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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 995/2019**
NAVEEN Petitioner

Through: Mr. Pradeep Teotia, Advocate

versus

THE STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Mr. Panna Lal Sharma, APP
with SI Sumit, PS:Jyoti Nagar,
Delhi

CORAM:

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

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22.04.2019

CRL.M.A.8320/2019

Allowed, subject to all just exceptions. The application is disposed of.

BAIL APPLN. 995/2019

1. The petitioner has filed the application under Section 438, read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.PC) for grant of anticipatory bail.
2. The case of the prosecution is that, on 15.2.2019, at about 9:00 pm, the complainant was at his shop and his nephew, Manish and two other persons came rushing to him and told him that they along with one person, Gaurav were eating at a small cart near the MCD School and in the meanwhile, one person, Umesh, who was drunk, started abusing them. To this,

when they objected, Umesh called his friends and 3-4 persons arrived and started fighting with them. It is alleged in the complaint that when the complainant arrived at the spot, Umesh and others started firing in the air and one of them pointed the gun towards Manish and shot him. The name of the person who fired on complainant's nephew was Chunnu who is the younger brother of Umesh. Umesh had also hit Manish on his head with a stick. After that, Umesh and others fled the spot.

3. Learned counsel for the petitioner submitted that the petitioner has been falsely implicated in this case and his name is not found in the FIR. Even otherwise, he was not present at the spot and has not committed any offence.

4. On the other hand, learned APP submitted that the petitioner has already been named in the statement of the injured and he has not cooperated in the investigation. Rather, the petitioner had sold the weapon to the accused Dinesh @ Chunnu. The petitioner ought to have surrendered and joined the investigation. Hence, the petitioner should not be granted any relief at this stage.

5. 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.

6. 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.

7. 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.”

8. It is a fact on record that the petitioner moved an anticipatory bail application under Section 438 of the Cr.PC before the Sessions Court, which was dismissed on 15.4.2019

and the Court held that the allegations against the applicant/accused are serious in nature. The applicant is named in the statement of the injured and it is also alleged that the applicant/accused had sold the weapon to one of the accused Dinesh@ Chunnu, who used the weapon. Now, the petitioner has invoked the jurisdiction of this Court.

9. It is also a fact on record that the injured has named the petitioner in his statement to the police, assigning him a specific role in the offence.

10. In view of the nature of the alleged offence as well as the manner in which the offence was committed and taking into consideration that there is allegation that the petitioner sold the weapon to one of the accused Dinesh @ Chunnu, who used the same, hence, the custodial interrogation is essential. Even otherwise, the petitioner is not co-operating and his anticipatory bail application has already been dismissed by the Sessions Court. Learned counsel for the petitioner has also not been able to point out in any manner that the prosecution was inherently doubtful and/or that there is a possibility of false implication. There appears, *prima facie* at this stage, to be nothing on the record, in view of the allegations which may indicate, in any manner that the petitioner was falsely implicated. The petitioner has neither joined nor co-operated in the investigation, rather he has fled from the justice.

11. Accordingly, the anticipatory bail application is dismissed.

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

CHANDER SHEKHAR, J

APRIL 22, 2019

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