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

+ **BAIL APPL. 1208/2020**

ZAHID HUSSAIN

..... Petitioner

Through: Mr. Rajat Wadhwa, Advocate
versus

STATE & ANR.

..... Respondents

Through: Dr. M.P. Singh, APP for State
Mr. Mehmood Pracha, Advocate with
Mr. Jatin Bhatt, Advocate for the
complainant

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

(VIA VIDEO CONFERENCING)

ORDER

% **04.08.2020**

1. The present bail application has been filed seeking anticipatory bail in FIR No.132/2020 under Sections 307/498A/120B IPC registered at Police Station Mehrauli, New Delhi.
2. Learned counsel for the petitioner submits that as per the statement of the complainant, the incident occurred at about 7:30 A.M. on 12.03.2020 and the victim was taken to the hospital by the petitioner himself at 8:00 O'clock on the same day as reflected in the admission documents of the Max hospital. He submits that the petitioner is a Constable working in Delhi Police and is supporting his nine months old son who is presently living with the petitioner. He further submits that there are contradictions in the statements of the injured, her daughter and her father, who is the complainant in the present case.

3. Learned counsel for the petitioner has contended that present is not a case of any assault but rather of a suicide attempted by the injured. In this regard, he has also submitted that the marriage between the petitioner and the injured took place on 29.03.2015 and the present incident is of the year 2020 and in between these five years, there has been no complaints to the police of any torture or harassment.

4. Lastly, learned counsel for the petitioner has sought to place reliance on the order dated 13.07.2020 passed by the Full Bench of this Court in W.P.(C) 3037/2020 wherein orders of stay/interim bail/bail/parole wherever granted, has been directed to be continued.

5. Dr. M.P. Singh, learned APP for State, duly assisted by Mr.Mehmood Pracha, learned counsel for the complainant, has vehemently opposed the bail application. It has been submitted that on account of the assault and fall, the injured was hospitalised for 20 days and the nature of injuries suffered by her have been opined to be '*dangerous*'. It is stated that the petitioner has been advised another operation for her injuries.

6. It is further submitted that a statement of the three years old daughter of the injured has been recorded under Section 164 Cr.P.C. As per her statement, it has been stated that on the night of the incident, there was a quarrel between the petitioner and the injured subsequent to which, the petitioner dragged the injured to the roof top. It is also stated that in her presence, the petitioner had beaten the injured.

7. Subsequently, on 21.07.2020, a statement of the injured had been recorded during investigation. The injured has stated that since her marriage in the year 2015, there has been continuous demand of dowry as well as physical beatings given by the in-laws. In the year 2016, she was beaten and

thrown out of the house on account of which she had to stay at her parents' place. The injured has further stated that on the day of the incident, her mother-in-law Yasmin, sister-in-law Ruksana, brother-in-law Pervez and her husband were present in the house and they with the common intention, tried to kill her as they could not succeed to get her property. She further stated that on account of the incident, she sustained injuries.

8. Although on the first date of hearing, it was directed that no coercive action be taken against the petitioner till the next date of hearing as it was submitted on behalf of the petitioner that all other co-accused were already admitted to anticipatory bail. Today, it has been submitted that vide order dated 07.07.2020, the bail applications of the three co-accused namely Pervez, Yasmeen and Ruksana stands dismissed. It is also relevant to note that the three co-accused who were not present at the spot, were earlier admitted to anticipatory bail on 19.05.2020.

9. According to the MLC of the injured, she suffered the following injuries:-

“1. Right frontotemporoparietal acute SDH with right parietal contusion.

2. Fracture neck of Femure I/L fracture shaft of femure with wound left side with fracture neck of 5th metatars left side.

3. Hypothyroidism.”

10. *Prima facie*, both the injured as well as her daughter have categorically stated about the role of the present petitioner. The statements are duly corroborated by the injuries observed in the MLC which have been opined to be ‘*dangerous*’. Looking into these facts and circumstances, I do not deem it fit to admit the petitioner on anticipatory bail.

11. So far as the submission of learned counsel for the petitioner that his case is covered by the order dated **13.07.2020** passed by the Full Bench in **W.P.(C) 3037/2020** and that the order of no coercive action be extended on the basis of the said order is concerned, I deem it appropriate to reproduce the relevant paras of the said order dated **13.07.2020** as well as the subsequent order dated **24.07.2020** that reads as follows:

“7. In this regard, we make it clear that all the directions issued from time to time in this case are based on the ongoing pandemic situation in Delhi. So far as the criminal matters are concerned, these directions have been issued keeping in view the fact that the jail authorities have limited space to keep the inmates and in case of spread of Covid-19 pandemic in the jail, it would not be in a position to maintain physical distancing amongst jail inmates. Looking to this aspect and the possible threat of spreading of viral infection by those persons who are on interim bail/bail/parole granted by this Court or the Courts subordinate to this Court, to other inmates of the jail on their return to the jail, the decision of extension of interim bail/bail/parole has been taken from time to time. It is clarified that this order of extension of bail/interim bail/parole shall be applicable to all undertrials/convicts, who are on bail/interim bail or parole as on date irrespective of the fact that they were released on bail/interim bail or parole before or after 16th March, 2020.”

On **24.07.2020**, the Full Bench passed the following order:

“From a plain reading of the foregoing directions, it is axiomatic that, the Full Bench while taking suo motu cognizance of the extraordinary circumstances, arising out of the Covid-19 pandemic, had made it clear that insofar as, criminal matters are concerned, in view of the serious threat posed by the possibility of the unchecked spread of the coronavirus pandemic, by those

who have been enlarged on interim bail/parole; and who may carry back with them the Covid-19 infection, so as to infect other inmates of the jail, if they are required to surrender, to the already congested and over-crowded jails, which may not be in a position to strictly maintain physical distancing amongst jail inmates; and considering the inherent vulnerability of the jails, owing to serious space constraints, to effectively control, check and prevent the spread of Covid-19; it was directed that, the interim bail/parole granted to such persons by this Court or the Courts subordinate to this Court, either before or after the 16.03.2020, upto date, shall stand automatically extended till the 31.08.2020 or until further orders, except where there are any orders to the contrary, passed by the Hon'ble Supreme Court of India in any particular matter, during the intervening period. It is further clarified that this order of extension of interim bail/parole shall be applicable to all under trials/convicts, who have been enlarged on interim bail or parole, as on date, irrespective of the fact that they were so released on interim bail/parole, before or after 16.03.2020.”

12. A bare perusal of the aforesaid orders show that the submission of the learned counsel for the petitioner has no merit as the aforesaid orders relate to undertrials/convicts who were released on interim bail/bail/parole etc., and the same is not applicable in the facts of the present case, where initially a direction for “no coercive action against the petitioner” was given and today the matter has been finally argued and heard on merits.

13. Accordingly, the present bail application is dismissed.

MANOJ KUMAR OHRI, J

AUGUST 04, 2020/na