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

+ BAIL APPLN. 1600/2017, CRL.M.A. 13165/2017, CRL.M.A.
14250/2017
DANISH ALI Petitioner

Through: Mr. S.B. Tripathi, Adv.

versus

NCT OF DELHI Respondent
Through: Mr. Amit Chadha, APP for State.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **28.11.2017**

The petitioner seeks the anticipatory bail in relation to FIR No. 40/2017 dated 09.02.2016 registered at Police Station Mayur Vihar Ph-I , New Delhi, for the offences punishable under sections 354, 354 (B), 323, 509, 506 & 34 IPC.

The application for bail of applicant/petitioner Parvez Ali was dismissed on merits on 02.08.2017. The learned Special Judge (PC Act), CBI, East, KKD, Delhi had recorded as under:

“This is Ist application u/s 438 CR. P. C. moved on behalf of applicant/accused Parvez Ali.

As per FIR complainant was standing in front of her house at about 09.30 pm on 08:02.2017. Accused Parvez was neighbour of complainant, who came there and started showing some signals/gestures to the complainant. On objection being raised by complainant, he started abusing her. In the meanwhile, elder brother of complainant namely Amir

also came out of the house and accused Parvez Ali abused him as well. On this issue an altercation took place between the parties, wherein Parvez and his brother Danish gave him beatings to Amir as well as complainant. Complainant alleged that she was hit on her chest and her clothes were also torn. She was also given threat to deface her body by pouring acid and thereafter, both accused fled away.

Ld. Counsel for applicant submitted that false allegations were made against the applicant though as a matter of fact applicant and his brothers were given severe beatings by Amjad Ali i.e. father of the complainant. Even applicants had made call at 100 number. The complainant had also joined this scuffle, which had taken place at the instance of Amir Ali and another Parvez, who was tenant of nearby house. Amir had inflicted knife injuries upon wrist of applicant and incident was recorded in CCTV installed in a nearby house.

Ld. Addl. PP for state and IO submitted that similar application of co-accused has been dismissed in Sessions Court as well as in the High Court onwards. They further reported that process under section 82 Cr. P.C. have been issued, but both accused are absconding. They further reported that accused persons are not joining investigation. IO further reported that the CCTV footage did not have the clarity due to darkness and it was so reported to Sessions Court during bail hearing of co-accused.

Ld. Counsel for applicant gave clarification that the order against co-accused Danish was not based on merits either on 02.03.2017 or 21.07.2017. He submitted that on 02.03.2017 High Court had observed that since only notice was given to the accused to join the investigation, therefore, there was no apprehension for arrest. For such reasons application was dismissed on both the occasions.

I have perused the copy of orders passed by

High Court on 02.03.2017 as well as on 21.07.2017. I do find that these orders were not based on merits and the application was dismissed for the reasons that there was no threat of arrest. However, at the same time I also find that IO has reported that accused persons did not join the investigation and had been absconding. This situation also applies to the applicant herein. Ld. Counsel submitted that in respect of injuries inflicted to applicant and his brother, a complaint was made in July 2017 i.e. after a long gap of time. Similar application of co-accused Danish was dismissed by Sessions Court on 16.02.2017 and I do find that for the purpose of investigation of the case and to recover the alleged weapon, custodial interrogation of applicant is required. Hence, application is dismissed.

Copy of order be given Dasti to both the parties”.

The police has filed the Status Report dated 24.11.2017 which reads as under:-

"Most respectfully it is submitted that a case vide FIR No. 40/17, dated 09.02.2017 was registered at PS Mayur vihar, on the statement of Ms. Shahnab, in which she alleged that in the night of 08.02.2017, the above mentioned petitioner (Accused Person) along with his brother, abused her and on her objection, she and her brother were beaten up by them. The accused persons Danish and Parvez also tore the clothes of the complainant and outraged her modesty. On her statement case was registered U/s 354/3548/323/506/509/34 IPC at Police Station Mayur Vihar, Delhi against the accused persons namely Danish Ali and Parvez Ali, and investigation was taken up. During the course of investigation medical examination of the complainant and her brother was got conducted at LBS Hospital, the examining doctor

has opined on MLC the nature of injury as simple.

The Petitioner/Accused has filed Anticipatory bail application before the Hon'ble session court on 02.08.2017 and bail of the Petitioner/Accused was dismissed on merits. Thereafter, the Petitioner/Accused moved a Bail Application before this Hon'ble court and vide order dated 17.08.2017, he was granted Anticipatory Bail till the next date of hearing i.e. 28.11.2017. On 22.09.2017, the accused Parvez Ali joined the investigation of the case. The accused person was interrogated at length and arrested in the case and later released on Bail with the directions to join the investigation of the case as and when called by the 10.

The allegations in the FIR are serious in nature and in view of the submissions made herein above the bail is opposed. However, the undersigned is bound to abide by any directions passed by this Hon'ble Court"

The learned counsel for the petitioner submits that the nature of injury upon the complainant and her brother were simple; the petitioners have joined the investigations and are participating in the same and there is no chances of their evading the process of law.

The Court would note, as recorded by the learned Special Judge that the petitioners had not joined investigations and had been absconding. Hence, process under section 82 Cr.P.C. had to be initiated against them. Besides, the nature of accusation is that the petitioners had assaulted the complainant and her brother because of which the latter had received injuries on several parts of his body. Furthermore, they hit her upon her breast and tore her clothes and threatened to disfigure her face with acid. The recovery of the weapon of offence is yet to be effected.

In the aforesaid circumstance and in view of the fact that the nature of allegations against the petitioners is serious, no case is made out for grant of anticipatory bail to the petitioners.

The bail application alongwith all pending applications is dismissed.

NAJMI WAZIRI, J

NOVEMBER 28, 2017