

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

+ **BAIL APPLN. 2751/2022**

Date of Decision: 18.10.2022

IN THE MATTER OF:

SH. DINESH SHARMA
S/O SHYAM LAL,
R/O B-103, ASHOKA ENCLAVE-II
SECTOR-37, FARIDABAD, HARYANA
PRESENTLY AT DELHI

..... Petitioner

Through: Mr. Vikas Pahwa, Sr. Advocate
alongwith Mr. Arun Khatri, Mr.
Sahil Khurana, Ms. Saumya Bajaj,
Mr. Akshay Dahiya, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Pradeep Gahalot, APP for
State.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. On objection being raised by learned counsel for the State, learned senior counsel appearing on behalf of applicant undertakes to remove all the objectionable document/files, electronic or otherwise from the instant case.
2. Let the needful to be done within 5 working days.

3. Registry is directed to allow removal of the objectionable documents/ files, electronic or otherwise.

4. This application under section 438 of the Cr.P.C., is filed by the applicant apprehending his arrest in connection to FIR no. 362/22, registered at PS Mehrauli for offences punishable under section 308/451/34 IPC.

5. The learned senior counsel appearing on behalf of the applicant submits that the applicant is innocent and he has been falsely implicated in the present case. According to him, the complainant in the instant case, Rohan Kaushik, is co-brother of the present applicant. Wife of the present applicant, namely, Ms. Sneha is the real sister of Swati. Sneha married to applicant and Swati married to Rohan Kaushik. Certain matrimonial differences between Swati and Rohan Kaushik, has resulted into lodging of FIR under Section 498A and other offences at the instance of Swati. That case is still pending.

6. He further states that in the instant case, the date of incident is 08.06.2022, whereas, the FIR is lodged on 14.06.2022. He further states that the allegations are completely false and fabricated, and if the entire material available on record is scrutinized, the same would clearly indicate that the same is the result of matrimonial disputes between the parties. According to learned senior counsel, in terms of interim-protection granted by this court, the applicant appeared before the Investigating Officer as and when he was called for. He further undertakes to appear on each date whenever he is called for. He states that the punishment under section 308 of IPC is maximum up to 7 years and in view thereof, there is necessity to comply with the provisions of

Section 41(A) of the Cr.P.C., there is no reason for his custodial interrogation and therefore, the interim protection is sought for.

7. On the other hand, learned State counsel, Shri Pradeep Gahalot appearing alongwith Sh. Sanjay Rathi on behalf of the complainant vehemently opposed the instant application. According to them, there are serious allegations against the present applicant that he caused injuries by hitting the bottle on the head of the injured Rohan Kaushik. According to them, there is no reason to believe that Section 41 (A) of the Cr.P.C., would not be complied with. Section 41(A) of the Cr.P.C. would necessarily be complied in the instant case and the reasons will be recorded for arresting the present applicant. According to them, the argument, so far as, relates to non-compliance of Section 41(A) of Cr.P.C., is not tenable at this stage. The Learned State counsel further submits that recovery of blood stained T-shirt and robbed articles are very much necessary to take the investigation to its logical end. In absence of the said recoveries, the further investigation of the instant case cannot be taken forward. They further state that the custodial interrogation under the aforesaid facts is necessary.

8. I have heard the learned counsel appearing for the parties and perused the record.

9. As per the allegations in the FIR, the applicant Dinesh and Sneha, allegedly caused injuries to the complainant by hitting on his head by a bottle. The facts in the instant case are not disputed that the applicant and the complainant are co-brothers. Before lodging of the complaint, on the basis of which the instant FIR was registered, there was already a complaint lodged, at the instance of wife of the present applicant, Swati, at page no. 96. There is unexplained delay in lodging of the FIR. The

delay of course can be explained during the course of trial but can still be taken into consideration for the purpose of considering the bail application. There are allegations and counter allegations. Applicant Dinesh, his wife Sneha and sister of Sneha, Swati have alleged that the complainant in the instant case was found in some compromising position on the date of incident with some other lady and the same has resulted in altercation between them and therefore, the instant FIR came to be lodged.

10. This court is conscious of the fact that there are allegations of hitting the complainant on his head by bottle, but the fact remains that the maximum punishment under the offence in question is up to 7 years. The nature of injuries does not appear to be grievous. The applicant is not a flight risk or the offence does not require custodial interrogation. The material on record indicates that as per complainant himself the applicant has changed his T-shirt at the residence of complainant, hence, the applicant possibly cannot handover blood-stained T-shirt. Taking into consideration, the overall facts and circumstances of the case, this court finds it appropriate to accept the application for grant of anticipatory bail to applicant.

11. Accordingly, it is directed that in the event of arrest, the applicant be released on anticipatory bail subject to his furnishing a personal bond in the sum of ₹15,000/- with one surety in the like amount to the satisfaction of the Arresting Officer/Investigating Officer/SHO of the concerned Police Station and also subject to the further following conditions:-

(i) The applicant shall join the investigation as and when he is directed to do so.

(ii) The applicant shall not directly or indirectly try to get in touch with the complainant or any other prosecution witnesses or tamper with the evidence.

(iii) In case of change of residential address/contact details, the applicant shall promptly inform the same to the concerned Investigating Officer/SHO.

12. The bail application is disposed of in the above terms.

PURUSHAINDRA KUMAR KAURAV, J.

OCTOBER 18, 2022/bsr



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