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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 22.02.2016

+ BAIL APPLN. 2732/2015

JALANDHAR SHAH Applicant
Through Mr. Sunil Tiwari, Advocate

versus

THE STAE (NCT OF DELHI) Respondent
Through Ms. Radhika Kolluru, APP for State
SI Mehrab Alam, PS Khajuri Khas
Mr. Anup Banerjee, Adv. for the
Complainant

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present is an application under section 438 of the Code of Criminal Procedure, 1973 (Cr.P.C.) read with Section 482 Cr.P.C. seeking pre-arrest bail in FIR No. 1196/2015, under Sections 308/34 IPC, registered at Police Station- Khajuri Khas, Delhi.

2. Mr. Sunil Tiwari, learned counsel appearing on behalf of the applicant herein states that at the time when the applicant's application for anticipatory bail was pending before the Sessions Court, the applicant had joined investigation.

3. However, a perusal of the order dated 3rd December, 2015 passed by the learned Special Judge, NDPS (NE), Karkardooma Courts, Delhi in Bail Application No. 20/2015 titled State vs. Jalandhar Shah reveals that the Sessions Court was of the opinion that the restricted interrogation of the applicant would not serve the purpose unless the Investigating Officer is given an opportunity to investigate the applicant herein. In this view of the matter, the Sessions Court by way of order dated 3rd December, 2015 dismissed the bail application filed on behalf of the applicant being Bail Application No. 20/2015 titled State vs. Jalandhar Shah.

4. A perusal of the order dated 3rd December, 2015 also reveals that the custodial interrogation of the applicant is needed for effecting recovery of the *Saria (Iron rod) and the danda* with which he allegedly attacked the complainant in the subject FIR, resulting in a Clear Lacerated Wound (CLW) measuring 2.5 X 0.5 cm on the latter's head and also injuring one other person named Divakar, who sustained Clear Lacerated Wound (CLW) measuring 4 X 0.5 cm on the right frontal region of his head.

5. Counsel appearing on behalf of the applicant would then urge that they had also been injured in the altercation between the parties. However, the police had failed to register an FIR on the basis of their complaint.

6. Be that as it may, in the present case, the applicant has caused injuries on the vital part of the body of the complainant allegedly with *Saria (iron rod) and danda* and his custodial interrogation is needed for effecting recovery of the weapons allegedly used to commit the offence and cause injuries. Two other co-accused are admittedly absconding.

7. The Supreme Court in the case of *State represented by CBI vs. Anil Sharma* reported as *1997 Criminal Law Journal 4417*, made the following observations in paragraph 6 of the report:-

“6. We find force in the submission of the CBI that **custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code.** In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful information and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, has such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of

disinterring offences would not conduct themselves as offenders.”

8. In view of the gravity of the allegations levelled against the applicant which are serious and specific in nature and the circumstance that the alleged weapons of offence are yet to be recovered, I do not find that this is a fit case for grant of an anticipatory bail. The application is hereby dismissed.

FEBRUARY 22, 2016
SD

SIDDHARTH MRIDUL, J

