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IN THE HIGH COURT OF DELHI AT NEW DELHI

BAIL APPLN. 971/2019 & CRL. MAs 8148-50 /2019

NASEEM BANO & ORS. Petitioners

Through: Mr. Chirag Madan, Advocate
versus

STATE Respondent

Through: Mr. Panna Lal Sharma, APP
with SI Krishan Kumar,
PS:Hari Nagar, Delhi

CORAM:

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

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24.04.2019

1. The petitioners have filed the application under Section 438 of the Code of Criminal Procedure, 1973 (Cr. PC) for grant of anticipatory bail.
2. Status report stands filed.
3. The case of the prosecution is that, on 14.1.2019, a PCR call regarding a quarrel was received. A case was registered on the complaint of victim, Yusuf, wherein he alleged that Sahib Ahmad parked his scooty in front of the main gate of his house, to which he opposed and asked Sahib to remove his scooty from that place, but Sahib did not do so, which resulted in an altercation and quarrel between them. After that, Sahib carrying a cricket bat, along with his family came to the victim's house. Sahib used the cricket bat and hit the victim on his head. Then, brother of Sahib, Samim Ahmed hit the victim with a wooden rod/danda and another person, Aneesh Ahmad hit a brick on the head of Yusuf, after which the victim fainted. Family members

of both the parties started scuffling and abusing each other. After that, victim was rushed to the hospital. The MLC stated that the injury of the victim was grievous in nature.

4. In this case, the petitioners earlier moved an application under Section 438, Cr.PC before the Sessions Court, which was dismissed vide order dated 12.3.2019, wherein it was held as follows:

“there are prima facie serious allegations of causing serious injuries to complainant side levelled against these accused in this matter at this stage. In the further considered view of this Court, custodial interrogations of these accused may be essential for fair investigation of this case as per law in future. In the further considered view of this Court, they may flee from justice, if allowed to be released on anticipatory bails at this stage. For these reasons, I do not find any merits in these applications at this stage and the same are hereby dismissed at this stage. Hence, all these anticipatory bails applications decided by this common order to this effect. Anything written here need not to treated to affect further proceedings of this case on merits. Any interim protection from arrest, if allowed earlier in favour of any of these accused, is hereby cancelled/withdrawn.”

5. Learned counsel for the petitioners submitted that the petitioners have also lodged a cross-FIR against the complainant and his family. However, the police has not registered the case properly and it is one of the grounds for the grant of anticipatory bail to the petitioners.

6. Learned APP, on the query of the Court, submitted that, as per the MLC, one of the injured suffered grievous injury and the other suffered simple injury.

7. Anticipatory bail may be granted when there is material on record to show that prosecution was inherently doubtful or where there is material on record to show that there is a possibility of false implication. However, when the element of criminality is involved and/or the custodial interrogation is required and/or the other aspects and facts are required to be unfolded in investigation, the applicant is not entitled for anticipatory bail.

8. It is also well-settled law that while considering the question of grant of anticipatory bail, the Court *prima facie* has also to look into the nature and gravity of the alleged offence and the role of the accused. The Court is also bound down and must look into, while exercising its power to grant bail, the antecedents of the applicant and also the possibility of the applicant fleeing from justice, apart from other factors and parameters in view of the facts of each and every case.

9. The Supreme Court in the matter of ***Dr. Subhash Kashinath Mahajan v. State of Maharashtra & Anr.***, in Criminal Appeal No.416/2018, decided on 20.3.2018, held as under:

“112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;
- (iii) The possibility of the applicant to flee from justice;
- (iv) The possibility of the accused's likelihood to repeat similar or other offences;
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
- (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;
- (vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern;
- (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- (ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

10. The prosecution has filed the status report, wherein, apart from the contents of the FIR and its version, it is also stated that accused persons are not cooperating in the investigation and absconding from their houses.

11. Learned counsel for the petitioners has not been able to point out why and how the petitioners were falsely implicated in this case. Rather, the arguments of the learned counsel for the petitioners stated that the cross-FIR has not been registered as per law and the rival party has been accommodated by the police and is booked for bailable offences, whereas the petitioners have been booked for heinous crime. The arguments of the learned counsel for the petitioners itself prove that there is an element of criminality involved in the matter.

12. Taking into consideration the nature of the injuries, which are stated to be grievous, the gravity of the alleged offence as well as the fact that anticipatory bail application of the petitioners has already been dismissed by the Sessions Court and *prima facie*, at this stage there appears to be nothing on the record, in view of the allegations, that may indicate that

the petitioners were falsely implicated. Their custodial interrogation is essential. The petitioners have neither cooperated nor joined the investigation rather have fled from the justice.

13. In view of the above, I do not find any ground to grant anticipatory bail to the petitioners. The anticipatory bail application is dismissed. Pending applications are also dismissed.

14. It is clarified that this order shall not tantamount to any expression of opinion on the merits of the case.

CHANDER SHEKHAR, J

APRIL 24, 2019

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