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

Judgment delivered on: 8th January, 2016

+ BAIL APPLN. 42/2016

DHEERAJ KUMAR TOKAS

..... Petitioner

Represented by: Mr. S.P. Kaushal,
Mr. Dhananjai Kaushal and Mr. Rohit
Kumar, Advs.

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Represented by: Mr. Shailendra Babbar,
SPP for State with Mr. Joginder Sukhija and
Mr. Tarun Khanna, Advs.
Mr. Hirein Sharma, APP for State with
Inspr. /Investigating Officer Vijay Pal and
SI Harbir Singh, PS-R.K. Puram.
Mr. Kishan Naitiyal and Mr. Neeraj, Advs.
for R2.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl. M.A. 280/2016 (for exemptions)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

+ **BAIL APPLN. 42/2016**

1. By way of the present petition, filed under Section 438 Cr.P.C., petitioner seeks anticipatory bail in case FIR no. 1009/2015, registered at PS-R.K. Puram of the offences punishable under Sections 353/332/186/34 IPC.

2. Ld. Counsel appearing on behalf of the petitioner submits that aforesaid case was registered on the complaint of Sh. Gyani Ram, Executive Engineer, who stated therein that on 15.12.2015 during 12 noon to 2.30 PM he was peacefully carrying out the work of removal of Jhuggi in the presence of Delhi Police and Govt. Officer and employees. At that time, Smt. Promila Tokas, Member of the Legislative Assembly of AAP Party along with her husband (petitioner herein) and other workers reached there and provoked the owners of the jhuggis and created obstruction in the process. Thereafter, their workers encircled him and ordered the women workers to beat him. Resultantly, the women present there along with other workers fought with him, misbehaved him and abused him; however, he remained fully silent. Thereafter, telephonic information regarding the incident was given to other officers and Sh. M.K. Khatri, Superintending Engineer also reached over the spot. Meanwhile, other police personnel also reached there and saved him.

3. Ld. Counsel appearing on behalf of the petitioner submits that petitioner was not present at the time of the incident as recorded in the FIR that incident occurred from 11 to 11.30 AM. At that time he was in the Dwarka Courts and an order to this effect is also a part of the petition.

4. He further submits that wife of the petitioner earlier made two complaints dated 04.08.2015 and 27.11.2015 respectively against the complainant and other officials for not doing the proper work in her

Constituency and the present FIR is a vendetta against the said complaints.

5. Ld. Counsel submits that petitioner has not uttered even a single word regarding the caste of the complainant, however, the Police deliberately has added Section 3 of SC/ST of Prevention of Atrocities Act, 1989 later on just to make the offence mentioned above against the petitioner. He further submits that the present case was registered against the petitioner and his wife, however, his wife has already been released on bail vide order dated 22.12.2015 and by that time, offence under Section 3 of the aforesaid Act was not added. However, after 22.12.2015, Police has further added the said Section against the petitioner so that he may not get interim protection or anticipatory bail as is barred under Section 18 of the said Act. Moreover, there was no reference of recording any supplementary statement or complaint received from the complainant and thus the addition of the provision of Section 3 of SC/ ST Prevention of Atrocities Act, 1989 in connivance of the Delhi Police later on is a misuse of process of law against the petitioner.

6. On the other hand, ld. APP appearing on behalf of the State submits that complainant with other officials reached to the place of occurrence for demolition of unauthorized construction and they partly demolished the same. Meanwhile, wife of the petitioner Smt. Promila Tokas, member of Legislative Assembly of AAP Party of the R.K. Puram Constituency along with petitioner reached over the spot and created hindrance in the public function and assaulted the

complainant and other officials with their associates. The incident has been recorded in a Mobile and a CD thereto has been prepared. He further submits that the aforesaid FIR was registered on 15.12.2015 immediately after the incident. Thereafter, the complainant made a supplementary complaint on 17.12.2015 just two days after the incident as he could not give the full contents of the complaint as he was perplexed on that day. He stated in the supplementary complaint that petitioner and his wife Smt. Promila Tokas with their associates created hindrance in the public function and instructed their associates and jhuggi owners to assault him. Thereafter, some women were also participated in the incident and the petitioner abused him with the words "*chure chamar*" and further stated "*is chure chamar ki naukri kha jaunga*". He further stated that "*I will see how he will work in the area of R.K. Puram*". Accordingly, Section 3 of the SC / ST Prevention of Atrocities Act was added against the petitioner in the present case.

7. Ld. APP further submits that the petitioner is a habitual offender and besides the present case following cases were also registered against him:

- (i) FIR No. 1016/2015 at PS-R.K. Puram for the offences punishable under Sections 451/509/506/34 IPC on the complaint made by Smt. Geeta, wife of Bhagat Singh resident of R.K. Puram, New Delhi.
Section 3 of SC/ST Prevention of Atrocities Act, 1989 was also added later on.
- (ii) FIR No. 968/2014 at PS-Vasant Vihar for the offences punishable under Sections 341/509/34 IPC and Section 3

of SC/ST Prevention of Atrocities Act, 1989, wherein one lady Ms. Meena resident of Munirka Village, New Delhi was the complainant.

- (iii) FIR No. 721/2015 at PS-Vasant Vihar for the offences punishable under Sections 323/341/506/34 IPC on the complaint of Mr. Narender Singh Tokas resident of Munirka Village, New Delhi.
- (iv) FIR No. 723/2015 at PS-Vasant Vihar offences punishable under Sections 336 IPC and Section 25 and 27 of Arms Act on the complaint of Sanjay Tokas, resident of Munirka, New Delhi.

8. Ld. APP further submits that Section 18 of SC / ST Prevention of Atrocities Act, 1989 creates a bar for invoking Section 438 of Cr.P.C. The said issue has been decided by the Supreme Court of India in case of ***Vilas Pandurang Pawar and Anr. v. State of Maharashtra and Ors.*** in Special Leave Leave Petition (Crl.) No. 6432 of 2012 whereby Hon'ble Supreme Court held that the accused is not entitled to anticipatory bail under Section 438 Cr.P.C., if nature of averments are such in the complaint.

9. On this aspect, ld. Counsel for the petitioner has relied upon a case of ***Pooja Jha and Anr. v. State*** decided by the coordinate Bench of this Court in the bail application no. 1616/2013 on 10.09.2013 and submits that there were no specific averments in the complaint initially made by the complainant. Even otherwise there is no bar under Section 18 of SC/ST Prevention of Atrocities Act, 1989. Thus, the petitioner is entitled for bail.

10. The case of the petitioner is that he was not present at the time of incident on 15.12.2015 and was in the Dwarka Court. For the satisfaction, the CD provided by the prosecution has been played today in the Court and the presence of the petitioner is very much there. He is seen very actively participated in the incident in question and his associates and jhuggi owners abused and manhandled the complainant. The police initially registered a case under Section 353/332/186/354 IPC against the petitioner regarding the incident. However, after recording of the statement of the complainant Section 3 of SC/ ST Prevention of Atrocities Act, 1989 was also added. Thus, it cannot be denied that petitioner was not present at the spot and not actively participated in the incident and created hindrance in the public function. Moreover, in addition to the present case, the petitioner is involved in four other cases. Thus, he is a habitual offender and does not deserve any leniency.

11. Keeping in view the involvement and active participation of the petitioner in the incident in question, I am not inclined to allow the present petition.

12. Accordingly, the petitioner is directed to surrender himself before the police and join investigation.

13. Consequently, the petition is dismissed.

SURESH KAIT, J

JANUARY 08, 2016/jg