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

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Order pronounced on: 19.05.2022

+ BAIL APPLN. 3475/2021

MOHD ANAS

..... Petitioner

Through: Mr. Maroof Ahmad, Mr. M.K. Khan,
Mr. Aman Mirza and Mr. C.B. Kumar,
Advocates.

versus

STATE (GOVT NCT OF DELHI)

..... Respondent

Through: Mr. Ravi Nayak, APP for State with SI
Nishant, PS Welcome.

CORAM:

HON'BLE MR. JUSTICE TALWANT SINGH

TALWANT SINGH, J.:

1. The petitioner has moved this anticipatory bail application in FIR No. 0455/2021 dated 28.08.2021 under Section 308/323/509/34 IPC, registered at PS Welcome District, North East Delhi.
2. It has been submitted that the petitioner and his family members are innocent persons. The cousin brother of the petitioner, namely Asad got married with the daughter of Mohd. Shakir, from the complainant side on 24.03.2012 and no dowry was exchanged at the time of the marriage and two children have been born of the said wedlock.
3. The family of the petitioner and the complainant are relatives of each other. The wife of the cousin brother of the petitioner started harassing her



husband and some matrimonial disputes arose between them. A meeting of the relatives was called at DESU Park, Jafrabad, Delhi, to work out the settlement. During the course of conversation, the quarrel started and father-in-law of the cousin brother of the petitioner took away his daughter without the consent of her husband. Complaints were filed by both the sides against each other at PS Welcome, Delhi. Efforts for settlement were made but were of no use.

4. On 02.04.2021, some persons from the complainant side came to the house of the cousin brother of the petitioner with intention to kill him and opened fire with illegal country made pistols. Somehow, the cousin brother of the petitioner was able to save his life. The attackers made a false PCR call and tried to implicate the cousin brother of the petitioner, who also made a PCR call and FIR No. 0186/2021 dated 03.04.2021 under Section 336 IPC and 27 of Arms Act was registered.

5. One of the accused, Astakeem was arrested, however, no other person has been arrested till date in the said FIR. The cousin brother of the petitioner sent a complaint dated 07.04.2021 to the higher authorities for taking action against attackers under relevant provision of law. The accused Astakeem in the said FIR was later on released on bail.

6. It has been further submitted that on 28.08.2021, at about 11:30 P.M., when the petitioner was going to his home, one Jumma and his son Faizan started abusing and beating the petitioner. Few other persons joined them and all of them started beating the petitioner with kicks and fists. Faizan attacked the petitioner with sharp object, causing injury on his nose and when the petitioner regained his consciousness, he found himself outside his house; the police was called and he was admitted to a hospital.



7. The petitioner filed a complaint dated 28.08.2021 to the SHO against the above culprits and requested for taking action. An FIR bearing No. 0456/2021 dated 28.08.2021 under Section 324/34 IPC in respect of the said incident was registered. The said attackers have not been arrested till date and they are forcing the petitioner to withdraw the said FIR.

8. On the other hand, the said attackers from the complainant side have got registered a false and frivolous FIR bearing No. 0455/2021 dated 28.08.2021 under Section 308/323/509/34 IPC as a counter blast to the said FIR launched on the complaint of the present applicant. In the said complaint, Faizan has alleged that he and his family members were allegedly beaten up by the petitioner and his family members on 28.08.2021. In fact, it was Faizan and his family members who had attacked the petitioner on 28.08.2021.

9. On 04.09.2021, the Police along with Rapid Action Force came to the house of the petitioner to illegally and unlawfully arrest the petitioner and his family members. The petitioner filed bail application seeking anticipatory bail before the District Courts, which came up for hearing on 15.09.2021. The said application was dismissed by the learned ASJ. Hence, the present bail application has been filed.

10. It has been submitted that the IO is illegally and unlawfully trying to arrest the petitioner and his family members without complying with Section 41A Cr.P.C. The custodial investigation is not necessary; there is an apprehension in the mind of the petitioner that he can be arrested by the Police at any time; the antecedents of the petitioner and his family members are clean and the petitioner is ready to abide by all the terms and conditions to be imposed by this Court.

11. Notice was issued. Status Report, as well as a Further Status Report



were filed.

11.1 As per the said reports, a PCR call was received on 28.08.2021, on which SI Amit along with staff reached at the spot and the injured Faizan, Shama Begam and Zeeshan were found at the spot, who were sent to Jag Parvesh Chandra Hospital for treatment. Their MLCs were collected. The statement of the complainant was recorded and the case was registered.

12 During investigation, stones were seized from the place of the incident at the instance of the complainant. DVR of the CCTV cameras installed outside the home of the complainant were also taken into Police possession. The CCTV Footage shows that the present applicant/accused was carrying a cane in his hand and he was seen coming at the entry gate of the home of the complainant, hitting the victim and his family members with the said cane and the other accused persons can be seen following him with canes and stones in their hands. All the accused persons can be seen pelting stones and beating the victims with the help of canes. In the incident, Anas also suffered injuries, and therefore, a cross-FIR was registered.

13. The present applicant had joined the investigation on 20.10.2021 after getting interim protection from the Court. During interrogation, accused persons accepted their involvement in the case but the present accused as well as other accused disclosed that they had no weapon of offence at the time of the incident except accused Rahbar, who stated that he had one steel rod. Accused Rahbar also disclosed that accused Monu had one belt, accused Anas had one cane, accused Altamas had nothing, accused Nazim had one cane but none of the accused got recovered the weapon of offence during the course of interrogation.

14. In the CCTV Footage, it can be seen that accused Anas had one cane in



his hand and the accused persons can be seen throwing stones on the complainant party. The accused persons were called upon to join the investigation on 20.01.2022, but none of them joined the investigation on the ground that all were out of Delhi. The present applicant joined the investigation on 19.02.2022 along with few of the accused. They did not cooperate in the recovery of the weapons and did not come out with true facts of the incident with the accused persons. They were again directed to join investigation on 22.02.2022 but none of them joined the investigation on the said date, and thereafter, they have not joined the investigation so far despite various notices.

15. The bail application of the accused Anas is opposed on the following grounds:

- (i) In the FIR and in the statement u/s 161 Cr.P.C of the victim there are direct allegations against the accused person.
- (ii) The crime is heinous in nature and the nature of injuries inflicted by the accused is severe.
- (iii) Accused person can be seen in the CCTV footage giving beatings to the victim and other family members.
- (iv) The investigation of the case is at the initial stage, if granted Bail the accused may influence the victim/witnesses.
- (v) If granted bail the accused, co-accused persons may seek parity on the grounds which may hamper the investigation of the case.
- (vi) The weapon of offense used in the crime is yet to be recovered from the accused persons.
- (vii) The act of the accused shows that they have no regard for the law.

16. The MLCs of Shama Begam and Faizan have been also enclosed,



which shows that the nature of injuries are 'simple'. The CCTV Footage has been also filed on record and it has been pointed out that the accused is the person, who was having a cane in his hand.

17. I have heard the arguments.

18. The interim protection was granted to the present petitioner vide order dated 20.09.2021, which was subject to joining the investigation as and when directed by the Investigating Officer and the said order was further extended vide order dated 24.02.2022 and accused were again called upon to join the investigation on 20.02.2022 but none of them joined the investigation till date. The accused persons are also stated to be not cooperating in the investigation.

19. In the case of the present petitioner, the weapon of offence, i.e., the cane is yet to be recovered.

20. Keeping in view the fact that the present petitioner has not joined the investigation when called upon by the IO; he has not cooperated in the investigation; in the photographs of the incident, he is seen holding a cane in his hand and the said cane, the weapon of offence, is yet to be recovered and for the said purpose, custodial interrogation of the present petitioner is required, so I am not inclined to grant anticipatory bail to the present applicant.

21. The application for anticipatory bail is accordingly dismissed.

TALWANT SINGH, J

MAY 19, 2022

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