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

% *Order pronounced on 15.09.2022*

+ BAIL APPLN. 2479/2022

AAKASH CHOUDHARY

..... Petitioner

Through: Mr. Ramesh Gupta, Sr. Advocate
with Mr. Ravi Kumar, Mr. Rohit
Pratap Singh, Mr. Gagandeep and Mr.
Shailender Singh, Advocates.

versus

THE STATE (NCT OF DELHI) & ANR.

..... Respondents

Through: Mr. N.S. Bajwa, APP.
Mr. Kirti Uppal, Sr. Adv. with Mr.
Himanshu Bidhuri, Ms. Riya Gulati
and Mr. Chandan Sinha, Advocates
for R-2.

+ BAIL APPLN. 2497/2022

GAURAV SINGH

..... Petitioner

Through: Mr. Ramesh Gupta, Sr. Advocate
with Mr. Ravi Kumar, Mr. Rohit
Pratap Singh, Mr. Gagandeep and Mr.
Shailender Singh, Advocates.

versus

THE STATE (NCT OF DELHI) & ANR.

..... Respondents

Through: Mr. N.S. Bajwa, APP.
Mr. Kirti Uppal, Sr. Adv. with Mr.
Himanshu Bidhuri, Ms. Riya Gulati
and Mr. Chandan Sinha, Advocates
for R-2.

CORAM:

HON'BLE MR. JUSTICE TALWANT SINGH

Talwant Singh, J.:

1. Both these petitions have been taken up together as both the petitioners are co-accused in FIR No. 353/2022 registered under Section 308/323/341/34 at PS Sarita Vihar, Delhi and they have applied for grant of



anticipatory bail by way of filing these two petitions.

1.1 It has been submitted that the present FIR is a counter blast to the applicant's FIR No. 352/2022 registered at PS Sarita Vihar, Delhi, registered under the influence of one Mr. Brahm Singh, who is the aggressor and husband of a local municipal councillor.

1.2 The CCTV footage shows that the applicants were mercilessly beaten with spade, iron rods and rocks and even then, they have been arrayed as accused in the present case. The applicants fear arrest in the present FIR; the CCTV footage has not been examined by the IO although this is the best evidence of the incident; provocation came from the complainant's side as they had stopped the tractor trolley of the applicants; applicant Aakash Choudhary had suffered injuries and he was treated at AIIMS Trauma Centre; complainant Mr. Brahm Singh was treated at a private hospital, i.e., Apollo Hospital at Sarita Vihar; the police officials have removed charges under Section 308 IPC on 04.08.2022 from the cross-FIR registered at the instance of the applicants, which is contrary to the statutory provisions as well as the CCTV footage.

1.3 The bail application of Lalit Bidhuri has been already allowed by the Sessions Court but the bail application of the applicants were rejected by the said Court. The cross-FIR bearing No. 352/2022 was registered prior to the false counter-FIR bearing No. 353/2022.

1.4 The CCTV recording, in possession of the IO shows that the applicants were mercilessly beaten. It is stated by the IO that Section 308 IPC was removed from FIR No. 352/2022 on the ground that the injury was 'simple' as per AIIMS Trauma Centre report. This act of the IO is contrary to the statutory provision.



1.5 The Trial Court refused to grant anticipatory bail to the applicants without considering the CCTV recording and the factum of cross-FIR.

2. The applicants are ready to cooperate with the investigating agencies and they have never been summoned nor arrested till date.

3. Notice was issued to the State as well as to the complainant.

4. Status Report has been filed on behalf of the prosecution in which it is mentioned that there was a quarrel on 08.07.2022, regarding which a PCR call was received and GD No. 110A was recorded at PS Sarita Vihar. Intimation was received regarding one injured Mr. Brahm Singh being in hospital and MLC No. 564/2022 was received vide DD No. 114A on the same date.

4.1 The injured and the witnesses were found in the hospital and on the complaint of the complainant, FIR No. 353/2022 was registered. Reference was made to an earlier incident dated 10.04.2022, when the work of construction of a road at the initiative of Smt. Kamlesh, W/o Mr. Brahm Singh, was opposed by Mr. Lalit S/o Krishan, Mahavir S/o Shyamlal and applicant Gaurav S/o Davnder and his brother Aakash Choudhary.

4.2 On 08.07.2022, victim, Brahm Singh went to the ground at Sarita Vihar to inspect the same for upcoming Kabaddi Matches to be played on 9th and 10th July, 2022. Some material was to be transported, so they stopped a tractor trolley which was passing by, to bring the material to the said park. The driver, after asking his owner, refused to do the said work and after some time, a car reached at the spot and four persons including one Lalit Bidhuri came out of the car and they started threatening the victim Brahm Singh. Thereafter, another car reached at the spot and 4-5 boys came out.

4.3 The applicants caught hold of the victim Brahm Singh and the



accused Lalit Bidhuri brought shovel (fawra) from Brezza car and tried to hit the victim Brahm Singh on his head. The victim tried to stop the shovel (fawra) with his hand and sustained injury in the hand. He was again hit by the shovel (fawra) and sustained injury on his shoulder and near the eye.

4.4 The other accused, including the present applicants, brought dandas and iron rods and had the hit victim Brahm Singh. As a result, he fell unconscious and all the accused persons left the spot thinking that Brahm Singh had died. The victim was admitted in hospital.

5. During investigation, the IO visited the place of incident; he preserved the video footage of the incident. As per the IO, the video footage shows that Lalit Bidhuri had hit the victim Brahm Singh with shovel (fawra) and the present applicants were actively involved in the incident and had hit the victim with fists and blows.

5.1 The accused Lalit Bidhuri was arrested on 17.07.2022 and he was bailed out by the Sessions Court on 20.07.2022. The statements of witnesses were recorded.

6. After consideration, Section 307 IPC was added in FIR No. 353/2022.

7. The custodial interrogation of the accused is required to ascertain further facts and to recover the weapon of offence, so the bail application is opposed.

8. Status Report has been also called regarding FIR No. 352/2022.

8.1 The said FIR was registered on behalf of one of the applicants, namely Aakash Choudhary in which it is stated that after the incident, he was treated at AIIMS Trauma Centre. On his MLC, the Doctor has written that as per history given, he was assaulted by 4-5 known persons.

8.2 This FIR was registered under Section 308/323/348/34 IPC. As per



the complainant, when he reached at the main gate of Pocket F, Sarita Vihar, he found that Brahm Singh, his two sons, Arjun and Basant and his nephews, Pradeep and Kunal were also there and they all assaulted him. Brahm Singh attacked on his forehead with a spade from the sharper side and the other accused persons attacked him with fists, leg blows, rods and in this incident, he had lost Rs. 1.95 lacs and one Arjun had snatched his gold chain.

8.3 The nature of injury was opinioned as simple blunt. So, the assault on the complainant by a sharp weapon could not be corroborated and since the injury sustained by complainant was 'simple', hence, Section 308 IPC was removed from the case.

9. The video footage was collected which shows that on 08.07.2022 at about 3:00 p.m., one tractor was stopped by Brahm Singh, and thereafter, the said tractor left about at 3:12 p.m. At about 3:30 p.m., complainant, along with one Lalit Bidhuri, his brother Gaurav and some other accused persons came there and started fighting and in the video footage, it is visible that Arjun had punched on the face of Gaurav, Pradeep kicked victim and in the fight between Brahm Singh and Lalit, it is seen that Lalit was attacking Brahm Singh, and thereafter, Brahm Singh is fighting with Lalit and Aakash.

10. Further investigation is in progress.

11. On behalf of the complainant Brahm Singh, photographs showing the injuries, photographs showing the incident and copy of the complaint to SHO filed by an official of MCD regarding the earlier incident on 10.07.2022 were filed. The applicants have also brought on record compilation of photographs of the incident as retrieved from the official



CCTV footage supplied by the IO along with an affidavit under Section 65B of the Indian Evidence Act. The photographs of the victim at AIIMS Trauma Centre have been also filed.

12. I have heard the arguments at length.

13. It has been argued on behalf of the applicants that the video CCTV footage shows that it was Brahm Singh, who first lifted the spade (fawra) and attacked the accused party.

13.1 The video footage was played in Court. It can be seen in the CCTV footage that the spade (fawra) was lifted by complainant Brahm Singh at the first instance and he had attacked the accused party. Lalit Bidhuri forcibly took the spade (fawra) from Brahm Singh and attacked Brahm Singh and his supporters.

13.2 Lalit Bidhuri was arrested and released on regular bail. The allegation that the present applicants along with other had caught hold of Brahm Singh, is not supported by the video footage. The incident mentioned in the FIR is not supported by the video footage. Interestingly, no police remand of Lalit Bidhuri was sought by the IO to recover the spade, which was last seen in his hands.

13.3 PCR had taken the applicant Aakash Choudhary to AIIMS Trauma Centre, where MLC was prepared and after discharge, he did not recover so he was admitted to Apollo Hospital, from where he was discharged after a week. As far as applicant Gaurav Singh is concerned, he went to Apollo Hospital on his own and he was discharged on the same day.

14. It has been submitted on behalf of the petitioners that Section 307 IPC was added under police pressure only with a view to deny the right of bail to the present applicants. Under these circumstances, it has been prayed that



the applicants may be admitted to anticipatory bail and they undertake to appear before police and extend cooperation in the investigation.

15. On behalf of the State, it has been submitted that the CCTV footage shows that the spade (fawra) was already lying on the ground when the altercation started as some levelling work was being undertaken on the ground for hosting the Kabaddi Matches.

15.1 It has been further stated that the version of both the sides is not fully corroborated by the video footage and investigation is still on. It is admitted that the wife of the complainant is a councillor and it may be a case of political rivalry.

16. On behalf of the complainant, it is submitted that the video footage of the earlier incident dated 10.04.2022 shows that Lalit Bidhuri, along with another muscle man were threatening the MCD officials. In the present case also, Lalit was the aggressor and for invoking Section 307 IPC, only intention is to be seen and not the actual injuries.

17. In rebuttal, it has been argued that the findings of the learned ASJ regarding the use of danda, spade (fawra) and rod, etc., by the present applicants is contrary to the facts as evident from the CCTV footage. Regular bail was granted to Lalit soon after the arrest.

18. After hearing arguments on behalf of the parties, i.e., the applicants, complainant and the State, I am of the view that the only reliable piece of evidence, which gives a clear picture of the incident is the CCTV footage of the entire incident, which was captured in a CCTV installed near the ground. Both the parties have exaggerated the claims and have stated facts in their respective FIRs, which are not supported by the CCTV footage. This must be brought to the notice of the area DCP of Delhi Police, and he shall ensure



that an independent investigation is conducted in the incident and take steps as per law, without getting influenced by the stature or political background of any of the parties.

19. As far as the present applicants are concerned, the complainant as well as the IO have failed to point out any frame in the entire CCTV footage where they can be seen capturing and holding the injured Brahm Singh and when the injured was being held captive by them, at that time, Lalit Bidhuri attacking him with a spade (fawra) with an intention to kill him.

19.1 Similarly, in none of the frames, it is visible that the present applicants are attacking the other side with iron rods or dandas.

20. On behalf of the State, it has been submitted that the main weapon of offence, i.e., the spade (fawra) is yet to be recovered. Interestingly, it was the same IO, who never sought police remand of Lalit Bidhuri, who was last seen having the spade (fawra) in his hand in the CCTV footage.

21. In my view, the altercation started on a very minor issue when the complainant side stopped a tractor trolley for ferrying certain material to the park where they were going to host a Kabaddi tournament. On this minor issue, the incident escalated to a free for all fight, which resulted in injuries on both sides and rival groups have lodged the FIRs against other groups, alleging the facts, which best suited to them, without realising that the entire incident was captured in a CCTV camera.

21.1 Here, the investigating agency is required to investigate the entire incident on the basis of scientific evidence, without relying upon exaggerated allegations made in both the FIRs and to conclude the investigation and take further action. This is the reason that the present investigation is ordered to be done directly under the supervision of the area



DCP.

21.2 This Court has at no point of time, directed for transferring the investigation to any other agency or to transfer the respective investigating officers. However, keeping in view that the case is quite sensitive, the area DCP shall supervise the day-to-day investigation and he shall call for the progress reports in the investigation at regular intervals and shall review the progress made so far.

22. In the present case, the main accused Lalit Bidhuri has been already released on bail after his arrest. The CCTV footage, *prima facie* does not support the allegations as mentioned in the FIR, as far as the present applicants are concerned.

22.1 Keeping in view the facts that the applicants are ready to join the investigation; they have also suffered injuries in the incident, which in my view, was a free for all fight; *prima facie* they are not seen to be holding the victim Brahm Singh when Lalit Bidhuri was seen attacking him with spade (fawra) and the fact that no weapon of offence was seen in their hands in the entire CCTV footage, I am inclined to grant them anticipatory bail, subject to the following conditions:

- (i) They shall join the investigation as and when called by the IO and fully cooperate in the same.
- (ii) They shall not contact, coerce or threaten the complainant and the witnesses in the present case;
- (iii) They shall share their Mobile Numbers with the IO within one week from the date of this order and keep the mobile location on at all times;
- (iv) They shall not leave the country without the permission from the learned Trial Court.



23. In the event of arrest, they be released on bail on execution of personal bond of Rs. 25,000/- with one surety of the like amount to the satisfaction of the concerned IO/SHO/learned Court.

24. Copy of the order be sent to area DCP for complying with the directions passed herein above and a copy be also sent to the learned Trial Court for information.

25. It has been noticed that in the bail applications, apart from stating the facts, elaborate extracts from judgements have been made part of the pleadings. The learned drafting counsel are requested to adhere to the basic principles of pleading and state only facts and the legal provisions applicable along with the grounds on which the bail has been sought. As far as the citations are concerned, the counsels are at liberty to cite all relevant judgements at the time of the arguments. There is no need to attach copies of the judgements with the pleadings, which results in making the pleadings too bulky. These citations may be handed over to the Court Master at the time of arguments or they may be filed online just before the petitions are listed for final arguments. I earnestly hope that the learned drafting counsels will bear this in mind in future.

26. Both the petitions are disposed of in above terms.

TALWANT SINGH, J

SEPTEMBER 15, 2022/pa

Click here to check corrigendum, if any