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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 5th July, 2018

+ BAIL APPLN. 1156/2017 and CrI. M.A. 9993/2017

SH. NARESH & ORS

..... Petitioner

Through: Mr. C. Mohan Rao with Mr.
Lokesh Kumar Sharma, Advocates for the
applicants

versus

STATE

..... Respondent

Through: Mr. Arun Kumar Sharma, APP for
the State

Mr. Pradeep Teotia and Mr. Siddharth
Chaturveid, Advocate for the complainant
/R-2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The names of the eight petitioners i.e. Naresh S/o. Sh. Ram Kishan, Satender @ Sant Ram S/o. Sh. Kishan Lal, Manoj S/o. Sh. Kesri, Ajay S/o. Sh. Kavar Lal, Jitender S/o. Sh. Sant Ram, Shyamvir S/o. Santram, Kesri S/o. Sh. Aflaton and Rakesh S/o. Sh. Kishan Lal, all residents of A-34, New Usmanpur, Gali No.1, 2nd Pusta, Delhi-110053 have figured in the investigation into FIR no.241/2017 under Section 307/34 IPC and Section 27 Arms Act of police station Usmanpur, Delhi and they apprehending arrest have approached this court with the petition at hand under Section 438 of the Code of Criminal Procedure, 1973 (Cr.PC) for release on anticipatory bail.

2. Pursuant to the directions given earlier by order dated 15.06.2017 while notice was issued to the State, interim protection was granted in their favour. In terms of the earlier directions, status reports have come on record from time to time. The incident which is the subject matter of the case in which prayer for anticipatory bail is made occurred on 12.04.2017.

3. It may be added here that the status report dated 21.05.2018 of Inspector Dheeraj Singh of District Investigation Unit of North-East District relates to another crime (FIR 1128/2017) involving offences punishable under Sections 307,336,506,34 IPC and Section 27 of Arms Act. This needs to be mentioned because the said report (additional status report) does not give the particulars of the case to which its contents relate and though it has been filed with reference to the present bail application.

4. The case FIR 241/2017, as observed earlier, concerns the incident that occurred on 12.04.2017, in which one Mahipal suffered fire-arm injury at about 10.30 a.m. As per the statements under Section 161 Cr.PC of Mahipal recorded on 13.04.2017 and 26.04.2017, the petitioners were amongst the assailants. It is the version of victim Mahipal that when he was present in the old animal shed in Village Usmanpur tending his animals, the petitioners and certain other persons had come there, they including Sonu who was holding a fire-arm (pistol like object) in his possession. He was assaulted and in the course of the incident the said Sonu had fired at him, the bullet having hit on his right hand where-after the assailants had fled away.

5. The version of the petitioners is that it is a case of false implication, the entire story having been concocted. It is their submission that the complainant and his associates have tried to wrongfully grab their land to use it for unauthorized parking of the vehicles which was the bone of contention between two sides and the quarrel actually having resulted in attack by the victim and his side against the petitioners and members of their family. Reliance is placed on the telephone calls made by Jitender and Kamlesh to the police control room (PCR).

6. Copies of the PCR forms relating to three calls purportedly pertaining to this incident have been placed on record, the first of them being a call made at 10:49:16 hours on 12.04.2017 by one Kapil, nephew of victim Mahipal. The input thus received through this PCR call brings out the earliest version of the complainant side as to the involvement of some of the associates on the side of Sonu with whom the petitioners are connected. The incident having occurred at about 10.30 a.m., the veracity of the information received by the subsequent calls to PCR logged at 10:55:51 and 11:39:48 hours of 12.04.2017 would need to be investigated and examined. The said two calls attributed to persons named as Jitender and Kamlesh, generally refer to a quarrel happening. Since Mahipal is shown by the evidence to have been injured at 10.30 a.m. by projectile from fire-arm, it is difficult to believe at this stage that an assailant from the other side would have been present holding a gun extending threats at 10.55 a.m. as is the scene portrayed in the second call.

7. In the above facts and circumstances, it cannot be said that the allegations made and being investigated against the petitioners in a case of such grave nature as involves offence under Section 307 IPC by use of a fire-arm are wholly unfounded.

8. Though the above by itself is a reason good enough to decline release on anticipatory bail, there is another reason to do so and that pertains to the subsequent events. As noted above, the interim protection was granted to the petitioners against coercive action by order dated 15.06.2017. At the same time they were also directed, *inter alia*, not to make contact, directly or indirectly, with any person on the side of the complainant. And yet, the incident which is subject matter of FIR 1128/2017 occurred on 19.11.2017 wherein, once again, fire-arm was used against the same victim Mahipal, he having been accosted by two persons indentified as Shyamveer and Kalu, they being allegedly aided and assisted by two other persons named Sushil @ Guruji and Jitender @ Jitney. As per the additional status report dated 21.05.2018, the evidence has come forth, including CCTV footage, indicating complicity of the said persons, who statedly are connected to the petitioners herein.

9. In the foregoing facts and circumstances, no case for release on anticipatory bail is made out. Interim orders are vacated.

10. The bail application and the application filed therewith are dismissed.

R.K.GAUBA, J.

JULY 05, 2018/yg