



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 2693/2020

Order reserved on : 05.11.2020

Date of decision : 04.07.2022

SH CHETAN @ GOLI

..... Applicant

Through: Mr. Ajay M. Lal, Advocate.

Versus

STATE

..... Respondent

Through: Mr. Ashok Kumar Garg, APP
for State.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The applicant vide the present application under Section 438 of the Cr.P.C., 1973 seeks the grant of anticipatory bail in relation to FIR No. 178/2020, Police Station Subzi Mandi, under Sections 307/308/34 of the Indian Penal Code, 1860 read with Sections 25/27/54/59 of the Arms Act, 1959, submitting to the effect that he has been falsely implicated in the case, and that the Investigating Agency has been manipulating the investigation by recording false statements.

2. *Inter alia* the applicant submits that he has a fixed abode of living and there are no chances of his absconding nor tampering with the prosecution evidence in any manner. *Inter alia* the applicant



submits that there is not a single averment against the applicant in the FIR that was lodged initially and allegations of firing and of the possession of a revolver are against the co-accused Kali @ Rajinder with there being no allegations against him nor are there any allegations against the applicant of having fired on the complainant Nikhil at any stage. *Inter alia* the applicant submits that whereas as per the FIR, there are six persons allegedly involved, the police has implicated eleven persons in the case as per its status report. The applicant further submits that he is not a previous convict and if he is granted the concession of bail, he shall not mis-utilize that liberty. *Inter alia*, the applicant submits that the object of bail is neither punitive nor preventive and is only to secure the presence of the accused at his trial.

3. Notice of the application was issued to the State and vide order dated 16.09.2020 which is presently in operation, subject to the applicant not leaving the city, joining the investigation as and when required by the Investigating Officer, keeping his mobile phone on at all times and dropping a pin on the Google map to ensure that his location was available to the Investigating Officer and not committing any offence whatsoever, he was granted the interim relief of prevention of arrest till the date 21.09.2020, which order dated 16.09.2020 was extended on 21.09.2020 till 29.09.2020 and vide order dated 29.09.2020 was extended till the date 05.11.2020 and vide order dated 05.11.2020 was extended till pronouncement of orders on the application. In terms of the order dated 16.09.2020, the status report dated 18.09.2020 was submitted by the State. In terms of the order



dated 29.09.2020, the State has submitted the copy of the charge sheet that has been filed in the instant case.

4. As per the status report dated 18.09.2020 submitted under signatures of the SHO, PS Subzi Mandi, it has been stated that on 14.06.2020, an information vide DD No. 44A was received at PS Subzi Mandi which was marked to SI Jaivir, who along with his staff reached the spot near the Balaji Mandir, Ghanta Ghar, where it was learnt that the injured persons have been shifted to the Hindu Rao Hospital, and on reaching there, it was learnt by the Investigating Officer that none of the injured were there, in as much as, they had gone to the Police Station because Hindu Rao Hospital had been declared a Hospital for Corona Patients. The injured Nikhil S/o Ved Prakash was medically examined vide MLC No. 910/2020 at the Aruna Asaf Ali Hospital on which the Doctor had opined, *“A/H/O Physical Assault by (06) known person at around 6.00 pm at Punjabi Basti Sargam Wala Hotel as told by patient himself L/E (1) reddish abrasion Over Front Right Knee 3cm*2cm (2) Diffuse Reddish abrasion below right eye (+) 3cm*3cm Name of injuries O/R”*. Inter alia, as per this status report, it is indicated that qua the injured Akshay, S/o Ved Prakash, the brother of the complainant Nikhil, he was examined vide MLC No. 909/2020 on which the Doctor opined, *“A/H/O Physical Assault by 5-6 known person at around 6.00 pm at Punjabi Basti Sargam Wala Hotel as told by patient himself L/E (1) Lacerated wound over left parietal region of scalp 2cm*0.25cm*0.5cm (2) Lacerated wound over Mid-Parietal region of scalp 3cm*0.25cm & skin deep (3) incised looking wound over left*



*thigh Anterolateral aspect 1.5cm*0.3cm*2cm depth (4) incised wound over left hip back side 0.5cm*0.25cm*5.5cm depth (5)tenderness over left forearm nature of injuries O/R".* The Investigating Officer is stated to have then met the complainant/injured Nikhil, who in his statement allegedly stated that on 14.06.2020 at around 4:00 PM, he was going to his house from his mother's house along with his son and his wife Anjali in a Maruti Breeza Car No. DL1CAA6692 and when they reached near the Gudar Basti, Aryapura, six boys came there on three scooties and two boys, who were on a red colored scooty, brought their scooty in front of his car and stopped his car. *Inter alia*, it has been stated through the statement that the person who was riding the scooty broke the front mirror of his car and the pillion rider whose name was Kali, who is the real brother of BC Sonu Sardar of Subzi Mandi and was known to the complainant, opened the door of the complainant's car, pulled him out and all the boys who had come on the scooty started beating him and then the complainant's wife Anjali, who was sitting in the car, came out of the car to save them, then Kali even pushed her also and immediately after that all the boys fled away and the complainant stated that he came back to his mother's house i.e. Balmiki Beda and told this incident to his brother Akshay, who along with his brother Tushar, Govind and the complainant went to Kali's House at Malka Ganj to ask him as to why he had done this, and when they reached at Ghanta Ghar Road, Opposite Balaji Mandir and Dass Dawakhana at about 6.00 PM, then again those six boys came on three scooties who had beaten him earlier and stopped their battery rickshaw. *Inter alia*, as per the statement of the complainant, Kali @



Rajinder fired two bullets with a pistol in the air and the third was fired on the complainant but luckily the bullet passed away from his head, and after that Kali attacked on his brother's head with a butt of his pistol, and when his brother tried to escape, two boys, who were with Kali, caught his brother and Kali took out a knife from his right-side belt and attacked with a knife on his brother's left thigh and secondly on his brother's left hip, and when he tried to save his brother then the boys, who were with Kali, started beating him with fists and legs and Tushar and Govind escaped from there. As per the statement made by the complainant, a boy who had a stick in his hand also beat them, and after that all those boys fled away from the spot. Thereafter, the complainant and his brother went to the hospital for treatment. As per the FIR lodged on the statement of Nikhil i.e., the complainant, Kali @ Rajinder along with his associates had fired on him with the intention to kill and they had also beaten his brother. As per the status report, the FIR was thus registered on the statement of the complainant Nikhil i.e., the FIR No.178/2020, PS Subzi Mandi, under Sections 307/308/34 of the Indian Penal Code, 1860 read with Sections 25/27/54/59 of the Arms Act, 1959.

5. It has been stated through the status report that during the course of investigation, four fired empty cartridges were found at the spot which were taken into police possession, blood was found on the spot and taken in a gauze and two vehicles i.e., a scooty and a motorcycle, which were used in the crime, were also seized. The statement of Akshay, the brother of the complainant, is also indicated to have been recorded, wherein he stated in his statement under Section 161 of the



Cr.P.C, 1973, that **Chetan @ Goli**, i.e., the applicant herein, fired on his brother Nikhil @ Nikku and other accused persons were identified by Akshay as being Kali @ Rajinder, Chetan @ Goli, Ishpreet @ Ishu, Karanjeet, Himanshu Batra, Deepanshu Batra, Mayank Kardam, Nitesh, Rinku @ Kuldeep Nigam and Faheem and the statement of Akshay and a supplementary statement of the complainant was also recorded. As per this status report, the applicant Chetan @ Goli along with other accused persons had beaten the complainant and Akshay very badly and that the applicant had also threatened to kill Akshay if he informed the police, and that the applicant had also fired on Nikhil, but somehow, he had been saved. A statement under Section 161 of the Cr.P.C, 1973 of Nikhil the complainant dated 15.06.2020 is indicated to have been recorded by the State, copy of which has been annexed with the status report in which Nikhil the complainant stated that at about 4-5 p.m. near Guddad Basti, the main persons involved in quarrel on 14.06.2020 were Kali, Ispreet @ Ishu, Karanjeet, Chetan @ Goli and Himanshu Batra, and that Chetan @ Goli, the applicant, along with other accused persons had beaten the complainant and Akshay very badly and had fired on the complainant.

6. The State further submits that during the investigation of the case, the CCTV footages were obtained and shown to the complainant Nikhil and to Akshay on 20.06.2020 and after watching the CCTV footages, the complainant Nikhil and Akshay his brother, had identified Chetan @ Goli i.e. the applicant herein who was wearing a white T-shirt and a black cap, and was the pillion rider on the motorcycle following their Breeza Car during the quarrel the first time.



7. It is submitted through the status report of the State that during the investigation, Sections 323/341/120B of the Indian Penal Code, 1860 were also invoked and an accused Mayank Kardam was arrested at the instance of the injured Akshay on 01.07.2020 and raids were conducted at the house and other hide outs of all remaining persons but they were not found present there and that they were avoiding their arrest deliberately, and thus Non Bailable Warrants were obtained from the learned Trial Court, but none of them joined the investigation of the case and process under Section 82 of the Cr.P.C, 1973 has been initiated against the accused persons.
8. The status report dated 18.09.2020 submitted by the State further indicates that during the investigation on 18.08.2020, the accused Rajinder @ Kali and Kuldeep @ Rinku were arrested in the case and one pistol was recovered from the possession of the accused Rajinder @ Kali, and three days' police custody remand of the accused persons was obtained from the Court and sincere efforts were made to arrest the remaining accused persons. Rajinder @ Kali and Kuldeep @ Rinku disclosed that Chetan @ Goli was with them in this firing incident and Chetan @ Goli and his other friends had beaten the complainant and his brother. The said accused persons had allegedly further disclosed that the applicant had fired upon Nikhil, and the accused Ispreet and Karanjeet were arrested on 24.08.2020, and the accused Himanshu Batra and Dipanshu Batra were arrested on 08.09.2020. As per the said status report dated 18.09.2020, seven accused persons have been arrested but Chetan @ Goli the applicant, Nitesh, Shivraj and Faheem were not joining the investigation of the



case and were avoiding their arrest. *Inter alia*, the State has submitted that Chetan @ Goli and Nitesh were avoiding their arrest deliberately, and that proceedings under Section 82 of the Cr.P.C, 1973 were initiated against Chetan @ Goli and Nitesh and the report of the unexecuted proceedings under Section 82 of the Cr.P.C, 1973 had been submitted in the Court on 10.09.2020.

9. *Inter alia*, as per the status report, the applicant Chetan @ Goli is involved in three other FIRs i.e.,

- a) FIR No.315/13, PS Kashmiri Gate, under Sections 394/34 of the Indian Penal Code, 1860,
- b) FIR No.131/14, PS Kashmiri Gate, under Sections 186/224/225/332/353/34 of the Indian Penal Code, 1860 and,
- c) FIR No.118/20, PS Kotwali, under Sections 323/341/336/34 of the Indian Penal Code, 1860 read with Sections 25/27/54/59 of the Arms Act, 1959.

10. The State has further submitted through its status report that the custodial interrogation of the applicant was required to recover the pistol which was used in crime. The State has thus vehemently opposed the prayer made by the applicant seeking grant of bail.

11. During the course of submissions made on 29.09.2020 qua the application filed by the applicant seeking grant of anticipatory bail, a submission was made by the State that the charge sheet in the matter had been submitted without the recovery of the weapon of offence. On behalf of the applicant it was submitted that the printout of the CCTV footage that had been submitted with the status report dated 18.9.2020 of the State showed the petitioner allegedly on a scooty



with another co-accused at 5:20 p.m., whereas, the incident is stated to be of around 4:00 p.m. and that the same itself falsified the version of the prosecution and the complainant.

ANALYSIS

12. Without any observations on the merits or demerits of the trial that may take place in the instant case, it is essential to observe that it has been stated in the charge sheet, copy of which has been filed by the State that the certificate under Section 65B of the Indian Evidence Act, 1872 was obtained from the Executive Engineer PWD (CCTV & WiFi) Department, 13th Floor, ITO Delhi of the CCTV footage in relation to the CD marked A1 qua the CCTV footage of the recording made by two cameras of the Delhi Government at House No.4921, Aryapura, near Gudar Basti, which showed the members of the gang of Kali @ Rajinder, i.e., the applicant Chetan @ Goli, Ispreet @ Ishu, Karanjeet, Himanshu Batra and Shivraj, who were seen on three scooties and one motorcycle and were seen coming from the opposite side of the car, and on identifying the complainant seated in the car, went in front of the car and turned their vehicles and started following the car of the complainant Nikhil @ Nikku, and as per this CCTV camera, these persons could be seen only following the complainant's car and the complainant informed that after following him from some distance, the said persons had given effect to the incident.

13. The avowed contention on behalf of the applicant is that even if the applicant was seen in the CCTV footage of the CD marked A1, the



same is only allegedly to the effect that he was following the complainant and does not show any assault committed by him.

14. It is essential to observe that through the statements under Section 161 of the Cr.P.C, 1973 of the complainant Nikhil dated 15.06.2020 and of his brother Akshay dated 15.06.2020, who are both the injured in the instant case, as well as of Nikhil the complainant and Akshay his brother dated 20.06.2020, it has been stated allegedly therein to the effect that the applicant was the person who had beaten and assaulted Nikhil, the complainant, the most and had threatened the complainant and his brother that if they informed the police about the same, then Kali the co-accused would kill them. Both Nikhil and Akshay through their statements have allegedly stated that the applicant used to supply pistols and cartridges to Kali, the accused who had fired on them. Both Nikhil the complainant and Akshay his brother have, through their statements under Section 161 of the Cr.P.C, 1973 dated 15.06.2020, categorically stated that the applicant had fired on the complainant but he was not hit, though Karanjeet and Kali, the other two co-accused had assaulted Akshay with a knife and Nitesh had hit with a bat and Ishu assaulted with a Danda.

15. The statements under Section 161 of the Cr.P.C, 1973 dated 20.06.2020 of the complainant Nikhil and of his brother Akshay relate allegedly to the CD marked A1 which they are stated to have been shown by the police in which they have both identified the applicant herein as being the person in a white t-shirt and a black cap seated behind a person seated in a striped shirt and a red cap and both the complainant Nikhil and his brother Akshay identified the applicant as



being the person who had also fired on the complainant Nikhil in the second incident in which he had been saved and the bullet had not hit him. Both the complainant Nikhil and his brother Akshay have allegedly identified the persons seen in the CCTV Footage as being persons residing in the area near Malka Ganj and who roam around there, whom they know from before and both the complainant and his brother have stated that all these boys had together attempted to kill Nikhil the complainant.

16. The State through its charge sheet has also further submitted to the effect that during the course of investigation, it was learnt that the Mobile No.9711783443 registered in the name of Sapna, the sister of the applicant, which was being utilized by the applicant and was on that day i.e., 14.06.2020 utilized by the applicant to make a call at 16.18 hours to the Mobile No.8287320221 to the co-accused Karanjeet whose location was found at Mori Gate and the applicant at 16.26.57 hours was found to be at Malka Ganj as per the location of the mobile, whereafter the applicant at 16.25 hours had telephoned the co-accused Himanshu Batra on Mobile No.9871729986 when their locations were found to be at Sabzi Mandi, Main Bazaar, and at 17.01.55 hours, the applicant Chetan @ Goli the co-accused was found to be in a conversation with Karanjeet the co-accused on Mobile No.8287320221 who was found to be located at that time at Sabzi Mandi, Aryapura, where the first quarrel had taken place. The charge sheet filed by the State further states to the effect that at 17.37 hours, the location of the applicant Chetan @ Goli was at Malka Ganj, that Rajinder @ Kali with Mobile No.7834903030 have spoken to the



applicant Chetan @ Goli at Mobile No.9711783443 and Rajinder @ Kali in his disclosure statement had informed that at that time the complainant Nikhil and the brother of the complainant Akshay had come with their complaint to his house and at that time, he, Rajinder @ Kali, had called Chetan @ Goli, the applicant, and his other friends on their mobiles and at that time Chetan @ Goli came on a motorcycle and participated in the incident and went away. As per the charge sheet, the CDR details of the applicant Chetan @ Goli indicate that Shivraj, who was using the Mobile No.8076684846 belonging to his sister Divya, had on 14.06.2020 vide this mobile called the applicant Chetan @ Goli at 16.20 hours on Mobile No.9711783443 and at that time, the applicant was at his house, whereas the location of Shivraj was at Mori Gate, whereafter, the motorcycle of Shivraj, the co-accused, was utilized in the incident and Shivraj @ Raj had taken the applicant Chetan @ Goli on his motorcycle to Malka Ganj, where the incident had taken place, and after the incident, Shivraj and Chetan @ Goli, the applicant, had come back to Mori Gate.

17. Undoubtedly, it is the avowed contention of the applicant that the entire prosecution version is based on surmises and that even in the CCTV footage, that has been collected by the Investigating Agency, there is nothing to show the applicant at the time of the alleged assault. Qua this submission, it is essential to observe that it has been stated categorically in the charge sheet that the CD marked A4 of the recording of the area of the Main Ganta Ghar Road could not clearly capture the place of the incident because the camera was at a distance from the spot. In these circumstances, presently at this stage, taking



into account the statement under Section 161 of the Cr.P.C, 1973 of the complainant Nikhil dated 15.06.2020 and that of Akshay dated 15.06.2020 and the statements under Section 161 of the Cr.P.C, 1973 of the complainant Nikhil and his brother Akshay the other injured dated 20.06.2020 after they saw the CD marked A1, whereby they allegedly identified the applicant as being seated behind the co-accused Shivraj and identified the applicant as being the person who had beaten them the most and had threatened them not to inform the police of the incident and who had also fired at the complainant but the shot had not hit him, are circumstances which at this stage cannot be dislodged and cannot be disbelieved in view of the factum that there is undoubtedly a CCTV Footage through CD marked A1, which has been collected of the date 14.06.2020 qua the first incident, in which the applicant and the other co-accused had stopped their bikes in front of the car of the injured the complainant, and the applicant, through the statements under Section 161 of the Cr.P.C, 1973 of the injured Nikhil and his brother, has been identified to be one of the alleged assailants who attacked them and who also attempted to shoot at Nikhil the complainant.

18. In these circumstances, in as much as the State seeks to recover the weapon of offence from the applicant and taking into account the previous adverse antecedents against him, the alleged propensity towards crime of the applicant, presently, cannot be overlooked.

19. The principles laid down in the catena of verdicts relied upon on behalf of the applicant, i.e., on the verdicts in “*Sarla Devi versus State of NCT of Delhi*” Bail Appln No. 608/2015, a verdict dated



27.05.2015, “*Balveer Singh Bundela versus The State of Madhya Pradesh*” M.Cr. C. No. 5621/2020, a verdict dated 12.05.2020, “*Maulana Mohd. Amir Rashadi versus State of U.P. and another*” Criminal Appeal No. 159/2012, a verdict dated 16.01.2012, “*Ketan Suresh Pawar and another versus Yuvraj Sandeepan Sawant and another*” SLP (Crl.) No. 4158/2019, a verdict dated 27.08.2019, “*Ramesh versus State of Haryana*” CrlMisc No. M-1203 of 2014, a verdict dated 14.03.2014 and “*Siddharam Satlingappa Mhetre versus State of Maharashtra and Ors.*” AIR 2011 SC 312, a verdict dated 02.12.2010 are not in dispute. However, the facts of the instant case as put forth through the prosecution version are not in *pari materia* with the facts of the cases relied upon.

CONCLUSION

20. In these circumstances, the prayer made by the applicant seeking grant of anticipatory bail is declined and the interim protection granted to the applicant vide order dated 16.09.2020 in force till date in terms of order dated 05.11.2020 is thus withdrawn.

21. Nothing stated hereinabove shall however amount to any expression on the merits or demerits of the trial that may take place.

22. The application is disposed of accordingly.

ANU MALHOTRA, J.

JULY 04, 2022

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