

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

Date of decision: 14th September, 2021

IN THE MATTER OF:

+ **BAIL APPLN. 3140/2021**

AZAD SINGH @ MAMU

..... Petitioner

Through Mr. Mukesh Kalia, Advocate with
Mr. Chetan Pangasa, Advocate
versus

THE STATE (N.C.T OF DELHI)

..... Respondent

Through Mr. Amit Chadha, APP for the State
with SI Baljit Singh, PS Paschim
Vihar East

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition under Section 438 Cr.P.C is for grant of bail to the petitioner in the event of arrest in FIR No.541/2020 dated 09.09.2020, registered at Police Station Paschim Vihar East for offences under Sections 308/324/392/506 IPC.

2. Facts, in brief, leading to the present petition are as under:

- a) An information was received on 08.09.2020 that “D-9 Peeragarhi Apsra Banquet Hall, Caller ke pati ko Mamu Naam Ke Badmash Ne Chaku Mar Diya”. The said information was entered vide DD No.05-A. The police reached the spot and found that the injured has been shifted to Sanjay Gandhi Memorial Hospital, Mangolpuri. Police reached the Hospital and collected the MLC of the injured, being MLC

No.10893/2020. The MLC records the following injuries:

- i. Abrasion on left parietal region,
 - ii. Swelling on B/L cheek,
 - iii. Clear incised wound on Left thigh 2cm x 0.5cm x0.2cm,
 - iv. Clear incised wound on right thigh 1cm x 0.2cm x0.2cm.
- b) The MLC also records that the injured was not able to speak due to pain and swelling in his jaws. It is stated that on the next day i.e. 09.09.2020, the Police reached the house of the injured and recorded his statement.
- c) It was stated by the complainant that on 07.09.2020, at about 11:30 PM, when he was going to Kapoor Dhaba to take food, when he reached near Hanuman Temple, the petitioner herein, who is a Bad Character of the area and against whom a number of cases are registered, confronted the complainant and threatened him by saying that the complainant's brother, Dheeraj, is behaving like a strongman of the area and today the petitioner will teach him a lesson. It is stated that the petitioner took out a knife and inflicted injuries on the legs of the complainant due to which he fell down. It is stated that the petitioner then sat over the complainant and hit him on his face a number of times with the butt of knife. It is stated that the petitioner then took away the complainant's mobile phone. It is stated that the petitioner had abused the complainant's brother some days back but since the petitioner is a Bad Character of the area, the complainant's brother was hesitant to file any complaint. It is stated that on receiving the information about

the incident the complainant's brother and his wife reached the spot and his wife called the police. It is stated that the brother of the complainant took him to the Sanjay Gandhi Memorial Hospital. It is stated the complainant was released from the Hospital but since there was intense pain in his jaws and he was not able to speak and he did not give any statement to the Police on that day. It is stated that since the Police had come to the house of the petitioner, he is giving the present statement. On the statement of the injured/complainant, FIR No.541/2020 dated 09.09.2020, was registered at Police Station Paschim Vihar East for offences under Sections 308/324/392/506 IPC.

- d) The petitioner filed an application under Section 438 Cr.P.C seeking anticipatory bail. The learned Additional Session Judge – 03, Tis Hazari Courts, *vide* order dated 28.09.2020, dismissed the said application.
- e) The petitioner filed another application under Section 438 Cr.P.C seeking anticipatory bail. The learned Additional Session Judge – 01, Tis Hazari Courts, *vide* order dated 29.06.2021, dismissed the said application.
- f) The petitioner has thereafter approached this Court by filing the instant bail application.

3. Notice was issued on 27.08.2021. Status Report has been handed over in the Court on 08.09.2021, by the learned APP for the State. A copy of the Status Report has already been supplied to the learned counsel for the petitioner.

4. Mr. Mukesh Kalia, learned counsel for the petitioner, states that the

incident occurred on 07.09.2020, the injured was taken to the Sanjay Gandhi Memorial Hospital and he was discharged on the very same day but the instant FIR was registered only on 09.09.2021 at 3:20 PM. He states that there is an inordinate delay in filing the FIR. He submits that the MLC was recorded on 08.09.2021, more than one year has passed after the incident. He, therefore, states that there is no need of custodial interrogation of the petitioner. He submits that the petitioner reported to the Police Station on 05.09.2021, 06.09.2021 and 07.09.2021 and has joined the investigation. He states that the petitioner has lost his wife and he has three small children and there is no one to take care of them. He, therefore, states that anticipatory bail be granted to the petitioner.

5. *Per contra*, Mr. Amit Chadha, learned APP for the State, submits that the petitioner is a Bad Character of the area and he has about 24 cases registered against him. He states that since the petitioner has been declared a Bad Character of the area, he is supposed to come to the Police Station once every month. He states that after the incident, the petitioner was absconding. He states that non-bailable warrants were issued against the petitioner on 26.01.2021 and proceedings under Section 82 Cr.P.C have been initiated against the petitioner on 27.01.2021. It is stated that the petitioner had not reported to the Police Station till interim protection was granted to him by the Court. Mr. Amit Chadha, learned APP for the State, has taken this Court through the MLC, which apart from the incise wounds on the left and right thighs also records abrasion on the left parietal region and swelling on the cheek. The MLC records that information from the surgery Department is required. It is stated that on 10.09.2020, the petitioner went to Bhagwan Mahavir Hospital, Pitampura, where the doctor has mentioned that the

petitioner has sutured wounds on thighs. The Doctor has also mentioned that there is a swelling on the left side of the face, it also mentioned that the teeth on the left side of the mouth of the petitioner is loose. The Doctor has referred the petitioner to higher centre for dentist opinion. The learned APP states that in the month of September, 2020 itself the petitioner approached Dr. Baba Saheb Ambedkar Hospital, Rohini, for treatment. The Doctor at Dr. Baba Saheb Ambedkar Hospital, Rohini, has recorded that there is a Mandibular fracture on the left side of the mouth of the petitioner. The Doctor has further noted that there is a limited opening of the mouth of the injured. The learned APP further submits that the injured once again went to the Maulana Azad Institute of Dental Sciences wherein the Doctor has recorded that there is a restricted mouth opening and the injured was directed to report on 11.09.2020 in the Dental OPD for further examination. The learned APP further submits that on 11.09.2020 the injured was directed to undergo Rapid Antigen Test before the injured could be examined by the Dental Department. He states that the injured was found to be Corona positive. He states that the injured has thereafter started treatment at Dr. Gautam's Dental Clinic. The learned APP for the State has produced certain portions of the Police Dairy which shows that the injured has been going to Dr. Gautam's Dental Clinic. The learned APP has submitted a note from Dr. Gautam's Dental Clinic which confirms that the injured is getting treatment from Dr. Gautam's Dental Clinic. He states that the petitioner can threaten and influence the witnesses and this would impede the investigation. He, therefore, states that anticipatory bail be not granted to the petitioner.

6. Heard Mr. Mukesh Kalia, learned counsel appearing for the petitioner and Mr. Amit Chadha, learned APP for the State and perused the material on

record.

7. A perusal of the report from Dr. Baba Saheb Ambedkar Hospital, Rohini, shows that there is a fracture in the jaw of the injured and he is not able to open his mouth. The injury has been caused by the blows inflicted by the petitioner herein with the butt of knife on the face of the injured. The injuries are grievous in nature. The petitioner is a Bad Character of the area. The Status Report records that including the present case, there are about 25 cases registered against the petitioner. The petitioner has either been discharged or acquitted in 18 out of 25 cases and he is facing trial in six cases. The petitioner has not been reporting to the Police Station and was absconding after the incident because of which non-bailable warrants have been issued against him. The material on record discloses that the petitioner filed an application under Section 438 Cr.P.C seeking anticipatory bail but the same was rejected by the learned Additional Session Judge – 03, Tis Hazari Courts, *vide* order dated 28.09.2020. The fact which emerges is, therefore, that the petitioner was absconding for nine months.

8. The parameters for granting anticipatory bail have been succinctly laid down in Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694, wherein the Supreme Court has observed 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 over implication 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.*

113. *Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. **The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.***

114. *These are some of the factors which should be taken into consideration while deciding the anticipatory bail applications. These factors are by no means exhaustive but they are only illustrative in nature because it is difficult to clearly visualise all situations and circumstances in which a person may pray for anticipatory bail. If a wise discretion is exercised by the Judge concerned, after consideration of the entire material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of. The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the Judges of the superior courts. In consonance with the legislative intention we should accept the fact that the discretion would be properly exercised. In any event, the option of approaching the superior court against the Court of Session or the High Court is always available.”*

(emphasis supplied)

9. The said principle has been affirmed by the Constitution Bench of the Supreme Court in Sushila Aggarwal and Ors. v. State (NCT of Delhi) and Anr., (2020) 5 SCC 1.

10. Applying the said principles to the present case and the fact that the petitioner is a Bad Character of the area having a number of cases registered against him, the chances of the petitioner threatening the complainant and his family members cannot be ruled. The effect of injury on the complainant is such that the complainant has suffered a jaw fracture. The custody of the petitioner is required for the recovery of the knife. The fact that the petitioner was not reporting to the Police Station regularly and the fact that the petitioner was evading arrest since September, 2020 gives a reasonable apprehension that the petitioner is likely to abscond if the petitioner is granted anticipatory bail.

11. The fact that the nature of injury, the antecedents of the petitioner, the chances of the petitioner fleeing from justice, are all relevant factors for grant or refusal of bail. This Court is not inclined to grant anticipatory bail to the petitioner.

12. Accordingly, the petition is dismissed along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J

SEPTEMBER 14, 2021

Rahul