, the interpreting tools could not be used to add or omit the words in the statute. If the legislature intended to have full gamut of hurt and injury to be within the ambit of Section 307 IPC, the same would have been so provided and explained through illustration. That was presumably not done because the very act of attempt to murder itself has within its commission, the bodily pain, infirmity, mental disorder, bereavement etc. All such types of hurts were not to be punishable with life imprisonment.

17. In view of the above discussion, I am of the considered view that the offences alleged against the petitioners were of simple attempt to murder which would fall within the first part of Section 307 IPC and the same being punishable with imprisonment upto 10 years was within the competence of M.M. under Section 437(1)(i) CrPC.

18. In view of the above, the order of learned ASJ dated 30.4.2011 is set aside and the petitions are allowed. Consequently, the order of learned M.M. dated 21.4.2011 is restored.

19. Petitions stand disposed of.

**M.L. MEHTA
(JUDGE)**

DECEMBER 07, 2011
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