

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

Date of hearing and Order : April 19, 2016

+ **BAIL APPLN. 608/2016
DALBIR SINGH DAGAR & ORS**

..... Petitioners

Through: Mr. R.S. Malik, Mr.Sahil Malik,
Advocates

versus

THE STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through: Ms. Meenakshi Chauhan, Additional
Public Prosecutor for the State with
Sub-Inspector Yakub Khan, Police
Station Kapashera, Delhi.

**CORAM:
HON'BLE MR. JUSTICE P.S.TEJI**

ORDER

P.S.TEJI, J. (Oral)

1. The present application has been filed by the petitioners under Section 438 of the Code of Criminal Procedure, 1973 for the grant of anticipatory bail in FIR No.70/2016, Police Station Kapashera, under Sections 452/325/427/34 of the Indian Penal Code.

2. The petitioners seek anticipatory bail in a case, wherein they have been alleged to have entered into the house of the complainant – Rajesh Dagar by breaking open the door of the house and thereafter, throwing the complainant on the road from the roof of the house.

3. The present FIR has been registered at the instance of Mr. Rajesh Dagar (hereinafter referred to as the complainant), who stated that on 27.02.2016 at about 10 PM, he was standing outside his home and one Tinku Dagar, his neighbour was consuming liquor at the balcony of his home. It is further alleged that the said Tinku started abusing the complainant, whereupon the complainant also abused back. Thereafter, Tinku Dagar, his brother Lala and Dalbir came downstairs to beat him. The complainant went inside his house and locked from inside. It is alleged that the petitioners hit the door of his home from their legs while using filthy language. The petitioners were tried to calm down by the complainant's nephew Amit and Parveen with the help of neighbours. It is alleged that after some time, the petitioners break open the lock of his house and entered therein and started misbehaving with the wife of complainant and the wife of his nephew. It is alleged that Tinku Dagar has taken the DVR of the CCTV installed at his house. Thereafter, the complainant went to the roof of his home, where also the petitioners reached and after picking the complainant they threw him from the roof of his home and due to which he suffered several injuries. Investigation of the case started and during investigation it was found that the lock of the door was broken up.

4. The cross FIR No.71/2016 under Section 451/354A/509 of IPC was also registered at the instance of one Smt. Kamlesh Dagar wife of petitioner No.1 at the same Police Station, in which it is alleged that on 27.02.2016 at about 9.50 PM, Rajesh Dagar after consuming liquor

came to her house and started misbehaving with her and also tried to outrage her modesty. He caught hold of her hand and when she asked him not to behave in such manner, he went on giving filthy abuses. On raising alarm, he ran away.

5. Mr. R.S. Malik, learned counsel for the petitioners contended that the petitioners and the complainant belong to same family and have free entry into the houses of each other and when the complainant was trying to outrage the modesty of the wife of petitioner No.2, Smt. Kamlesh Dagar made a PCR Call, whereafter the complainant of the FIR fled away. A DD in respect thereof was also recorded vide DD No.33A at 10.37 PM. Police reached at the spot, the neighbours also gathered at the spot and they all went to the house of the complainant alongwith the police and the wife of the complainant did not tell the whereabouts of her husband and told that he is not at home. Thereafter, at 11.00 PM the police party returned back to the Police Station and everybody including the petitioners returned to their houses, presuming that the complainant might be under the influence of liquor and must be hiding himself.

6. Learned counsel for the petitioners further contended that in the next morning, the petitioners came to know that while fleeing from the scene of occurrence the complainant jumped from the height and sustained some injuries in his leg and manipulated the incident of his injury and falsely attributed the same to the petitioners and others. The complainant got himself admitted in a private hospital and

manipulated the MLC with alleged history of assault. It is further contended on behalf of the petitioners that the complainant discharged from the hospital and there is no danger to his life.

7. On merits, it is contended on behalf of the petitioners that the petitioner No.1 is working in Delhi Police as Head Constable and is a heart patient. It is further contended that the petitioner No.1 is also suffering from *post polio paralysis of right lower limb* and due to which he is having 42% physical disability. It is further contended that the petitioner No.1 was not even present at the time of incident.

8. Regarding petitioner Nos.2 and 3, it is contended that they have clean antecedents and have never involved themselves in any criminal activities and they were also not present at the house at the time of incidents and they have been falsely involved in the present case due to cross case registered against them.

9. Lastly, learned counsel for the petitioners has contended that the petitioners have already joined the investigation of the case. It is further contended on behalf of the petitioners that there is nothing to be recovered from or at the instance of the petitioners and no purpose will be served in sending the petitioners in custody. Learned counsel for the petitioners further relied upon the judgment of the Hon'ble Supreme Court in *Arnesh Kumar vs. State of Bihar & Anr.*, V(2014) SLT 582.

10. Ms. Meenakshi Chauhan, Additional Public Prosecutor for the

State opposed the aforesaid contentions raised on behalf of the petitioners. However, on instructions from Sub-Inspector Yakub Khan, learned Additional Public Prosecutor for the State submitted that the petitioners have joined the investigation and during interrogation, the petitioners have denied for taking out the CCTV DVR from the home of complainant and the same need to be recovered from the petitioners.

11. I have heard learned counsel for the petitioners as well as the submissions made by learned Additional Public Prosecutor for the State and gone through the contents of the petition as well as material placed on record.

12. The present bail application first came up for hearing before this court on 18th March 2016, when this court had directed the petitioners to join the investigation and to not to tamper with the evidence and also to not leave the country without prior permission of the Trial Court.

13. After careful scrutiny of the case and the facts and circumstances of the present case, this Court observes that the petitioners have joined the investigation and there is no averment made on behalf of the State that the petitioners have not cooperated the investigation or that the petitioners have tried to tamper with the evidence. However, the case is pending adjudication.

14. In view of the aforesaid facts and circumstances of the present

case, the order dated 18.03.2016 vide which the petitioners were granted anticipatory bail, is made absolute. Accordingly, it is ordered that in the event of arrest, the petitioners – Dalbir Singh Dagar, Tinku Dagar and Lala be released on bail subject to their furnishing personal bond in the sum of Rs.25,000/- with two sureties of the like amount to the satisfaction of the Arresting Officer.

15. The petitioners are directed not to tamper with the evidence, not to influence the prosecution witnesses and shall not leave the country without prior permission of the Court concerned.

16. Before parting with the above order, it is made clear that anything observed in the present petition shall not have any bearing on the merits of the case during trial.

17. In view of the aforesaid directions, the present bail application is disposed of.

Dasti.

(P.S.TEJI)
JUDGE

APRIL 19, 2016

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