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

+ **BAIL APPLN. 664/2016**

SANJEEV SEJWAL @ SANJU

..... Petitioner

Through: **Mr.S.P.Kaushal, Mr.Amit Anand &
Mr.Dhananjay Kauhal, Advocates**

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through: **Ms.Kusum Dhalla, APP for the State
with Inspector Upender Singh PS
Mehrauli**

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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01.04.2016

1. By way of this application under Section 438 Cr.P.C., petitioner is seeking anticipatory bail in case FIR no.3298/2015 under Section 307/34 IPC, PS Mehrauli, Delhi.
2. Notice of the application has been issued to the State and status report has been filed.
3. Heard.
4. Briefly stating the petitioner is a witness in case FIR No. 189/2014 under Section 302/307/34 IPC and Sections 25/27 of the Arms Act which was registered in respect of double murder i.e. murder of Sandeep Sejwal and Paramjeet Sehrawat in the office of the petitioner. One of the accused in FIR No. 189/14 is Rakesh Kumar Malik S/o Satbir Singh, who was arrested on 11th March, 2014. While in custody in, he sent a complaint dated 19th

December, 2014 to the Commissioner of Police with copy to DCP and SHO, Hauz Khas, South District requesting for registration of case against Manjeet Sehrawat, Abhisek Narayan @ William, Ashok @ Kale, Sanjeev Sejwal @ Sanju, Dinesh Sejwal @ Monu and their associates for their attempt to kill him.

5. This anticipatory bail application has been filed by Sanjeev Sejwal @ Sanju. In the said complaint he also stated that he was assured by the local police that action would be taken in respect of the assault made on him but when he came to know that no action has been taken against the offender who attempted to kill him, he filed a complaint case being CC No.40/2/2015.

6. Charge-sheet in case FIR No. 189/2014 has already been filed on 8th May, 2014.

7. Pursuant to the direction given by learned Metropolitan Magistrate in exercise of power under Section 156(3) Cr.P.C. in CC No.40/2/2015, FIR No. 3298/2015 was registered and the petitioner herein, Sanjeev Sejwal @ Sanju applied for anticipatory bail before learned District & Sessions Judge, South District, Saket Court.

8. The bail applications Nos. 86/2016 & 6132/2015 were filed by Dinesh Sejwal @ Monu & Sanjeev Sejwal @ Sanju. Initially direction was given by learned Sessions Judge, South District, Saket to the petitioner to join the investigation which he complied with. Later after considering the submissions, learned Sessions Judge, South District, Saket dismissed both the applications.

9. Aggrieved by the order of dismissal of his anticipatory bail application, the petitioner Sanjeev Sejwal @ Sanju has approached this Court praying for grant of anticipatory bail.

10. It is informed by learned APP for the State that the application seeking anticipatory bail by co-accused Dinesh Sejwal @ Monu is listed for 27th April, 2016 for hearing. Learned APP for the State made a request that both the applications may be heard on the same date. However, Mr.S.P.Kaushal, learned counsel for the petitioner insisted that either the protection be granted to the petitioner against arrest or his application may be heard and disposed of. In the above circumstances, the application has been heard today.

11. Mr.S.P.Kaushal, learned counsel for the petitioner has submitted that it is a strange case wherein the star witness of case FIR No. 189/2014 registered at PS Mehrauli has been made an accused. Learned counsel for the petitioner has further submitted that the petitioner has never abused his liberty when interim protection was granted by learned ASJ and has joined the investigation. The complainant in this case i.e. Rakesh Kumar Malik is accused in case FIR No.189/2014 wherein this petitioner is a witness. This complaint has been filed to pressurize the witness in a double murder case wherein the incident has happened in the office of the petitioner.

12. Learned counsel for the petitioner has submitted that investigation in case FIR No.189/2014 is already complete and charge-sheet has been filed. detailed statement u/s 161 Cr.P.C. of the petitioner has been recorded in that case as well the disclosure statement made by Rakesh Kumar Malik who is accused in FIR No.189/2014 and complainant in FIR No.3298/2015 PS Mehrauli.

13. Learned counsel for the petitioner has repeatedly tried to refer to the disclosure statement made by complainant Rakesh Kumar Malik in FIR No. 189/2014, however keeping in view the limited extent of admissibility of the disclosure statement, Mr.S.P.Kaushal, Advocate was informed not to refer to

the disclosure statement recorded by the police in case FIR No. 189/2014 wherein complainant Rakesh Kumar Malik has been named as an accused.

14. Mr.S.P.Kaushal, learned counsel for the petitioner has further submitted that as per the status report the petitioner Sanjeev Sejwal @ Sanju is having licensed weapon of .32” revolver whereas the statement of the complainant Rakesh Kumar Malik is that he was hit with a ‘*katta*’. The hand wash of the petitioner has also been taken and sent to FSL but nothing incriminating surfaced against the petitioner. The petitioner had not used any fire arm and the alleged injuries caused by the splinters cannot be attributed to him. Mr. S.P.Kaushal, learned counsel for the petitioner has also submitted that the version given by the complainant in his complaint that he was a passerby when he saw the incident in the office of the petitioner is improbable. The inordinate delay of about 10 months in making the complaint to the police and delay of two years in registration of FIR shows that the purpose behind filing this FIR is to destabilize the case of the prosecution in FIR No. 189/2014. The allegations made in the complaint/FIR No.3298/2015 by Rakesh Kumar Malik are concocted and an afterthought. It has been urged that custodial interrogation of the petitioner is not required and there is no apprehension of his fleeing from justice, he is ready to abide by any condition imposed hence he may be enlarged on anticipatory bail.

15. On behalf of the State, prayer for release on anticipatory bail has been strongly opposed contending that during investigation of case FIR No.189/14 PS Mehrauli the petitioner Sanjeev Sejwal @ Sanju has concealed the material fact of he possessing an Arms License as well a licensed weapon. It has been further submitted that Rakesh Kumar Malik, the complainant in this case was admitted in Saket City Hospital, Saket after

the incident on 7th February, 2014. On his MLC No.328 alleged history was recorded as “Physical assault gunshot (Ballistic Injury) at Neb Sarai Freedom Fighter Colony around 6.30 PM. Patient had some argument with some known persons and was hit by a rod on his head. Patient also received many pellets on right side of chest, right thigh etc.”

16. It has been further submitted that opinion on the MLC of Rakesh Kumar Malik has been obtained and injuries have been opined to be dangerous. It is also submitted that due to delay in taking the hand wash sample the result could not be positive.

17. Learned APP for the State has further submitted that accusations against the petitioner are of firing towards complainant Rakesh Kumar Malik. Further, petitioner was having Arms license No.4400/NH/NEW from Nagaland, and purchased 35 Bullet on 21st January, 2014, 50 Bullets on 22nd January, 2014 from Choudhary Gun House, Hapur, Meerut, U.P. and purchased the revolver No.43574 from Gun Factory, Kanpur. He did not tell about the weapon to police. At the time of investigation he concealed these facts. During the course of inquiry of the above complaint, it was found that an arms license No.4400/NH/NEW was issued in the name of Sanjeev Sejwal S/o Dharamvir from Deemapur Nagaland. The said license has been cancelled w.e.f.29.4.2015. Verification about the cartridges purchased by Sanjeev Sejwal on his license has also been made from Choudhary & Sons, Meerut U.P. wherefrom the owner of said gun house informed that no cartridges were purchased by above named persons Sanjeev Sejwal from them. On further verification, it was revealed that Sanjiv Sejwal @ Sanju had purchased 35 cartridges on 21.1.2014, and 50 cartridges on 22.1.2014 against his license from Choudhary Store Arms & Ammunition dealer, Garh, Delhi Road, Hapur, U.P. During the inquiry it was also confirmed that

the accused Sanjiv Sejwal @ Sanju had indeed purchased a Revolver No.43674 on 24.12.2012 from Gun Factory, Kanpur, U.P. But he had concealed this fact during the investigation of case FIR No.189/14 dated 8.02.14 u/s 302/307/34 IPC & 25/27/54/59 Arms Act Police Station Mehrauli. Later on, he had also filed an application before DLSA for providing security but he concealed the fact of possessing a licensed weapon.

18. Learned APP for the State has also submitted that during interrogation the petitioner has stated that he has destroyed the licensed weapon by throwing the same in Yamuna river. Efforts to recover the weapon from river Yamuna with the help of divers and magnet could not succeed and later on the petitioner disclosed that he had dismantled the weapon before throwing it in Yamuna river. He also failed to account for the bullets purchased by him. In view of the nature and gravity of the offence prayer for release on anticipatory bail has been opposed as custodial interrogation of the petitioner is required.

19. Before dealing with the rival contentions, it is necessary to refer the various judicial pronouncements laying down the principles to be considered while granting anticipatory bail.

20. In *Jai Prakash Singh Vs. State of Bihar*, AIR 2012 SC 1676, the order granting anticipatory bail by the High Court in a murder case was challenged before the Hon'ble Supreme Court inter alia on the ground that anticipatory bail has been granted without considering the gravity of the offence and the manner in which it has been committed. Relying on the observations made in *Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors.*, AIR 2011 SC 312, it was submitted on behalf of the Respondent that unless the custodial interrogation is warranted, non

grant of anticipatory bail amounts to denial of rights conferred upon a citizen under Article 21 of the Constitution of India. While rejecting the contentions raised on behalf of the respondent, in para No.17 & 18, it observed:

“17. This Court in Siddharam Satlingappa Mhetre (supra) after considering the earlier judgments of this Court laid down certain factors and parameters to be considered while considering application for anticipatory bail:

“122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
- iii. The possibility of the applicant to flee from justice;*
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.*
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.*
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.*
- vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over-implication in the cases is a matter of common knowledge and concern;*
- viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*
- ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
- x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be*

considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

123. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case.

124. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.”

18. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefore. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. (See: D.K. Ganesh Babu v. P.T. Manokaran & Ors., (2007) 4 SCC 434; State of Maharashtra & Anr. v. Mohd. Sajid Husain Mohd. S. Husain & Ors., (2008) 1 SCC 213; and Union of India v. Padam Narain Aggarwal & Ors., (2008) 13 SCC 305).

21. In the case reported as ***Adri Dharan Das Vs. State of West Bengal*** 2005 III AD (SC) 73, the Apex Court has laid down the guidelines for considering the prayer for release on anticipatory bail. In para 7 of the report it was held as under:-

“7. The facility which Section 438 of the Code gives is generally referred to as 'anticipatory bail'. This expression which was used by the Law Commission in its 41st Report is neither used in the section nor in its marginal note. But the expression "anticipatory bail" is a convenient mode of indication that it is possible to apply for bail in anticipation of arrest. Any order of bail can be effective only from the time of arrest of the accused. Wharton's Law Lexicon explains 'bail' as 'to set at liberty a person arrested or imprisoned, on security being taken for his appearance.' Thus bail is basically release from restraint, more particularly the custody of Police. The

distinction between an ordinary order of bail and an order under Section 438 of the Code is that whereas the former is granted after arrest, and therefore means release from custody of the Police, the latter is granted in anticipation of arrest and is therefore effective at the very moment of arrest. (See: Gur Baksh Singh v. State of Punjab SC/0215/1980: 1980CriLJ1125). Section 46(1) of the Code, which deals with how arrests are to be made, provides that in making an arrest the Police officer or other person making the same "shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action". The order under Section 438 of the Code is intended to confer conditional immunity from the touch as envisaged by Section 46(1) of the Code or any confinement. The apex Court in Balachand Jain v. State of Madhya Pradesh, SC/0172/1976: [1977]2SCR52 has described the expression 'anticipatory bail' as misnomer. It is well-known that bail is ordinary manifestation of arrest, that the Court thinks first to make an order is that in the event of arrest a person shall be released on bail. Manifestly there is no question of release on bail unless the accused is arrested, and therefore, it is only on an arrest being effected the order becomes operative. The power exercisable under Section 438 is somewhat extraordinary in character and it is only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty then power is to be exercised under Section 438. The power being of important nature it is entrusted only to the higher echelons of judicial forums, i.e. the Court of Session or the High Court. It is the power exercisable in case of an anticipated accusation of non-bailable offence. The object which is sought to be achieved by Section 438 of the Code is that the moment a person is arrested, if he has already obtained an order from the Court of Session or High Court, he shall be released immediately on bail without being sent to jail."

22. When the case of the petitioner is examined in the light of above principles, none of the above parameters is satisfied.

23. The delay in making complaint to the Commissioner of Police or in registration of FIR cannot be considered by this Court at this stage. The complainant Rakesh Kumar Malik was in judicial custody in the case FIR No. 189/14. The complaint has been sent by him to Commissioner of Police from Tihar Jail. His presence at the spot can be gathered from his MLC prepared on Saket City Hospital. The MLC records his date and time of arrival as 7th February, 2014 at 7.05 p.m. Brought by his friend Sandeep whose mobile number is also noted as 9999995610.

24. As per the MLC he has suffered following injuries:-

- “1. multiple wounds-7 punctured wounds on the right chest wall above nipple areolar complex (Upp. 0.5 x 0.5 cm each)*
- 2. 1(0.5 x 0.5 cm) puncture wound in epigastrium left side*
- 3. 2x2cm CLW over scalp fractal region*
- 4. 4x1cm CLW over scalp frontal region*
- 5. 5x1cm CLW over scalp frontal region*
- 6. 3x1 cm CLW over occipital region, right lower limb*
- 7. 2.5x1 cm CLW over right upper tibial region*
- 8. 1x.05 cm CLW over right upper tibial region*
- 9. 2 puncture thigh interior*
- 10. 4 puncture ward 10.3x0.3 right thigh posterior region*
- 11. puncture ward (0.3x0.3 cm) on right thigh lateral surface*
- 12. left lower limb 1(0.5x0.5 cm)CLW over left tibial region*
- 13. One 0.3x.03 cm puncture wound on right upper sapular region*
- 14. FA Over left paraspinal region*
- 15. FA over right hand*
- 16. 2 puncture wound on right upper arm(0.3x0.3 cm)”*

25. In the complaint case he has mentioned that he remained under the impression that police was taking action in respect of the injuries suffered by him. But when only he was arrested as an accused in case FIR No. 189/2014 and charge-sheet was filed against him and co-accused then he sent his complaint to the Commissioner of Police naming the persons who had caused injuries to him for taking action against them.

26. In the status report it is mentioned that the petitioner concealed the fact of being in possession of arms license and even his weapon could not be recovered. No doubt the complainant has claimed that he was fired with a '*katta*' which is not a licensed weapon, at the stage of considering the prayer for release on anticipatory bail, this cannot be a reason to grant anticipatory bail.

27. The petitioner before this Court was not only present at the spot, the double murder has taken place in his office, complainant, Rakesh Kumar Malik had suffered injuries allegedly in the same occurrence. Merely because the petitioner is a witness in case FIR No. 189/2014 does not mean that for the injuries allegedly caused by him to others, another FIR cannot be registered at the behest of injured. There is no legal bar in registration of cross cases pertaining to the same occurrence.

28. The petitioner is stated to have criminal antecedents, the State require his custodial interrogation, the nature of the injury suffered by the complainant Rakesh Kumar Malik are numerous and opined to be dangerous.

29. In the facts and circumstances of this case, I do not find it to be a fit case to exercise the discretion of release on anticipatory bail in his favour.

30. The application is dismissed.

PRATIBHA RANI, J.

APRIL 01, 2016

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