

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on : August 26, 2016

+ BAIL APPLN. 1690/2016
SURESH GUPTA Petitioner
Through: Mr. Ramesh Gupta, Senior Advocate
with Mr. Manish Bansal, Advocate

versus

STATE Respondent
Through: Ms. Meenakshi Chauhan, Additional
Public Prosecutor for the State

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

ORDER

P.S.TEJI, J.

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.502/2016, under Sections 308/34 of the Indian Penal Code, Police Station Sarai Rohilla, New Delhi,.

2. Complainant – Rajesh Mishra had reported to police that one Hunny, the son of the petitioner called him and requested to visit to his house as he wished to discuss something. It is submitted that on second call, the complainant visited the house of Hunny at first floor and discussion was going on in a peaceful manner. It is further stated that Hunny requested the complainant to remove the cycle which was parked in the gallery. Thereafter, the complainant told that his children use the cycle only on Saturdays and Sundays and for rest of the days,

he will get it parked in the Varandah. It is alleged that immediately thereafter, the petitioner came behind him and hit his head with a cricket bat and started shouting to kill him. Thereafter, it is alleged that Hunny also started beating the complainant with fists and blows. In between, wife of the petitioner as well as of Hunny also reached the spot including one Surrender, who runs a dhaba at Padam Nagar and started beating him with fists and blows and shouted to kill him so that he goes away from there after selling his house.

3. It was further stated by the complainant that after hearing the noise of fighting, his wife came down from the upper floor and tried to rescue him but she was also attacked on her head and received injuries. Thereafter the complainant was brought to Hindu Rao Hospital by his brother and his wife was also admitted in HRH Hospital.

4. Investigation commenced and upon inquiries it was revealed that the family members of the petitioner have caused injuries to the complainant. MLC of the complainant and his wife were collected. The statement of treating doctor was also obtained and on the MLCs of both the injured, i.e., the complainant and his wife it was mentioned that 'alleged H/o assault at home address and result u/o blunt'. Statement of complainant was recorded. Wife of the complainant also made a statement to the fact that when she reached downstairs she saw that the family members of the petitioner and other person named Surrender were beating her husband with a cricket bat and fists and

blows and when she tried to rescue her husband then Hunny hit on her head with a wooden stick and sister of Hunny - Masum Gupta also started beating her with fists and blows due to which she received multiple injuries. After recording of the statements of injured persons, the present case under Sections 308/34 of IPC was recorded.

5. Learned counsel for the petitioner contended that the petitioner was falsely implicated in the present case. However, another case registered as FIR No. 503/2016 under Section 354/354-B/427/323/34 of IPC is registered against the complainant of the present FIR on the complaint of Indu Gupta, wife of the petitioner herein. It was submitted that on 15.07.2016, the complainant of the present FIR had assaulted and attempted to disrobe the wife of the petitioner under the influence of heavy consumption of liquor and damaged the car of the petitioner at his home. Not only this, he also assaulted the servant and family friend of the petitioner with bat. It is contended that the complainant has dragged the petitioner and his whole family into the present false case.

6. Learned counsel for the petitioner further submitted that no statutory compliance of notice to the petitioner under Section 41 Cr. P.C. was made. It was further submitted that it was the family member of the petitioner who made call at 100 in the night of 15.07.2016. It was contended that the antecedents of the complainant is not clean and there are complaints filed by other local residents against the complainant of the present FIR. As far as MLC is concerned, it was

contended that the complainant was in a heavily drunken state, still the doctor had not even collected and seized the blood sample of the complainant. The complainant was referred to LNJP hospital for neuro evaluation and study report thereof was found normal and the complainant was discharged from neurosurgery department on the same day. More so, no incidence of offence as is alleged in the FIR in question has ever happened.

7. Apart from the aforesaid contentions, learned counsel for the petitioner informed that his wife – Indu Gupta, daughter – Masum Gupta, daughter in law – Ridam Gupta have already been granted bail by learned Additional Sessions Judge. Moreover, the co-accused – Surender has also been granted regular bail vide order dated 01.08.2016 by learned Additional Sessions Judge. Hunny @ Tushar Gupta, son of the petitioner has also been released on regular bail.

8. Ms. Meenakshi Chauhan, learned Additional Public Prosecutor appears on behalf of the State and has placed on record the status report in the present case. It was submitted on behalf of the State that the petitioner is the main accused and he is still absconding. The other co-accused – Hunny @ Tushar Gupta and Surender were arrested at the spot; cricket bat and danda were also recovered. It was further stated that the NBW had been issued against the petitioner by the trial court. On the point of recovery, it was reported that the clothes worn by the petitioner were still required to be recovered. Regarding medical opinion, it was reported that the injured had got *wound of 3cm*

to 6 cm in his frontal temporal and occipital region and the doctor had opined the injuries being *grievous*. The bail application filed by the petitioner was rejected by the learned Additional Sessions Judge vide order dated 09.08.2016. In the facts of the present case, it was submitted that the petitioner ought not to be granted bail in the present case.

9. I have heard learned counsel for the petitioner 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.

10. For granting anticipatory bail to the person against whom the allegations are leveled, the factors that need to be taken into consideration while dealing with anticipatory bail, are; (a) The nature and gravity of the offence and the exact role of the accused must be properly comprehended before arrest is made; (b) The possibility of the applicant to flee from justice; (c) The possibility of the accused's likelihood to repeat similar or other offences; (d) 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 free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused; (e) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant and unless there are peculiar and special facts and circumstances in a given case,

the Court would not be justified in extending the benefit of anticipatory bail to such a person.

11. So far as the contentions raised on behalf of the petitioner regarding cross-case registered against the complainant and about his own version of the incident are concerned, in the considered opinion of this court, it would ultimately be for the trial court to arrive at the findings as to whether such an allegation stands proved or not, on the basis of evidence that would be produced by the prosecution in support of its case. The issue before this court is whether in the circumstances of this case, petitioner is entitled to anticipatory bail or not and whether the learned Additional Sessions Judge was justified in rejecting the anticipatory bail to the petitioner.

12. In the case at hand, on a careful scrutiny of the record, this court observes that the recovery of cricket bat and danda have been effected and the petitioner is still not arrested in this case. However, as per the allegations made in the FIR, the complainant – Rajesh Mishra had specifically alleged that when the complainant was talking with the petitioner's son - Hunny on the issue of removing cycle from the gallery, it was the petitioner, who came behind him and hit his head with a cricket bat and started shouting to kill him.

13. This court has also perused the MLC of the injured, according to which the injured got the wound of 3 cm to 6 cm in his frontal temporal and occipital region and the doctor had opined the same as

grievous one. The rule attributed to the petitioner is of hitting cricket bat on the head of the injured.

14. This court further observes that the other co-accused, i.e., wife of the petitioner – Indu Gupta, daughter – Masum Gupta, daughter in law – Ridam Gupta, Surender and even son of the petitioner - Hunny @ Tushar Gupta, have been granted bail in the present case. The petitioner is seeking parity with the other co-accused in this case.

15. In this regard, this court is of the considered opinion that there is no straight jacket formula, based upon which it can be decided whether any accused is entitled to bail or not. So far as the parity is concerned, the word 'parity' connotes a state when a person is placed on the same footing as of the other person. This court is also of the opinion that that parity cannot be the sole ground for granting bail in a case where the bail applications of other co-accused whose bail applications had been allowed and are released on bail. It is purely a discretion of the court. Before granting or refusing bail, the court must satisfy itself after considering the material placed on record and further developments in the investigations or otherwise and other peculiar circumstances of each case, which show that there are sufficient grounds for releasing the applicant on bail. If on examination of any case, it transpires that the case of the applicant before the court is identically similar to the accused on facts and circumstances, who has been bailed out, then the desirability of

consistency will require that such an accused should be also released on bail.

16. In the facts and circumstances of the present case this court observes that the trial of this case is at the initial stage; the petitioner is a main accused, who had hit the complainant with cricket bat due to which the complainant got serious multiple wounds on his head, which is also corroborated with the MLC of the injured, according to which the injured got the wound of 3 cm to 6 cm in his frontal temporal and occipital region and the doctor had opined the same as grievous one. It is further observed that the petitioner is absconding from arrest and the NBW have been issued against him.

17. In the aforesaid facts and circumstances of this case, this court is of the considered opinion that the role attributed to the petitioner and the allegations leveled against the petitioner are grave in nature. Therefore, this Court is not inclined to grant anticipatory bail to the petitioner in this case.

18. Resultantly, the facts emerging from the record culminates into dismissal of the present bail application. Accordingly, the present bail application filed by the petitioner is dismissed.

19. Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for anticipatory bail made by the petitioner.

Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

20. With aforesaid direction, the present bail application, filed by the petitioner stand disposed of.

(P.S.TEJI)
JUDGE

AUGUST 26, 2016
pkb

