

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

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Reserved on: 18th January, 2017
Decided on: 14th February, 2017

+ **BAIL APPLN. 306/2016**

GAURAV BHARDWAJ

..... Petitioner

Represented by: Mr. Gurmehar S. Sistani, Adv.

versus

STATE

..... Respondent

Represented by: Mr. Hirein Sharma, APP with
SI Vikram Singh PS G.K.-I.

+ **CRL.M.C. 2624/2016 & Crl.M.A. 11240/2016 (stay)**

GAURAV BHARDWAJ

..... Petitioner

Represented by: Mr. Gurmehar S. Sistani, Adv.

versus

STATE

..... Respondent

Represented by: Mr. Hirein Sharma, APP with
SI Vikram Singh PS G.K.-I.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By Bail Application No.306/2016, the petitioner seeks anticipatory bail in case FIR No.638/2015 registered at PS Greater Kailash under Section 307 IPC and in CRL.M.C.2624/2016 the petitioner challenges the order dated 19th January, 2016 declaring him a proclaimed offender.

2. Learned counsel for the petitioner contends that even on the allegations in the complaint it is apparent that the injured Nitin misbehaved with the fiancée of the petitioner due to which quarrel took place between the petitioner and Nitin. Both petitioner and Nitin received injuries, however

FIR was immediately written on the complaint of Konark Verma for injuries to Nitin and the complaint of the petitioner was not even accepted. Even on the complaint of the fiancée of the petitioner, FIR was registered after registering the above-noted FIR. The petitioner had filed anticipatory bail application before the learned ASJ. Proceedings for declaring the petitioner as proclaimed offender were taken in a haste after anticipatory bail was granted to Nitin in FIR No. 388/2015 under Sections 354A/509/323/354/34 IPC of which no notice was given to the complainant therein. The connivance of the investigating officer with Nitin is manifest as first his FIR was registered and after he was granted anticipatory bail on the pretext of a settlement though no settlement was acted upon, the matter was proceeded against the petitioner and on the complaint of the petitioner, no FIR was registered. The petitioner was declared a proclaimed offender after serving notices at the incorrect address thus causing hindrance in the grant of anticipatory bail.

3. Learned APP for the State on the other hand submits that the order declaring the petitioner a proclaimed offender is not malafide. The proceedings were initiated because despite service of notice at his residence, the petitioner was not available and since he has been declared a proclaimed offender, his application for anticipatory bail is not maintainable.

4. A brief background of the case. FIR No.386/2015 under Section 307 IPC was registered on the complaint of Konark Verma who alleged that on 22nd August, 2015 he along with his friend Nitin Khanna went to attend a party at the house of the petitioner at E-67, Greater Kailash Enclave-I at around 9.15 PM where petitioner and his girl friend 'V' were already present. While they were all drinking at the party, at around 12.00 AM 'V'

went to the kitchen for taking water in the bottle. She was followed by Nitin Khanna who went to the kitchen for taking ice. Thereafter Gaurav Bhardwaj also went to the kitchen and he heard the sound of slapping. He went to the kitchen where Gaurav Bhardwaj slapped Nitin in his presence and Nitin caught hold of the neck of Gaurav Bhardwaj. He separated the two. He and Nitin Khanna came down at the ground floor. Gaurav Bhardwaj followed them carrying a kitchen knife, threatened Nitin Khanna and inflicted him knife injury. Since Nitin Khanna started bleeding, he took him to AIIMS for treatment. As per the MLC, Nitin Khanna received an injury being incised wound 1cm x 0.5 cm on the left axillary portion and as per the opinion noted in the MLC, the injury is grievous in nature. However, learned APP for the State has failed to point out under which of the descriptions of grievous injury mentioned in the IPC, the injury fell.

5. For the incident of the intervening night of 22nd and 23rd of August, 2015 on the complaint of 'V' the fiancée of the petitioner FIR No.388/2015 was registered under Section 354A/509/323/34/354 IPC. In the complaint 'V' alleged that she along with her friend Gaurav Bhardwaj was sitting at his house at E-67, G.K.-I Enclave on 22nd August, 2015 when at around 9.00 PM two persons namely Nitin Khanna and Konark Verma came and Gaurav introduced her to them. At around 12.00 AM when she went inside the kitchen to fetch a bottle of water, to her shock Nitin came from behind and pounced over her. He groped her from behind and touched her private parts. She stopped him and screamed, hearing which Gaurav came to the kitchen to her rescue and tried to stop Nitin from molesting her. Nitin was drunk, out of his senses and lost his temper. He shouted at Gaurav to get out of his way or he would beat him dead. He further stated "this babe is ours tonight". In

the meantime, Konark came, helped Nitin and held Gaurav's arm from behind and over-powered him. Nitin slapped her, abused her and stated that they would definitely rape her that night. They started beating Gaurav mercilessly. Seeing this, she got scared of her life and that of Gaurav. In the meanwhile Gaurav got his hand on a kitchen knife, threatened to leave them alone and that he would go to any extent to protect her. This did not deter Nitin and Konark and they again lunged towards Gaurav and tried to take the knife out of his hands. Their intention was clear that they were to make Gaurav drink, take advantage and rape her. During the scuffle both Gaurav and Nitin got injured, she started crying and ran away. Apprehending that they would come back again, they left the place.

6. The version of the complainant in FIR No.388/2015 is fortified by version of Konark in FIR No.386/2015 who also stated that 'V' was followed by Nitin where after Gaurav Bhardwaj also went to the kitchen and a fight ensued between them. It is thus apparent that the genesis of the incident was misbehavior by Nitin with 'V', the friend/fiancée of Gaurav Bhardwaj. Though it is the case of Nitin and Konark that knife injury on the axillary portion was given after they came downstairs, it is the case of 'V' and the petitioner that everything happened at the place of incident i.e. inside the kitchen. The petitioner alleges that he had also given a complaint against Konark Verma and Nitin Khanna for severely beating and falsely implicating him to avoid their criminal liability on which no FIR was registered where after he filed a complaint under Section 156(3) Cr.P.C. However since non-bailable warrants were issued against him, he could not appear before the Court and the same was dismissed for non-prosecution.

7. After registration of the FIR No.386/2015 Gaurav Bhardwaj applied for anticipatory bail before the learned Additional Sessions Judge on 21st November, 2015 which was dismissed on the same day. He filed another application seeking anticipatory bail which was also dismissed on 23rd December, 2015. Thereafter he approached this Court by way of the present bail application which came up on 9th February, 2016 wherein notice was issued to the State. However, in the meantime application for seeking non-bailable warrants against the petitioner was filed by the investigating officer on 14th September, 2015 and after following the process he was declared a proclaimed offender on 19th January, 2016. By Crl.M.C. 2624/2016 the petitioner challenges the said order.

8. The case of the petitioner is that no service was affected on him at his residential address. E-67, G.K. Enclave was immediately given on rent and the petitioner was not residing over there, though admittedly a floor on the said house was owned by the father. Since serious challenges were made qua the manner in which proceedings under Section 82/83 Cr.P.C. were initiated by the Police, this Court vide order dated 26th July, 2016 stayed the operation of the order dated 19th January, 2016 and the petitioner was permitted to join the investigation who has since joined the investigation. In the status report it is stated that non-bailable warrants were re-issued returnable for 10th November, 2015. Thereafter proceedings under Section 82 Cr.P.C. were issued on 10th November, 2015 returnable for 16th December, 2015. On 14th November, 2015 proceedings under Section 82 Cr.P.C. were conducted and statement of father of petitioner was recorded who admitted that he was residing at E-31 GK Enclave-I and his son was residing at E-67, GK Enclave. The petitioner filed his first application for

anticipatory bail before the learned ASJ on 21st November, 2015 and on 16th December, 2015 he filed an application before the learned Metropolitan Magistrate seeking withdrawal of the coercive process which was dismissed on 4th January, 2016. In the meantime he filed a second anticipatory bail application on 23rd December, 2015 which was also dismissed and on 19th January, 2016 he was declared a proclaimed offender.

9. A perusal of the record reveals that petitioner before this Court has sworn an affidavit giving his address as E-67, G.K. Enclave-I, therefore, in view of the statement of his father and his own affidavit it cannot be said that the process was initiated at the wrong address.

10. Thus the issue before this Court is that in view of the facts and circumstances of the case and the fact that the petitioner filed two anticipatory bail applications before the learned ASJ before he was declared a proclaimed offender and was thus before the Court, whether this Court can grant anticipatory bail to the petitioner.

11. Supreme Court in Lavesh Vs. State (2012) 8 SCC 730 and State of Madhya Pradesh Vs. Pradeep Sharma (2014) 2 SCC 171 held that normally when an accused is declared a proclaimed offender he should not be granted anticipatory bail. In Lavesh (supra) it was held:

“12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as “absconder”. Normally, when the accused is “absconding” and declared as a “proclaimed offender”, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail.”

12. This Court in Sarla Devi Vs. State of NCT of Delhi 221 (2015) DLT 779 following the decisions in Lavesh noted that when the bail application was filed before the Trial Court and was rejected though the proceedings were taken by the prosecution to pass the final order under Section 82 Cr.P.C., however no such order had been passed. Thus, though the Police were making efforts to arrest the petitioner but he had not been declared a proclaimed offender, thus relief of anticipatory bail could be granted to her. On the facts this Court thus granted anticipatory bail to the petitioner therein.

13. When the petitioner filed his first bail application before the learned Additional Sessions Judge and the application for recalling issuance of non-bailable warrants was filed, the petitioner had not been declared a proclaimed offender. But when Bail Application No.306/2016 was filed before this Court, the petitioner had been declared a proclaimed offender.

14. Though on merits, it is a fit case for grant of anticipatory bail in view of the facts that genesis of the occurrence is not disputed because as per both the complaints, the incident happened after Nitin followed 'V' in the kitchen and apparently due to misbehaviour with her, Gaurav also followed her and intervened to save the modesty of 'V', the only dispute being whether Gaurav inflicted the injury in the right of self defence of 'V' on the said floor of the house itself or in retaliation at the ground floor, which issue can be determined only when parties will lead evidence during trial, however in view of the pronouncements of the Supreme Court in Lavesh (supra) and Pradeep Sharma (supra), the anticipatory bail application of the petitioner is required to be dismissed.

15. For the discussion aforesaid, Bail Appln. No.306/2016, CrI.M.C. 2624/2016 and CrI.M.A. 11240/2016 are dismissed.

(MUKTA GUPTA)
JUDGE

FEBRUARY 14, 2017
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