

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on : November 30, 2016

+ BAIL APPLN. 2416/2016
SALMAN & ANR.

..... Petitioners

Through: Mr.Ajayinder Sangwan, Mr.S.N. Sharma, Mr.Tarunesh Kumar, Mr.Kunal Chopra, Mr.Rohan Sharma, Mr.V.P. Singh, Mr.Anirudha Kumar, Mr.Irfan Firdous, Ms.Richa and Mr.Narendra Singh, Advocates.

versus

STATE GOVT. OF NCT OF DELHI Respondent

Through: Mr.Ashish Dutta, Additional Public Prosecutor for the State with Sub-Inspector Sachin Kumar, Police Station Amar Colony, New Delhi.

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

JUDGMENT

P.S.TEJI, J.

1. The present application has been filed by the petitioner under Section 439 of the Code of Criminal Procedure, 1973 for the grant of bail in FIR No. 609/2016 under Section 384/308/34 of IPC, Police Station Amar Colony, New Delhi.

2. In a nutshell, the FIR of this case was registered at the instance of Muzammil, who stated in his complaint that on 10.10.2016 at about 3.15 AM, the petitioners alongwith his brother and father came to his

stall and demanded Rs.5,000/-. The petitioners alongwith his brother and father, had assaulted him to extort money from him. They demanded monthly money from him for running his shop inside the Okhla Sabzi Mandi, Delhi and when he refused, then on the instigation of their father to kill him, all the brothers started beating the complainant. The petitioners alleged to have hit the complainant with iron rod and danda. Shahrukh was alleged to have hit the complainant with iron rod on his head and Salman also assaulted the complainant and ran behind the brother of the complainant with a knife to kill him. The complainant sustained multiple head injuries and was admitted in AIIMS Trauma Centre for treatment. On the statement of the complainant the present case was registered.

3. Petitioners – Salman and Shahrukh are in custody since 11.10.2016 and the other co-accused – Imran is in custody since 15.11.2016. Bail application preferred by Salman and Shahrukh has been dismissed vide order dated 16.11.2016 passed by learned Additional Sessions Judge-01, South East District, Saket courts, New Delhi.

4. It is further contended on behalf of the petitioners that the complainant was discharged from the hospital on the same day and the injuries suffered by the complainant was opined to be of simple in nature. It is further urged that the father of the petitioners - Mohd. Anwar had filed a complaint before the DCP South-East on 13.10.2016 against the complainant regarding the alleged conduct of

the complainant and creating hurdle in the ingress and egress of the vehicle supplying vegetables to the shop of the petitioner and also misbehaving and abusing the farmers.

5. Learned counsel for the petitioners contended that the petitioners have been falsely implicated in the present case. According to the petitioners, they were sleeping in his house and were not at all present at the place of incident. They were informed by his employee that when a vehicle was entering at Okhla Sabzi Mandi to deliver vegetables at the petitioner's Shop No.199, the complainant created a hurdle in the entry of the vehicle and started abusing and misbehaving with the farmers who came to deliver vegetables at the shop. The complainant created ruckus, manhandled and snatched Rs.40,000/- from his clerk and the complainant caused injuries to himself. Thereafter, with the help of the local police lodged the present FIR and falsely implicated the applicants.

6. It is argued on behalf of the petitioners that the ingredients of Section 383 and 384 of IPC are not made out because delivery of property is sine-qua non for the commission of offence under Section 383 and 384 of IPC. Moreover there is no allegation of inducement thereby delivery of the property, therefore the ingredients of offence under Section 384 of IPC is also not satisfied. However, at the most, the offence under Section 385 of IPC can be said to have been committed, which is a bailable offence. So far as ingredients of Section 308 are concerned, the same are also missing as the

complainant was discharged from the hospital within an hour after giving first aid and the MLC of the complainant records the injury was simple in nature and it was not sufficient to cause death, and at best the offence under Section 323 of IPC could be said to have been committed, which is also a bailable one.

7. Mr. Ashish Datta, Additional Public Prosecutor for the State has vehemently opposed the aforesaid contents raised on behalf of the petitioners. The State has also filed a Status report. According to the status report it is informed that the petitioners have been attributed the role of hitting the complainant with iron rod and danda on his head. Learned Additional Public Prosecutor for the State further raised apprehension that if the petitioners are released on bail they may tamper with the evidences and hamper the investigation. Therefore, the applications filed on behalf of the petitioners are dismissed.

8. The contentions, arguments and legal submissions made on behalf of the petitioners are heard, the status report filed on behalf of the State and the material placed on record, have been perused.

9. So far as the different version of the prosecution story, as submitted by the petitioners, in the considered opinion of this court, the same can only be adjudged before the concerned court by leading cogent evidence. The issue before this court is whether in the circumstances of this case, petitioners are entitled to anticipatory bail or not and whether the learned Additional Sessions Judge was justified in rejecting the anticipatory bail to the petitioners.

10. In *Prasanta Kumar Sarkar v. Ashis Chatterjee* (2010) 14 SCC 496, the Hon'ble Supreme Court dealt with the basic principles laid down in catena of judgments on the point of granting bail. The Court proceeded to enumerate the factors:

9. ... among other circumstances, the factors [which are] to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail.*

11. In the facts and circumstances of the present case this court observes that the trial of this case is at the initial stage; as per the FIR, the petitioners have been attributed the role of hitting the complainant with iron rod and danda on his head and the fact that there is

apprehension of the State that the petitioners may hamper the evidence. Therefore, this court is not inclined to grant bail to the petitioners. Resultantly, the facts emerging from the record culminates into dismissal of the present bail application. Accordingly, the present bail application filed by the petitioners is dismissed.

12. 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 bail made by the petitioners. 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.

13. With aforesaid direction, the present bail application, filed by the petitioners stands disposed of.

(P.S.TEJI)
JUDGE

NOVEMBER 30, 2016
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