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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 18th November, 2014

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BAIL APPLN. 2333/2014

VARUN SRIVASTAVA

..... Petitioner

Through: Mr. Avinash Trivedi, Advocate
versus

STATE & ANR.

..... Respondent

Through: Mr. Sunil Sharma, Additional Public
Prosecutor for the State along with SI
Narsingh, PS Aman Vihar
Mr. Rishikesh Kumar and Ms. Neha
Pratap, Advocates for complainant

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BAIL APPLN. 2455/2013

RAJAN PRAKASH

..... Petitioner

Through: Mr. Rishikesh Kumar, Advocate

versus

STATE

..... Respondent

Through: Mr. Sunil Sharma, Additional Public
Prosecutor for the State along with SI
Narsingh, PS Aman Vihar
Mr. Rishikesh Kumar and Ms. Neha
Pratap, Advocates for complainant

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Vide this common order, I shall dispose of two applications bearing bail application No.2333/2014 and 2455/2013 filed by Varun Srivastava and Rajan Prakash respectively seeking anticipatory bail in case FIR No.614/2013 u/s 186/353/332/506/308 r/w S.34 IPC

registered with PS Aman Vihar.

2. It is submitted by Sh. Avinash Trivedi, Advocate for the petitioner-Varun Srivastava that the applicant is a retired Captain of Indian Army and is recently working as volunteer of Aam Admi Party (AAP). In the recent Assembly Election of 2013 in Delhi on the date of the voting at about 5:30 p.m. the accused received the information that bogus voting is going on. He reached the spot and tried to pacify the situation but was manhandled by the SHO and other police officials and was apprehended and taken to Police Station where a Kalandra u/s 107/151 Cr.P.C. was made against him. He remained in custody and was granted bail by Special Executive Magistrate on next day at about 5:30 PM. On the same day, one FIR was registered on the allegation of assaulting and causing an injury to a police constable. The content of FIR and the Kalandra refers to the same incident. The FIR is an afterthought and is designed to implicate the petitioner. Earlier the bail application was moved wherein interim protection was granted to the petitioner and he had joined investigation. However, due to wrong noting of the date, the application was dismissed. After seeking liberty to file fresh application, the present application has been filed. The applicant has

no criminal antecedents. He is ready to join investigation. As such, he be released on bail.

3. On behalf of accused Rajesh, it was submitted by Mr. Rishi Kumar, Advocate that the name of this applicant does not appear in the Kalandra. For the first time, his name appeared in the FIR. Interim protection was granted to the petitioner who had joined the investigation. Witnesses are police officials, therefore, there is no chance of influencing them. Antecedents of the petitioner are clean. The injured was discharged from the hospital and as per the MLC, only simple injuries were sustained by him. As such, the application be allowed granting the relief of anticipatory bail.

4. The application is opposed by the learned Additional Public Prosecutor for the State on the ground that on 4th December, 2013, D.D.No. 41B was recorded on receipt of a PCR call regarding forged voting at Pratap Memorial Public School, Kirari Suleman Nagar which was entrusted to Head Constable Narender who reached the spot. Subsequently, another D.D.No.45B was recorded regarding raising of slogan by 200 to 250 persons outside the school which was entrusted to ASI Pradeep Kumar who also reached the spot. The senior officers comprising of ACP Sultan Puri and SHO Aman Vihar

were also present at the spot. Inquiry revealed that there was a quarrel between the two parties regarding bogus voting. Two persons Ashu and Mahender were asked by the SHO, Aman Vihar to accompany him to the police station to enquire into the matter and when they were going to Police Station Aman Vihar, some persons claiming to be Aam Admi Party members tried to stop government vehicle then the senior officers tried to remove them. During this period, some persons of Aam Admi Party started creating problems in maintaining the law and order. As such, Varun, Ashu and Mahender Singh were arrested under Section 107/151 Cr. P.C. They did not heed to the warning of the police especially as the voting machines were to be transported to the scheduled place and the safety of voting machines was a big concern and there was immediate apprehension of breach of public peace and commission of serious cognizable offence. During this period, Constable Nawab Ali was found lying in unconscious state with serious head injuries and he was immediately sent to SGM Hospital for treatment. He was unable to give statement. On 5th December, 2013, statement of Constable Nawab Ali was recorded wherein he stated that Varun and Pradeep scuffled with him. While he was trying to get himself freed, Rajan told his associates to set on

fire the vehicle and, as such, he immediately moved forward to stop them and then Rajan Prakash twisted his arm and Varun Srivastava hit him on his head with a brick from front side. He started bleeding and fell down. All these persons left the scene after giving threat to police and thinking that he was dead.

5. It was further submitted by learned APP for the State that there is no contradiction in the action taken by the police under Section 107/151 Cr.P.C. and the FIR. Action under Section 107/251 Cr.P.C. was taken for maintaining public peace and tranquillity and for prevention of occurrence of any cognizable offence whereas the FIR was registered on the basis of obstructing the police officials in discharging their duties and causing injuries to Constable Nawab Ali. The allegations are serious. As such, the applicant is not entitled to be released on bail. It was further submitted that one Pradeep is also required to be interrogated. However, his address is not available. Custodial interrogation of the accused is required in order to arrest Pradeep. Furthermore, brick is required to be recovered at the instance of accused Varun Srivastava.

6. It is not in dispute that when bail applications were filed by the petitioners, interim protection was granted to them and it is not in

dispute that they have joined investigation. The injured was discharged from the hospital and the injuries are opined to be simple. It is submitted that custodial interrogation of the petitioners is required in order to ascertain whereabouts of Pradeep and recovery of brick used by Varun Srivastava is to be affected. So far as Pradeep is concerned, it is submitted by the counsels for the petitioners that in the petition for quashing of the FIR, Pradeep has joined the petitioner and has mentioned his address. Therefore, the address is available to the police authorities. It was submitted by the learned Additional Public Prosecutor for the State under instructions from the Investigating Officer that on the address given in the petition, Pradeep is not available. Counsels for the petitioners submit that they do not have any other address of Pradeep.

7. Under the circumstances, keeping in view the totality of the facts and circumstances of the case, it is ordered that in the event of arrest:-

- (i) The petitioners be admitted to bail on their executing personal bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand only) each with one surety in the like amount to the satisfaction of the concerned I.O./SHO.

- (ii) They shall join investigation as and when called for by the I.O.
- (iii) They shall furnish their address as well as their contact number to the Investigating Officer.
- (iv) They shall not threaten or coerce complainant or any prosecution witness.

The application is accordingly disposed of. Copy of this order be given ***dasti*** under the signature of Court Master.

(SUNITA GUPTA)
JUDGE

NOVEMBER 18, 2014
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