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

+ BAIL APPLN. 1612/2017

SAURABH

.....Petitioner

Through: Mr. Utsav Pandey, Advocate.

Versus

STATE NCT OF DELHI

....Respondent

Through: Mr. Akshai Malik, APP for the State.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

14.09.2017

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1. By the present application filed under Section 438 of Cr. P.C., the petitioner is **seeking grant of anticipatory bail** in FIR No. 292/2017 registered under Sections 308/34 of the Indian Penal Code at Police Station Model Town, Delhi.

2. As per the prosecution case, the present FIR was registered on the statement of complainant/Sumit alleging that, on 09.07.2017, when he woke up at 4am in the night, he discovered that his brother/Sushant is not present in the house. When he made a call to enquire about him, Sushant called him to pick him up from Rajpura Gurmandi; that when he went to pick Sushant with his friend Gaurav, he found that Sushant was under the influence of wine accompanied with the petitioner-accused/Saurabh. Further, when he started reprimanding his brother as he was drunk, Saurabh intervened and told him to stay away from Sushant and exhorted Tinda, who answered that

today they will settle their previous account and started beating him. As soon as he tried to run away to save himself, two other friends/associates of Saurabh caught and started hitting him, while Tinda gave an iron rod blow on his head, the petitioner started smashing him with a danda on his hand. Furthermore ,when he tried to ride his bike and run away, he fell down and became unconscious, after which he was admitted in the hospital by his family members, who stated to the doctors that he had received injuries due to an accident.

3. Mr. Utsav Pandey, learned counsel for the petitioner contended that the applicant has been falsely implicated in this case. Actually the complainant had met with a road accident because the he was driving in a very rash and negligent manner. He added that on 09.07.2017, brother of the complainant/Sushant, after consuming liquor was creating chaos/nuisance in front of the Aparna Girls Hostel, Rajpura, Gurmandi, Delhi where he was caught by public and warned not to misbehave; that the complainant along with his friend Gaurav came to pick up Sushant and went from the spot without any injury; that this incident is duly captured and recorded in CCTV footage of the Hostel but the police officials are deliberately and intentionally not collecting the evidence.

4. Learned counsel for the petitioner further contended that the FIR is a result of an afterthought decision registered after a delay of 17 days without any reasonable and probable explanation; that the complainant with dishonest and fraudulent intention to transplant the false case upon the petitioner has procured a manipulated, fabricated and forged MLC from

Jeewan Mala Hospital, Rohtak Road, New Delhi, which is 7-8 km away from the place of incident despite the fact that there are many private hospitals on the way.

5. Per contra, Mr. Akshai Malik, learned APP appearing for the State contested the anticipatory bail application of the petitioner and submitted that he has been charged with serious and grave offences; that he played an active role in the commission of the offence; that the complainant remained unconscious for six days because of the injuries caused to him by the petitioner on his person including CLW at left parietal area; that custodial interrogation of the petitioner is essential for the recovery of the weapon of offence. He added that all the other accused persons are presently absconding; hence, the present bail deserves dismissal.

6. I have heard the learned counsel for the parties and perused the material available on record.

7. Order dated 29.07.2017 has also been perused, whereby the anticipatory bail application filed by the petitioner was declined by the Trial Court.

8. On perusal of the record, it is found that the allegations leveled against the petitioner are very serious and grave in nature. The multiple injuries of the complainant on his person including CLW at left parietal area after he was beaten with iron rod and danda, due to which he remained unconscious for 6 days, which is also proved as per the MLC cannot be lost sight of. Furthermore, there is no evidence on record to prove that the petitioner has been falsely implicated in the present case.

9. Moreover, specific allegations have been made against the petitioner by the complainant in the FIR that the petitioner caught hold of him and exhorted the other co-accused person namely Tinda and when he tried to run away and save himself, two other co-accused persons caught hold of him and started beating him, while Tinda gave blow on his forehead with iron rod, petitioner gave blows on his left hand with wooden danda. Therefore, to complete the investigation, custodial interrogation of the applicant would be necessary at this stage. Further, as per the status report, it is observed that the petitioner has neither joined the investigation nor his statement has been recorded and that he has misled the Court by stating that he had joined the investigation.

10. Taking the facts and circumstances of the present case which have emerged on record into consideration and keeping in mind the allegations against the petitioner which are serious and grave in nature and that the weapon of offence is yet to be recovered, the petitioner needs to be interrogated in custody. Therefore, the discretionary relief of anticipatory bail cannot be extended to the petitioner. Hence the application for anticipatory bail stands dismissed.

11. Before parting with the above order, it is made clear that anything observed in the present petition shall not have any bearing on the merits of the case during trial.

12. Accordingly, petition stands disposed of.

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 14, 2017