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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 2nd June, 2021

Decided on: 14th July, 2021

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CRL.M.C. 1277/2021

UMED SINGH

..... Petitioner

Represented by: Mr.Viraj R. Datar, Sr.Advocate with
Mr.Rajtilak Guha Roy, Advocate.

versus

STATE (GOVT. OF NCT OF DELHI) & ANR. Respondents

Represented by: Mr.Amit Gupta, APP for the State
with SI Deepak, PS Alipur.
Mr.L.S. Saini, Advocate for
Respondent No.2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition, father of victim Sushil seeks cancellation of anticipatory bail granted to Chankya Mann @ Sanju, respondent No.2 herein in case FIR No.67/2021 under Section 307 IPC registered at PS Alipur, Delhi granted by the learned Additional Sessions Judge vide order dated 9th April, 2021.

2. Learned counsel for the petitioner contends that the impugned order dated 9th April, 2021 is perverse for the reason, the learned Trial Court declined to grant anticipatory bail to the co-accused who had no role in the offence, however granted anticipatory bail to the respondent No.2 who had the main role in causing injuries to Sushil alongwith the co-accused Gaurav s/o Naresh Kumar resulting in a condition of the injured being unfit for

statement for a long duration and even now suffers from paralysis having undergone decompressive cranieotomy. The defence put up in the FIR lodged by the co-accused that the victim was teasing the cousin sister of Gaurav is only an afterthought as the said FIR was lodged subsequently. The petitioner apprehends threat from the respondent No.2. In view of the gravity of the offence, the order granting anticipatory bail is perverse on facts as well as on law and has resulted in travesty of justice to the petitioner and his son.

3. Learned counsel for the respondent No.2 on the other hand contends that the present petition seeking cancellation of bail is not maintainable as the petitioner is neither the complainant nor the victim. The FIR was registered on a DD entry that too belatedly after 12 hours by manipulating the facts. Statement of the victim was recorded after a long duration. No motive to commit the offence is attributable to the respondent No.2 who was only a friend of Gaurav s/o Naresh Kumar. The dispute, if any, was between Gaurav and the victim and not with respondent No.2. One of the co-accused Gaurav s/o Jai Kishan has been granted anticipatory bail by this Court and hence even on parity it cannot be said that the impugned order is perverse. Charge-sheet has already been filed and thus the respondent No.2 is not required for investigation. Recovery of bricks used for the alleged offence has already been made at the instance of Gaurav. When the anticipatory bail was granted to the respondent No.2, learned counsel for the complainant was duly present. As per the CCTV footage relied upon by the prosecution Gaurav s/o Naresh Kumar came on a motorcycle and 3 or 4 persons were standing there. It was Gaurav s/o Naresh Kumar who took the victim inside the park and the respondent No.2 only followed them and had caused no

assault to respondent No.2 or any other person. Even the main accused Gaurav s/o Naresh Kumar has been granted interim bail for 60 days on the ground of covid-19. Consequently, no case for cancellation of bail is made out.

4. The above-noted FIR was registered on DD No.27A wherein a PCR call was recorded on 14th February, 2021 in which the caller informed that his younger son had gone to get some articles, where 4-5 people have beaten him brutally and he has received lot of injuries near Chhota Shiv Mandir, Alipur. Head Constable Attar Singh who was assigned the DD entry reached the spot along with Constable Ashok Kumar and found that the injured had been shifted to SRHC Hospital, Narela. He could not find any eye witnesses at the spot and thus he reached the Hospital and collected the MLC of Sushil s/o Umed Singh. The MLC noted alleged history of physical assault around 9.55 AM L/E head injury present abrasion and contusion bulging right parietal region 4x4 cm bulging left occipital 2x2 cm. The patient was declared unfit for statement and had been referred to higher centre for further management and opinion. The patient was shifted to LNJP Hospital on the same day, where also he was declared unfit for statement and as the Investigating Officer could not find any eye witness and the victim was not in a position to make a statement, FIR No.67/2021 under Section 307 IPC was registered on the DD entry and investigation was entrusted to SI Deepak.

5. During the course of investigation, statement of Nasruddin was recorded and CCTV footages from near the place of incident were checked which only covered the road in front of the place of incident and not the place of incident. Analysis of the CCTV footage revealed that at 9.55 AM

two persons came on a bullet motorcycle and stopped the motorcycle in front of Tikona Park, Near Chhota Shiv Mandir, Alipur where Sushil, the injured was already standing with his friends namely Nasruddin, Saurabh s/o Jai Kishan and Gaurav s/o Jai Kishan. Both the persons who came on the motorcycle took Sushil inside the park forcefully. The two accused who took Sushil inside the park were identified as Gaurav s/o Naresh Kumar and Sanju s/o Rai Singh Mann, that is, the respondent No.2 herein.

6. In the statement of Nasruddin recorded on 14th February, 2021 itself he stated that the injured was allegedly stalking the cousin sister of Gaurav s/o Naresh Kumar for the last few months and thus Gaurav and his friends Sanju attacked Sushil with bricks. Gaurav s/o Naresh Kumar was arrested on 15th February, 2021 who disclosed that injured Sushil had been stalking his cousin for few months which was opposed by the family members. Earlier also Gaurav s/o Naresh Kumar had warned Sushil many times to stay away from his sister which was not acceded to by the victim. Thus to teach a lesson to Sushil, on 14th February, 2021 he along with his friend Chankya Mann @ Sanju had heated arguments with the injured Sushil, whereafter they hit him with bricks on his head and fled away from the place of incident. Two pieces of bricks were recovered from the place of incident at the instance of Gaurav s/o Naresh Kumar.

7. Efforts were made to arrest the respondent No.2 however, he was found absconding hence non-bailable warrants qua the respondent No.2 were taken from the Court of learned CMM, Rohini on 26th February, 2021 but the same could not be executed. Proceedings under Section 82 Cr.P.C. were initiated against the respondent No.2 on 23rd March, 2021 which were renotified for 11th May, 2021.

8. Statement of Sushil, son of the petitioner was recorded on 27th March, 2021 after he was declared fit for statement who stated that on 13th February, 2021 Gaurav s/o Jai Kishan and Prince s/o Suresh Kumar called him on his mobile phone number in order to meet him but he refused to go. On the next day, that is, 14th February, 2021 Gaurav s/o Jai Kishan had called Sushil and asked him to come and meet him. On this Sushil went and after that at about 9.30 AM both Sushil and Gaurav s/o Jai Kishan went to the shop of Prince where an altercation started amongst them on the issue of Sushil's interaction with Gaurav's sister. In the meanwhile his friend Nasruddin and Saurabh s/o Jai Kishan came at the shop of Prince. During the altercation Prince called Gaurav s/o Naresh Kumar on his mobile phone and told him that Sushil was present at his shop and was arguing with him. Thereafter Sushil along with Nasruddin, Gaurav s/o Jai Kishan and Saurabh s/o Jai Kishan left the shop of Prince and were standing in front of Tikona Park, Alipur. In the meantime, Gaurav s/o Naresh Kumar along with Chankya Mann @ Sanju s/o Rai Singh Mann came on a bullet motorcycle where Sushil was already standing with Saurabh and Nasruddin. Gaurav s/o Naresh Kumar held Sushil and pushed him inside the park and both Gaurav and Sanju attacked Sushil with bricks on his head which resulted in serious head injuries to him and thereafter he fled away. During the course of investigation CDR analysis of the accused and the witnesses was also conducted and the statement of the injured was corroborated by the locations of the cell ID of various accused.

9. Petitioner who is the father of injured seeks cancellation of bail on the ground that the impugned order is perverse, has resulted in miscarriage of justice and not on the ground that after the grant of anticipatory bail the

respondent No.2 misused the concession granted to him, the only averment on this count being that the petitioner and his son apprehends threat, though there is no material to substantiate this apprehension. Thus, it has to be seen whether the impugned order passed by the learned Additional Sessions Judge granting anticipatory bail to the respondent No.2 is a perverse order resulting in miscarriage of justice. Relevant portion of impugned order dated 9th April, 2021 reads as under:

“Reply of the bail application has been received from the P.S. It is submitted by ld counsel for applicant that applicant has been falsely implicated in the present case. He has further submitted that present case FIR has been registered against the applicant for making pressure since cross case FIR is also pending against the complainant side. He has further submitted that applicant is a young boy of 22 years and is a student of B.A. Final year. It has further submitted that name of the applicant is not mentioned in the FIR and no specific role has been assigned to the applicant nor there is any eye-witness to the incident. He has further submitted that accused Gaurav was arrested in the present case on 14.02.2021 and accused Prince was arrested on 30.03.2021. He has further submitted that injured Sushil Kundu used to tease sister of Gaurav for which case FIR No. 75/21, u/s 354/354D IPC was registered against him and present case FIR was registered as counter of the said case. It is further submitted that applicant has nothing to do with the present case, main injury was allegedly caused by co-accused Gaurav, no recovery is to be effected from the applicant and at the most only offence u/s 308 IPC is made out and as such his custodial interrogation is not required. Ld. Counsel has further submitted that this applicant is a student of B.A Final year and has apprehension of his arrest hence his bail application may be allowed.

Per contra ld Additional P.P for State in assistance with ld. Counsel for the complainant has opposed the bail application on the ground that this applicant/accused has been named in the FIR and specific allegation has been levelled against him, serious injuries were caused to the complainant/injured and recently bail application of co-accused has been dismissed.

Heard. Keeping in view the fact that applicant is a student of B.A. Final year, also in view of the fact that no recovery is to be

effected, also in view of the fact that CDRs have already been collected, in view of the latest guidelines of Hon'ble High Court and also in view of the fact positivity rate of COVID-19 cases is at its highest peak, it will not be advisable to send the applicant, who is a student, in jail and as such a lenient view is taken against him. It is ordered that in the event of his arrest, he be released on anticipatory bail on his furnishing personal bond in the sum of Rs. 30,000/- with two sureties in the like amount to the satisfaction of the concerned IO/SHO. However, the applicant is directed to join the investigation as and when directed by the concerned IO/SHO. He is further directed not to threaten the prosecution witnesses or tamper with evidence or indulge in any such crime and to follow the guidelines qua COVID 19 issued by Government of India as well as by Govt. of NCT of Delhi. The applicant shall share his phone live location as and when required by the IO. In case, it is prima facie brought to the notice of the Court that the applicant/accused is violating the said conditions, the anticipatory bail granted to him shall be liable to be cancelled. The bail application is disposed of accordingly. Nothing stated herein shall tantamount to any expression of opinion on the merits of the case. Copy of order be given dasti to all concerned. Let copy of this order be also sent on the whatsapp/email ID of ld. Counsels for the parties."

10. In the decision reported as AIR 1980 SC 1632 Gurbaksh Singh Sibbia and Ors.vs. State of Punjab, Supreme Court laid down the circumstances which are required to be weighed while considering grant of anticipatory bail:

"31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true.

That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail."

11. Undoubtedly, the nature of accusation against the accused is a paramount consideration while granting anticipatory bail or regular bail to an accused. Vide the impugned order though the learned Additional Sessions Judge noted some of the relevant factors like the respondent No.2 is a student, no recovery is to be made from the respondent No.2 and the prevailing conditions due to pandemic requiring decongestion in the jail as the reasons to grant anticipatory bail, however it failed to note the most important factor i.e. the nature of accusation against the accused though the nature of injuries received by the victim and the allegations against the respondent No.2 were brought to his notice by the learned APP and learned counsel for the complainant. As a matter of fact in the case of co-accused i.e. Gaurav s/o Jai Kishan, against whom there were no allegations of causing injuries, the learned Additional Sessions Judge declined to grant anticipatory bail which was granted by this Court in view of the nature of

allegations against the said accused.

12. However, the issue in the present petition is whether the illegality in not noting the nature of accusation against the respondent No.2, warrants cancellation of bail of the respondent No.2.

13. Supreme Court in the decision reported as (2020) 2 SCC 743 Myakala Dharamaramj and Ors. vs. State of Telangana and Anr. held:

"9. It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail [Kanwar Singh Meena v. State of Rajasthan, (2012) 12 SCC 180 : (2013) 4 SCC (Cri) 614] .

10. Having perused the law laid down by this Court on the scope of the power to be exercised in the matter of cancellation of bails, it is necessary to examine whether the order passed by the Sessions Court granting bail is perverse and suffers from infirmities which has resulted in the miscarriage of justice. No doubt, the Sessions Court did not discuss the material on record in detail, but there is an indication from the orders by which bail was granted that the entire material was perused before grant of bail. It is not the case of either the complainant Respondent 2 or the State that irrelevant considerations have been taken into account by the Sessions Court while granting bail to the appellants. The order of the Sessions Court by which the bail was granted to the appellants cannot be termed as perverse as the Sessions Court was conscious of the fact that the investigation was completed and there was no likelihood of the appellant tampering with the evidence.

11. The petition filed for cancellation of bail is both on the grounds of illegality of the order passed by the Sessions Court and the conduct of the appellants subsequent to their release after bail was granted. The complaint filed by one Bojja Ravinder to the Commissioner of Police, Karimnagar is placed on record by Respondent 2. It is stated in the complaint that the appellants were roaming freely in the village and threatening witnesses. We have perused the complaint and found that the allegations made therein are vague. There is no mention about which accused out of the 15 indulged in acts of holding out threats to the witnesses or made an attempt to tamper with the evidence.

12. After considering the submissions made on behalf of the parties and examining the material on record, we are of the opinion that the High Court was not right in cancelling the bail of the appellants. The orders passed by the Sessions Judge granting bail cannot be termed as perverse. The complaint alleging that the appellants were influencing witnesses is vague and is without any details regarding the involvement of the appellants in threatening the witnesses. Therefore, the appeals are allowed and the judgment [Bojja Samatha Vijaya v. State of Telangana, 2019 SCC OnLine TS 2259] of the High Court is set aside."

14. As noted above, the learned Additional Sessions Judge though failed to note the relevant factor i.e. the nature of accusation and the injury caused in the reasoning, however, from the contentions of the parties noted in the impugned order he was conscious of the said fact and as all the material facts were before the Court, the illegality of not noting the nature of accusation in the order impugned granting anticipatory bail to respondent No.2 does not traverse to perversity. Thus this Court finds no ground to cancel the anticipatory bail granted to the respondent No.2.

15. Petition is dismissed.
16. Order be uploaded on the website of this Court.

(MUKTA GUPTA)
JUDGE

JULY 14, 2021
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