

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

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Crl.M.C.N0. 2247/2012

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Date of Decision: 7th November, 2012

RASHID

....Petitioner

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Through: Mr. Shailendra Bhardwaj, Advocate

Versus

\$ STATE GOVT. OF NCT OF DELHI & ORS. ..Respondents

**Through: Mr. M.N. Dudeja, APP for the State
Mr. Abdul Salam, Adv. for R-2 & 3**

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

ORDER

P.K.BHASIN, J:

The petitioner is aggrieved by the order dated 29th May, 2012 passed by the learned Additional Sessions Judge whereby anticipatory bail was granted to respondents no. 2 and 3 who are his father-in-law and brother-in-law respectively and who had caused firearm injuries to him on 13th May, 2012. The petitioner-injured has thus filed the present petition under Section 439(2) read with Section 482 of the Code of Criminal Procedure, 1973 for setting aside the said order of the Sessions Court.

2. The learned Sessions Judge granted anticipatory bail to respondents 2 and 3 rejecting the State's opposition on the grounds that the offence of attempt to murder alleged to have been committed by the father-son duo very was grave and the weapon of offence was also to be recovered and for that purpose their custodial interrogation was required. This is how the learned Sessions Judge dealt with the matter while granting anticipatory bail in this matter:-

“Present case FIR was registered on the statement of Rashid. According to this report on 13.05.2012 while Rashid was returning home and at around 11.30 pm reached Seelampur red light point and was getting puncture wheel of his motorbike repaired, Rizwan his brother in law came to him and called him that his father was calling him. Injured accompanied Rizwan and there applicant Nizam was present on a motorbike wearing helmet. Rizwan then also sat on the motorbike and soon Rizwan caught hold of the victim by his collar and told him that they would kill him and applicant then took out a pistol and aimed it on the injured. Injured/victim raised hue and cry and started running and applicant Nizam then fired a shot which hit victim on his left hand and both the accused persons ran away on their motorbike. It is argued from prosecution side that it was a serious offence where gunshot injury has been caused and that has been mentioned in the MLC of the victim. It is argued that recovery of the firearm will be an essential part of the case and custodial interrogation will help in recovery of firearm and recovery of firearm will provide an important circumstance to connect accused with this crime. I have appreciated all these arguments.

MLC of the victim Rashid mentioned that it was a case of gunshot injury but then it is specifically recorded that peripheral blackening was present around the wound which could suggest that the gunshot injury was from a close range. Though it is not a stage to take a critical view of the material but then this observation in the MLC is to be analysed in light of the FIR allegations that the injured/victim had started running while raising hue and cry when gunshot injury was fired and which happened to hit him on his left arm.....

In the given set of facts and circumstances where applicant Rizwan prima facie appears to be below 18 years of age, I find applicants deserves a protection of anticipatory bail order. They are granted anticipatory bail and they will be released on bail on furnishing a bail bond in the sum of Rs. 15,000/- each with one surety by the IO/arresting officer in the event of their arrest. Applicants should join the investigation in accordance with law as and when required by the IO.”

3. It was contended by the learned counsel for the petitioner-injured that the learned Additional Sessions Judge has granted anticipatory bail to the two accused totally ignoring the gravity of the offence on a perverse reasoning. The learned Additional Public Prosecutor also supported the petitioner’s prayer for cancellation of the anticipatory bail granted to the two respondents-accused on the ground that the allegations against them were very serious in nature and the punishment for the offence of attempt to murder could be life imprisonment and also because their custody was required for the recovery of the weapon of offence.

4. On the other hand, the main submission of the learned counsel for the respondents 2 and 3 was that when there is no complaint that they have misused the anticipatory bail granted to them, which could be the only ground for cancellation of their bail after setting aside the impugned order of the Additional Sessions Judge, this petition is liable to be dismissed as being *mala fide* and abuse of the process of the Court.

5. The submission of the learned counsel for the two accused that since they have not misused the relief of anticipatory bail given to them that relief cannot be withdrawn cannot be accepted in view of a recent pronouncement dated 13th May, 2011 of the Apex Court in Criminal Appeal No. 1174-1178 of

2011, “Prakash Kadam etc. Vs Ram Prasad Vishwanath Gupta & Anr.”. It was held in this case by the Apex Court that it is not an absolute rule that once bail is granted to an accused it cannot be cancelled unless there is likelihood of the bail being misused and that in cases of serious offences bail can be cancelled even if the accused has not misused the bail granted to him.

6. Now as far as the merit of this petition is concerned, I find from a reading of the bail order of the the learned Additional Sessions Judge, relevant parts whereof have been extracted already in this order, that anticipatory bail to the accused has been totally ignoring the seriousness of the allegations levelled against them. It has been held in a number of cases by the Supreme Court that gravity of the offence involved in a case is one of the primary factors which should be kept in mind by the Courts while dealing with bail applications. Some those decisions are reported as (2006) 9 Supreme Court Cases 785, (2006) 9 Supreme Court Cases 425, (2005) 8 Supreme Court Cases 21 and (2004) 7 Supreme Court Cases 528. In another case reported as (2001) 6 Supreme Court Cases 338 it was held by the Supreme Court that if bail is granted in a case of heinous offence by the Court by passing a perverse order the bail can be cancelled.

7. In the present case there is no dispute that the petitioner-injured was fired in the incident and he did receive firearm injury. It was his good luck that the injury he received while trying to run away from the spot on seeing the accused taking out pistol and aiming at him was on his hand and so his life was saved. Both the accused were named in the FIR as the culprits. The learned Additional Sessions Judge has given bail to the accused on the ground that the

gunshot injury as per the MLC was 'from a close range' while the petitioner had claimed that he had started running when he was fired. Thus, in that way the learned Judge appears to have doubted the version of the injured. That reasoning is not sustainable at all. The petitioner had simply stated that when he saw one accused aiming the pistol at him he tried to run away and not that he had actually reached at some distance away from the place from where he was shot at. In fact the accused firing at the petitioner, as claimed by him, from a close range, as opined by the learned Judge, showed the real intention of the accused and made the case quite serious and not fit for grant of anticipatory bail to the accused. The learned Judge has also not taken into consideration the fact that the weapon of offence is to be recovered and for that custodial interrogation of the accused would be necessary. Just because one of the accused was a young boy was also no ground to grant anticipatory bail in such a case of serious offence.

8. This petition is accordingly allowed and the anticipatory bail granted to the two accused-respondents is cancelled.

P.K. BHASIN, J

NOVEMBER 7, 2012