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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 10th May, 2021

Decided on : 17th May, 2021

+ **BAIL APPLN. 3882/2020;** + **BAIL APPLN. 3895/2020**
+ **BAIL APPLN. 3923/2020**

**TUSHAR GARG; PULKIT GARG;
AND SATISH GUPTA**

..... Petitioner(s)

Through : Mr.Ramesh Gupta, Sr Advocate
with Dr.Ajay Pal Tushir, Advocate.

versus

STATE (NCT OF DELHI)

..... Respondent

Through : Ms.Radhika Kolluru, APP for the
State with SI Hawa Singh, PS
Mangolpuri.
Mr.Chander.M.Maini and
Mr.Mayank Maini, Advocates
with complainant in person

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J. *(Through Video Conferencing)*

1. These anticipatory bail applications are moved by petitioners namely Satish Gupta; Tushar Gupta and Pulkit Gupta under Section 438 Criminal Procedure Code 1973 (hereinafter referred as *Cr P C*) in case FIR No.865/2020 under Section 448/380/506/34 IPC registered at police station Mangolpuri. Petitioner - Satish Gupta is father; petitioners - Tushar Gupta and Pulkit Gupta –are his sons.

2. The brief facts are on 11.10.2020 at about 20.28PM a PCR call was received at police station Mangolpuri. The police reached the spot

BAIL. APPLN Nos.3882, 3895, 3923 of 2020

Page 1 of 5

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and after preliminary enquiry, the present case FIR was registered on the complaint of Dr. Vineet Kumar Kohli in which he alleged that he took on rent the premises bearing No.B-24, Pushpanjali Enclave, Delhi from the petitioner Satish Gupta for running his school and entered into an agreement in the year 2018 for a period of five years for monthly rental of Rs.1.00 lac. The complainant alleged on 11.10.2020 the guard of the school informed him about 40-50 people had gathered at the school premises and after breaking open the locks have entered inside the school. On receipt of this information, the complainant visited the school and found the locks of the gate broken and belonging of the school worth Rs.70.00 lacs, including the cash amount, electronics, laptops, printers and projectors etc were stolen and the petitioners along with their goons were present at the gate of the school and did not allow the complainant to enter the school premises. He thus made a call at number 100. The police reached the spot. The complainant furnished the list of stolen articles to the Investigating Officer and also provided the copy of the rent agreement dated 18.03.2020 between the petitioner – Satish Gupta and himself. The statement of witnesses were recorded and during the course of investigation it was found on the date of the incident, the *possession* of the premises in question was *with the complainant*. The statements of the Principal (Coordinator), teacher of the school; book and stationery supplier were recorded. It transpired the books and uniform were supplied to the complainant from 02.03.2020 to 20.03.2020 for the total sum of Rs.14,75,985/-.

3. During the course of investigation, one Vikas, an employee of the petitioner Satish Gupta was arrested on 24.11.2020 and at his instance on

26.11.2020, in the presence of the complainant, from the first floor of house bearing No.C-89, Pocket-13, Sector 3, Rohini, Delhi various printed prospectus, leaflets, advertisement items, folders, educational activity box, printing books of play classes, and printed school bags etc were recovered at the instance of Vikas. The estimated cost of all the stolen item recovered was Rs.20.00 lacs.

4. The subject property belong to petitioner – Satish Gupta. It was alleged by co-accused Vikas the part of the stolen articles are lying with the petitioners herein, but they neither joined investigation nor could they be arrested and even the proceedings under Section 82 Cr P C are now complete against them.

5. The investigation thus show the possession of the premises was with the complainant and he was running a play school namely *Starkids* there till he was forcibly dispossessed.

6. The learned senior counsel for the petitioner argued *a)* even on 10.03.2020 the complainant had lodged a false complaint and *b)* the possession of tenanted premises was never taken by the petitioners and rather the complainant was unable to pay the arrears of rental, thus he insisted his assets/articles be kept at some safe place so that in future it may be released to him against payment of rental arrears. It was also argued by the learned senior counsel for the petitioner the real dispute between the parties is qua payment of pending rentals and the petitioners have not taken forcible possession of the property.

7. Considering the complaint, allegedly acts of the petitioner described in the status report based on examination of various witnesses which reveal the possession of the premises was with the complainant till it was forcibly taken by the petitioners, hence the submissions of the learned senior counsel for the petitioner are not of any help to them to justify their acts and omission.

8. Though, the learned senior counsel for the petitioner argued in March, 2020 also the complainant had made a police complaint regarding theft of his articles and it was found to be false, but the record shows the first incident was reported by the complainant to local police of police station Mangolpuri vide DD No.79A, 80A and 83A and a written complaint dated 16.03.2020 was registered at DD No.6B dated 17.03.2020 in respect of forcible entering into the premises to dispossess the complainant and the police did not help. Nevertheless, the statement of witnesses recorded as of now show the complainant was actually in possession of the premises till he was dispossessed.

9. Further, there may be arrears to be paid by complainant, but it does not give any right to the petitioners herein to act in a manner they had acted. They had forcibly entered into the premises and had allegedly stolen/taken away the articles, part of which stand recovered at the instance of co-accused Vikas from the house of petitioner(s). The proceedings under Section 82 Cr P C have also been concluded. The conduct of petitioners disentitle them from any discretionary relief. The applications are, *thus*, dismissed. Pending application(s), if any, also stand disposed of.

10. Nothing observed above shall be treated as an opinion on merits of respective claims of either side as observations are made only for the purpose of disposal of these petitions.

YOGESH KHANNA, J.

MAY 17, 2021

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