

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

% *Reserved on: 16th May, 2013*
Date of Decision: 20th May, 2013

+ BAIL APPLN. 811/2013

MOHD. SHAH ALAM Petitioner
Through: Mr. Chander M. Maini, Advocate.
versus

STATE (GOVT. OF NCT OF DELHI) Respondent
Through: Ms Jasbir Kaur, APP with ASI
Satya Vir, PS Govind Puri.

CORAM:
MR. JUSTICE R.V. EASWAR

JUDGMENT

R.V. EASWAR, J.:

1. This is an application filed by Mohd. Shah Alam under section 438 of Cr.P.C. for grant of anticipatory bail in FIR No.139/2013, P.S. Govind Puri registered under sections 323/ 380/ 448/ 427/ 34 of the Indian Penal Code. The lower court has rejected the bail application by order dated 29.04.2013.

2. The complainant is one Smt. Najma, wife of Mohd. Iqbal, residing in TA-185, Gali No.3, TKD Extension, New Delhi. According to the FIR, she was residing in the above address along with her family for the past 14 years as the tenant. The landlord was one Mohd. Shah Alam. On 05.03.2013, the landlord, his three brothers of which the present applicant is one, and their wives entered the residence of the complainant and started beating her and her

children. They also started throwing the household goods out of the house. These goods were some gold and silver jewellery, some money, documents, bicycle and other household articles such as TV, fridge, bed, gas cylinder, etc. During the incident the husband of the complainant was not present in the house as he had gone to the mosque for prayers. After throwing away the goods Mohd. Shah Alam locked the doors. On these facts, the complainant wanted action to be taken against the landlord, his brothers and their wives and also wanted to get herself medically examined.

3. The police registered the FIR and sent an ASI for on the spot investigation. The complainant and her children were sent for medical check up.

4. On coming to know of the registration of the FIR against him, the present applicant preferred an application for anticipatory bail before the Sessions Court which was declined. The argument put forward before the Sessions Court on behalf of the applicant was that there was no allegation in the complaint that the applicant and the other accused had taken away any of the articles. The Sessions Court, however, rejected the application. Bail was granted to the brothers of the present applicant by the Sessions Court on furnishing a personal bond for ₹20,000/- with one surety of like amount to the satisfaction of the SHO concerned. It was made clear that the IO can apply

for search warrants, if required and the accused can also be made to participate in the TIP even if on bail. The second bail application of the present applicant was also rejected by the Sessions Court by order dated 29.04.2013.

5. It is contended on behalf of the applicant that this is not a case where any articles are to be recovered since they have not been taken away by the applicant but were only thrown out of the house, even as per the complaint. Moreover, it was pointed out that the tenant had been issued with a legal notice under section 106 of the Transfer of Property Act on 20.09.2012 and irked by this the tenant is making false allegations against the applicant. It is also pointed out that the wife of the applicant had filed FIR No.140/2013 on 06.03.2013 against an advocate by name Iqbal, who was present in the tenant's place where Sonam (wife of the applicant) had gone along with her brothers-in-law and sisters-in-law. According to the complaint of Sonam, the said advocate told her and the persons accompanying her that he would himself throw all the articles out of the room and call the police to tell them that it was the landlord and his brothers and their wives who had done it. The advocate also tore Sonam's *burqa*. There was also some violence against her. The contention before me is that the complaint against the applicant is false and arises out of the legal notice issued by the applicant in his capacity as landlord of the property occupied by the tenant.

6. The learned Additional Public Prosecutor opposes the bail application.

7. On a careful consideration of the matter, I get the impression that this case has a predominantly civil flavour and it appears to me that the root cause is the legal notice issued by the applicant as landlord of the property occupied by the complainant. There is no allegation in the complaint that the applicant has removed the goods from the house of the tenant. The brothers of the applicant namely Mohd. Alam and Mohd. Akram had been granted bail by the Sessions Court by order dated 22.04.2013. The Sessions Court has observed that the IO can apply for search warrants if he wants to take search of the house of Mohd. Alam and Mohd. Akram. Taking note of these facts, I direct that in the event of his arrest, the applicant be released on bail on his furnishing a personal bond in the sum of ₹25,000/- with one surety in a like amount, to the satisfaction of the IO/ SHO concerned. There is no bar on the IO to apply for search warrants of the house of applicant herein, if he wishes to do so. There is also no bar on the TIP of the accused. Anticipatory bail is granted subject to the aforesaid conditions.

8. The application is disposed of as above.

(R.V. EASWAR)
JUDGE

MAY 20, 2013
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