

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ BAIL APPLN. 273/2016 & CrI. MAs 2043/2016 & CrI. MA 5185/2016

IRFAN JAVED QURESHI

..... Petitioner

Through Mr Prashant Bhushan and Mr Rohit
Kumar Singh, Advs.

versus

STATE (NATIONAL CAPITAL TERRITORY OF DELHI)

..... Respondent

Through Mr Ashok Kumar Garg, Additional
Public Prosecutor for the State alongwith
Sub Inspector Prakash Police Station
Sadar Bazar, Delhi
Mr Waseem Ahmad, Adv. for the
complainant

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

% 08.04.2016

Vide this application under Section 439 of Cr.PC, the petitioner seeks regular bail in case FIR No. 745/2015 under Sections 452/354B/323/506/34 IPC registered at Police Station Sadar Bazar, Delhi.

The FIR in the instant case was registered on the basis of a complaint made by prosecutrix 'A' wherein she alleged that on 08.12.2015 at around 8:45 pm while she was inside her house alongwith her relatives, her son Aslam came inside and told that the petitioner – Irfan Javed Qureshi and his son Javed had quarrelled with him in the street. Suddenly, Irfan Javed Qureshi and his son Hasir Javed entered into her room and started thrashing her son Aslam. Irfan Javed caught hold of her and hit on her chest and also torn her *kutra*. Hasir Javed also caught her suit (kurta) and torn it into pieces. Both of them also kicked and punched her and when her son Aslam and grandson-in-law tried to save her, Hasir hit with an iron pipe on her nose. On hearing noise, neighbours and other persons gathered in the street. Thereafter accused Irfan and his son Hasir Javed left her

room intimidating to kill her. Thereafter wife, daughters and the elder son of Irfan Javed came in the street and started abusing and threatening the complainant. On the basis of this complaint, the aforesaid FIR was registered.

It is submitted by learned counsel for the petitioner that the petitioner is a social worker, an RTI activist and a PIL petitioner. As an RTI activist, he has filed hundreds of RTI applications regarding the illegal construction and land grabbing in the area of Sadar Bazar, Delhi. He filed CWP/PIL No.6058/2015 seeking demolition of an illegal construction in Sadar Bazar which was disposed of by an order dated 24.05.2015 in his favour. Because of activism against land grabbing and illegal construction he has been implicated in many false cases. He has been threatened by the builder mafia as such he has written an application to SHO Police Station Sadar Bazar, Delhi on 26.06.2015 apprehending violence to his family and property and requested protection for his family. Counsel further submits that attempts have been made to falsely implicate the petitioner in various other cases which is reflected from the following instances:

- (i) FIR No.326/93 Police Station Sadar Bazar under Sections 147/353 read with Section 149 IPC was registered against the applicant and he was discharged by the learned Additional Sessions Judge in revision petition No.27A/03 by an order dated 31.07.2004.
- (ii) On 30.09.1995, an FIR No.309/1995 Police Station Sadar Bazar was registered under Sections 323/506/452/354/34 IPC against the applicant and two other persons by one Khursida Begum with allegations nearly identical to those in FIR No.745/2015 registered by the present complainant – Ashida. By an order dated 07.07.2004 of the learned Metropolitan Magistrate, he was acquitted noting that Khurshida Begum stated that FIR No.309/1995 was registered by her at the behest of SHO, Police Station Sadar Bazar, Delhi.
- (iii) On 17.08.2004, the complainant of this case also filed a complaint in Police Station Sadar Bazar wherein FIR No. 336/2004 was registered under Sections 323/341/354/506/34 IPC. The case is still pending in the Court of learned Metropolitan Magistrate. The applicant also filed an FIR regarding the same incident in which the complainant and her husband were declared proclaimed offenders after which the complainant in the

present case was arrested and remained in custody for seven months.

- (iv) Non-bailable warrants were issued by Additional Chief Judicial Magistrate, Bahraich, U.P. on 14.12.2004 under Sections 363/366/376 IPC. The applicant was arrested on 07.01.2005 by SHO Police Station Sadar Bazar, Delhi and was produced before learned Chief Metropolitan Magistrate whereupon he was sent to jail. Subsequently, ACJM, Bahraich wrote a letter to SHO Police Station Sadar Bazar stating the no such case was pending before him and he had not issued or signed any such non-bailable warrants. Thereupon CMM ordered for unconditional release of the applicant and Special Cell SHO was also directed to investigate the fabrication and forgery of the non-bailable warrant.
- (v) On 26.03.2008, FIR No.83/2008 Police Station Sadar Bazar, Delhi was registered under Section 498A/506/323/174A of IPC which was subsequently quashed by this Court vide order dated 15.04.2009.
- (vi) FIR No. 379/2015 Police Station Sadar Bazar, Delhi under Sections 385/452/506/34 IPC was registered on 08.07.2015 against the applicant and his son which was lodged by the complainant Daljit Singh Kalra, S/o Sukhbir Singh Kalra against which CWP/PIL No.6058/2015 was filed regarding illegal construction activities.

It is submitted by counsel for the petitioner that as per the present FIR, it is alleged that the petitioner and his son got into a fight with the complainant's son and thereafter they forcibly entered into the complainant's house and assaulted her. The contents of this FIR are clearly false and fabricated which is reflected from the fact that on the same day FIR No.746/2015 was filed by wife of the applicant against the complainant and her other relatives. The applicant's wife and elder daughter sustained serious injuries. It is further submitted that custodial interrogation of the petitioner is not required as charge-sheet has already been filed. The petitioner is in custody since 17.12.2015 as such he be released on bail.

The application is contested by counsel for the complainant on the ground that the petitioner is a habitual offender for the last many years, He is causing undue harassment for extorting money by making false complaints. The complainant has been twice victimized by the petitioner – firstly on 17.08.2004 and during pendency of this

case on 08.12.2015 again outraged her modesty resulting in registration of the present FIR. The sole reason of sexual and physical attack on the complainant and her son was because of the prosecution case was being deposed by the complainant and other prosecution witnesses. Reference was made to the several FIRs registered against the petitioner. Counsel further submits that on the same day on which the Metropolitan Magistrate dismissed the bail application of the petitioner in the present case, his sons who are also accused in this case threatened the complainant at her house for which complainant made a written complaint in Police Station Sadar Bazar dated 22.12.2015. In FIR No. 337/2004 under Sections 451/506/34 IPC Police Station Sadar Bazar remaining accused, other than the complainant, were discharged by the Magisterial Court and the discharged persons instituted a civil suit seeking damages for malicious prosecution titled as "*Sher Ali & Ors. v. Irfan Javed and Anr.*" and the said suit was decreed. Counsel further submits that the acts of the petitioner are not confined to making false complaints but he also harassed Judicial Officers and disturbed the Court proceedings and threatened the staff members. In this regard order sheets dated 29.10.2011, 11.01.2012, 07.03.2014 and 29.06.2015 were placed on record for showing that the petitioner obstructed the Court proceedings. Copies of numbers of complaints filed by the people of the locality has also been placed on record for showing that he has been causing much trouble in the society. He is also threatening the complainant and prosecution witnesses from deposing in the Court. As such if the petitioner is enlarged on bail that will be detrimental to the interest of the complainant and the society.

The application is also opposed by learned Additional Public Prosecutor for the State on the ground that the allegations against the petitioner are serious in nature. He is involved in other cases and two cases are of similar nature. His sons - Hasir Javed and Adnan Javed are still absconding and evading arrest. The efforts are being made to arrest them in the case.

Needless to say, the allegations against the petitioner are serious in nature. The complainant as well as the petitioner are residing in the same locality. Earlier also on the complaint filed by the present complainant in the year 2004, FIR No.336/2004 under Sections 323/341/354/506/34 IPC was registered which is still pending. During pendency of that FIR, the present FIR on substantially similar allegations has been registered against the petitioner. So far even the charge has not been framed. The complainant and

other material witnesses will have to be examined. It is the case of the complainant that the complainant and her family members are being coerced to settle the matter with the result a written complaint dated 21.12.2015 was filed before Police Station Sadar Bazar, Delhi. That being the position, since the complainant is yet to be examined, possibility of tampering with the evidence cannot be ruled out. Moreover, the conduct of the petitioner even in Court proceedings is not above board which is reflected from the various order-sheets placed on record by counsel for the complainant.

As such, at this stage, I do not deem it appropriate to release the petitioner on bail. The bail application is accordingly dismissed.

It is, however, clarified that while making the aforesaid observations, I have not expressed any opinion on the merits of the case.

Pending applications also stand disposed of.

Dasti.

SUNITA GUPTA, J

APRIL 08, 2016/*rd*