

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

+ BAIL APPLN. 2422/2016
IMRAN

..... Petitioner

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 petitioner alongwith his two brothers and father came to

his stall and demanded Rs.5,000/-. The petitioner alongwith his brothers 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 his father to kill him, all the brothers started beating the complainant. The petitioner - Imran alleged to have hit the complainant with stick on his head and his brothers were alleged to have beaten 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 knife to kill him. The complainant sustained multiple head injuries and admitted in AIIMS Trauma Centre for treatment. On the statement of the complainant the present case was registered.

3. During investigation, accused Salman was arrested on 11.10.2016. After interrogation, he admitted his involvement in the offence alongwith his associates. Another accused Shahrukh was also arrested on 12.10.2016. The petitioner - Imran had applied for anticipatory bail, which was dismissed vide order dated 27.10.2016, passed by learned Additional Sessions Judge, Saket Court, New Delhi thereafter, he surrendered before the Court on 15.11.2016. Weapon of offence i.e., danda/stick were recovered from him.

4. 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. However, the petitioner – Imran had surrendered before the area magistrate, Saket Court Complex, New Delhi on 15.11.2016 after his anticipatory bail being rejected. Now the petitioner has applied for regular bail directly to this court.

5. Learned counsel for the petitioner contended that the petitioner has been falsely implicated in the present case. According to the petitioner, he was sleeping in his house and was not at all present at the place of incident. He was 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 a 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 applicant.

6. It is further contended on behalf of the petitioner 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 petitioner 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.

7. It is argued on behalf of the petitioner 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 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.

8. Lastly, it is urged by learned counsel for the petitioner that it is not mandatory to approach Sessions court first before approaching this court for grant of regular bail. In support of his contention, learned counsel for the petitioner relied upon the judgment in ***Sundeep Kumar Bafana vs. State of Maharashtra and Anr., 2014 (16) SCC 623.***

9. Mr. Ashish Datta, Additional Public Prosecutor for the State has vehemently opposed the aforesaid contentions raised on behalf of the petitioner. The State has also filed a Status report. According to the

status report it is informed that the petitioner has been attributed the role of hitting the complainant with stick on his head. The role of the petitioner is similar to the role of his brothers, Salman and Shahrukh, whose bail applications have already been dismissed by the learned Additional Sessions Judge vide order dated 16.11.2016, therefore, the bail application filed by the petitioner is liable to be dismissed.

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

11. *Indisputably, the jurisdiction under Section 439 of Cr. P.C. for grant of bail is the concurrent jurisdiction of High Court as well as the Court of Session. But it would always be advisable to approach the court of session first to avail this remedy and further in the High Court under Section 439 of Cr. P.C.*

Therefore, in the considered opinion of this court is not inclined to comment upon the submissions and contentions raised on behalf of the petitioner at this stage, especially when the petitioner has remedy to take all pleas before the court of session.

12. Accordingly, without commenting upon the merits of the case and the submissions made on behalf of the petitioner, this court is not inclined to entertain the present bail application at this stage. However, the petitioner will be at a liberty to approach the Court of Session and to take all pleas, as taken in the present petition.

13. In view of the aforesaid, the present petition is disposed of with direction to the petitioner to approach the Court of Session for seeking regular bail.

14. With aforesaid observations, the present application is disposed of.

(P.S.TEJI)
JUDGE

NOVEMBER 30, 2016
pkb

