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

+ BAIL APPLN. 1769/2022

MANISHA Petitioner

Through: Ms. Jyoti Singh, Advocate.

versus

STATE OF DELHI Respondent

Through: Mr. Amit Sahni, APP for the State
with SI Shiv Kumar, PS Kishan Garh.

Mr. Shiv Chopra with Ms. Aadhyaa
Khanna, Mr. Siddharth Arora and
Mr. Nikhil Srivastava, Advocates.

+ BAIL APPLN. 1792/2022

OMWATI Petitioner

Through: Ms. Jyoti Singh, Advocate.

versus

STATE OF DELHI Respondent

Through: Mr. Amit Sahni, APP for the State
with SI Shiv Kumar, PS Kishan Garh.

+ BAIL APPLN. 1784/2022

MAMTA Petitioner

Through: Ms. Jyoti Singh, Advocate.

versus

STATE OF NCT OF DELHI Respondent

Through: Mr. Amit Sahni, APP for the State
with SI Shiv Kumar, PS Kishan Garh.

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Date of Decision: 14th December, 2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. There are the petitions for anticipatory bail. The matter was taken up by this Court on 03.06.2022, whereby, the following orders were passed.

“CRL.M.A. 11689/2022 in BAIL APPLN. 1769/2022
CRL.M.A. 11798/2022 in BAIL APPLN. 1784/2022
CRL.M.A. 11854/2022 in BAIL APPLN. 1792/2022

Allowed, subject to all just exceptions.

The applications are accordingly disposed of.

BAIL APPLN. 1769/2022, BAIL APPLN. 1784/2022 and
BAIL APPLN.1792/2022

1. Three separate applications under Section 438 Cr.P.C. have been preferred on behalf of the petitioners namely Manisha, Mamta and Omwati seeking anticipatory bail in FIR No.251/2022 under Sections 452/354/354- B/323/34 registered at Police Station Kishan Garh.

2. Issue notice. Learned APP for the State appears on advance notice served upon the State and accepts notice.

3. In brief, as per the case of the prosecution, the present FIR was registered on the complaint of Sanjay Gandas, who happens to be the brother of Manisha and Mamta and son of Omwati. It is alleged that on Holi, a quarrel had taken place between complainant's wife, mother and sisters and the matter was reported to the Police by both sides. Further, on 26.05.2022, there was a trespass in his premises by Manisha, Devender (Jija), Sandeep (cousin) and his associates Nitesh Bhardwaj and Ashish Yadav, while the complainant was sleeping along with his wife and children. They were further joined by the petitioners Mamta and Omwati. The aforesaid

BAIL APPLN. 1769/2022,

BAIL APPLN. 1792/2022 & BAIL APPLN. 1784/2022

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persons assaulted the complainant and his wife, which resulted in injuries on his head and hand. The accused also tried to tear the clothes of his wife, touched her inappropriately and also tried to do “dushkaram” with her. The matter was reported to the Police and the present FIR was accordingly registered.

4. Learned counsel for the petitioners submits that the disputes between the parties have arisen over the distribution of the properties left by the deceased husband of Omwati (i.e. father of complainant and accused Mamta and Manisha). It is contended that there was no alleged trespass since both the properties No. 34/9 and 44/9, Kishan Garh were owned by the husband of Omwati and she is also in possession of the same. He further contended that the relief is sought only on behalf of the petitioners being ladies and all the other co-accused have already visited the Police Station for surrender.

5. Learned APP for the State, assisted by Mr. Asif Ali, Advocate for the complainant vehemently opposes the application. It is also refuted that the co-accused are yet to surrender before the Police.

6. I have given considered thought to the contentions raised. Apparently, the dispute between the parties appears to have arisen on account of division of the properties as a civil case is stated to have been filed on behalf of the complainant on 23.05.2022. Merely, because an amount of Rs.25,000/- and two phones were found to be missing by the complainant, it cannot be assumed that the recovery has to be made from the petitioners under custodial interrogation.

Considering the fact that the petitioners Mamta and Manisha are real married sisters of complainant and Omwati is their mother with clean past antecedents, I am of the considered view that no coercive action shall be taken till the next date of hearing, subject to the condition that petitioners join the investigation. Since it is claimed that the co-accused have also made an attempt to surrender before the Police but have not been taken into custody, the co-accused are at liberty to

surrender before the concerned M.M./Investigating Officer today itself.”

2. Learned Addl. P.P. for the State, on the instructions of the Investigating Officer, states that the petitioner has joined the investigation as and when directed by the Investigating Officer. The Investigating Officer states that the Chargesheet is ready and shall be filed in the Court soon.

2. It is a settled proposition that the basic rule of criminal jurisprudence is bail and not jail. The Supreme Court has observed this time and again that the courts must enforce this principle in practice. It has to be borne in mind that denial of bail amounts to deprivation of personal liberty.

3. In the case of ***Siddharam Satilingappa Mhetre vs. State of Maharashtra*** (2001) 1 SCC 694, the Supreme court while considering matter relating to grant of anticipatory bail and after exhaustively analysing the rights under Article 21 *inter alia* held that a great ignominy, humiliation and disgrace is attached to the arrest. It was further held that arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community.

4. In ***Nathu Singh v. State of U.P.*** (2021) 6 SCC 64, the Supreme Court *inter alia* held that grant or rejection of an application under Section 438 Cr.PC has a direct bearing on the fundamental right to life and liberty of an individual. Thus, while considering the bail this court has to look into the facts and circumstances of the case so as to ensure that there is no infringement of fundamental rights. Further it was also *inter alia* held that Section 438 Cr.P.C. needs to be read liberally, and considering its beneficial

nature, the courts must not read in limitations or restrictions that the legislature have not explicitly provided for.

5. The criteria for granting the bail under Section 438 Cr.P.C. are quite well defined. The first and foremost thing that the court hearing an anticipatory bail application should consider is the *prima facie* case put up against the accused. Thereafter, *inter alia*, following factors should be looked into:

- (i) the nature and gravity of the accusation;
- (ii) the possibility of the applicant to flee from justice; and
- (iii) whether the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

6. It is also pertinent to mention here that the Supreme Court has laid down time and again that unnecessary restrictions or conditions should not be imposed in routine manner. The conditions, which limit the grant of anticipatory bail may be imposed only if they are required in the facts of any case(s). Reliance may be placed upon ***Sushila Aggarwal v. State (NCT of Delhi)*** (2020) 5 SCC 1.

7. In the present cases, the dispute between the parties appears to have arisen on account of division of the properties as a civil case is stated to have been filed on behalf of the complainant on 23.05.2022. Previously, this Court has noted that merely, because an amount of Rs.25,000/- and two phones were found to be missing by the complainant, it cannot be assumed that the recovery has to be made from the petitioners under custodial interrogation. The petitioners Mamta and Manisha are real married sisters of complainant and Omwati is their mother with clean past antecedents.

8. It is relevant to note that the petitioners have not misused the interim protection granted to him by this court.

9. Taking into account the totality of facts and circumstances, as recorded in detail by this Court vide order dated 03.06.2022, the petitioners in event of arrest be admitted to anticipatory bail on furnishing a personal bond each in the sum of Rs.15,000/- with one surety of the like amount to the satisfaction of the learned Trial Court subject to the following conditions:

- a) the Applicants shall cooperate in the investigation and appear before the Investigating Officer of the case as and when required;
- b) the Applicants shall under no circumstances leave India without prior intimation of the Court concerned;
- c) the Applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
- d) the Applicants shall provide his/her mobile number(s) to the Investigating Officer and keep it operational at all times;
- e) In case of change of residential address and/or mobile number, the Applicants shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.

10. The present bail applications stand disposed of in the above terms.

DINESH KUMAR SHARMA, J

DECEMBER 14, 2022/st