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

+ **BAIL APPLN. 2109/2019**

ANIL KUMAR

..... Petitioner

Through: Mr. Sunil Choudhary, Adv.

versus

STATE

..... Respondent

Through: Mr.Panna Lal Sharma, APP for State
with ASI Rajmal, PS – Swaroop
Nagar

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

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26.08.2019

Crl. M.A. 34141/2019

Allowed, subject to all just exceptions.

Application is disposed of.

BAIL APPLN. 2109/2019

Vide the present petition, the petitioner seeks directions for releasing him on bail in case FIR No. 199/2019 registered at PS – Swaroop Nagar, Delhi for the offence punishable under Sections 323/341/34 IPC on the complaint of Smt. Sapna wife of Jitender with the allegations that on the previous night an altercation had taken place with her neighbour Manju wife of Pramod for putting bricks in the drain. She further alleged that on 02.06.2019 she was going to her another plot with her 4 year old son and when she reached in front of house of Manju she was caught hold by Manju

and her husband, hit her on her head by brick.

It is further alleged that petitioner also hit her husband by brick on his face and all of them fled away from the spot. Consequently, FIR mentioned above was registered.

Learned counsel appearing on behalf of the petitioner submits that the complainant, her husband, her brother-in-law (Devar) and her sister-in-law (Devrani) had beaten Manju (Bhabhi of petitioner), her niece Mansi as well as neighbours namely Radha and Anjali for which FIR No. 201/2019, under section 323/341/34 IPC was registered at Police Station Swaroop Nagar, Delhi against the complainant.

He further submits that the case registered against the petitioner is not for the alleged offence, however, the complainant had beaten the petitioner.

This Court posed a query to the public prosecutor that since the FIR was lodged on 02.06.2019, how many witnesses have been examined under Section 161 Cr.P.C. till date? There was no satisfactory reply from the APP for State on the instructions from the IO present in Court.

Section 172 of Cr.P.C. directs the IO to proceed in the following manner:

“172. Diary of proceedings in investigation.—

(1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

[(1A) The statements of witnesses recorded during the course of investigation under section 161 shall be inserted in the case diary.

(1B) The diary referred to in sub-section (1) shall be a volume and duly paginated.]

(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), shall apply.”

As per the Cr.P.C., when a case is registered, the IO of the case is supposed to investigate the case and write the daily diary accordingly. Whatever, the witnesses examined and if a case comes for bail, the IO is supposed to place all the statements of the witnesses, before the Court, recorded under Section 161 Cr.P.C.

The practice in Delhi is that when bail application is filed, the IO/SHO files the status report wherein it will be mentioned only as to how the offence has been committed and under which provisions the case has been registered. If there is an injury, on receipt of the MLC from the hospital, some time the sections of the offences are added accordingly. But the fact remains that before the Court, as per the practice of the Delhi Police,

they do not file the statements of the witnesses recorded under Section 161 Cr.P.C.

Accordingly, I hereby direct the Commissioner of Police, Delhi to issue standing orders to all the Police Stations/ IOs concerned that at the time of hearing the bail applications or other petitions, the concerned IO/ SHO shall file the remand report (the statements recorded of all the witnesses under Section 161 Cr.P.C.) till that date.

For the aforesaid purpose, the steps shall be taken within one week from the receipt of this order.

Registry is directed to transmit this order to the Commissioner of Police, Delhi for necessary compliance.

Coming back to the case in hand, since there is cross FIR registered against the complainant, therefore, I hereby direct the trial court to admit the petitioner on bail on furnishing personal bond of Rs.15,000/- with one surety of like amount to its satisfaction.

The application is accordingly disposed of with the above directions.

SURESH KUMAR KAIT, J

AUGUST 26, 2019

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