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

Reserved on: 28.10.2022

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Pronounced on: 31.10.2022

+ BAIL APPLN. 2944/2022& CRL.M.A. 20037/2022

SANJEEV KUMAR

..... Petitioner

Through: Ms. Vibha Datta Makhija, Sr.
Advocate with Mr. Praveen
Gaur, Mr. Karan Mamgain,
Ms. Baani and Ms. Sampriti
Baksi, Advocates.

Versus

STATE GOVT OF NCT OF DELHI & ANR.

..... Respondent

Through: Mr. Naresh Kumar Chahar,
APP for the State with SI
Bansi Lal, P.S. Ambedkar
Nagar.

Mr. K.S. Negi, Mr. Mohit
Kukreja and Mr. Nikhil
Rajput, Advocates with
complainant in person.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

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28.10.2022

1. The instant application under Section 438 read with Section 482 of the Code of Criminal Procedure, 1973 (“Cr.P.C.”) has been filed on behalf of the petitioner seeking anticipatory bail in FIR bearing no. 472/2022, registered at Police Station Ambedkar Nagar, for offences punishable under Sections 323/354/354A/509/506/34 of the Indian Penal Code, 1860 (“IPC”).
2. Brief facts of the case are that on 17.02.2021 and 19.02.2021, the complainant ‘R’ and her family members were attacked by the applicant and other accused persons including some local outsiders/goons. A preventive action was taken with regard to this incident against both the parties whereby the present applicant and brother of complainant were arrested in kalandra under sections 107/151 Cr.P.C. at PS Ambedkar Nagar. Again on 17.03.2022, the applicant, who is the neighbour of complainant, attacked the complainant’s brother along with four other persons and pressed his neck. Thereafter, applicant/accused along with his associates attacked the complainant and mother of the complainant. It is specifically alleged in the FIR that applicant and his other associates had dragged complainant ‘R’ by her hair, pushed her to ground, forcibly lay over her and tried to disrobe her, and had also held the private parts of complainant and had outraged her modesty. After taking cognizance in the matter, the Court of CMM, South District, Saket Courts, Delhi *vide* order dated 06.08.2022, had directed the police officials to lodge

an FIR and investigate the same, and accordingly the present FIR was registered.

3. Learned senior counsel for the petitioner/applicant submits that the applicant is a government employee and belongs to Schedule Caste and the motive for framing him falsely is attributable to his caste. It is argued that the complainant and her family members have on numerous occasions hurled casteist slurs on applicant and his family, and no action has ever been taken on the complaints filed by the applicant and his family members qua the same. Learned counsel further submits that even as per the Status report, there is no CCTV footage of the alleged incident dated 17.03.2022 which could verify the allegations of the complainant. It is submitted that constant fights among the ladies of both the families is the main reason behind the false implication of the applicant in the present case. In support of her arguments, learned senior counsel has placed reliance on the following judgments: (i) *Arnesh Kumar v. State of Bihar and Anr.* (2014) 8 SCC 273, (ii) *Sushila Aggarwal and Ors v. State (NCT of Delhi) and Anr.* (2020) 5 SCC 1.

4. Per contra, learned Additional Public Prosecutor for the State, duly assisted by the Investigating officer and the learned counsel for complainant, opposes the present bail application stating that the FIR in present case was registered and investigation was taken up as per directions under Section 156(3) Cr.P.C of the Court. The statement of complainant was recorded under Section 164 Cr.P.C which corroborates earlier version in the complaint. It is stated that the

investigation is at initial stage and the allegations are serious in nature. It is stated that the CCTV footage dated 19.02.2021 was analyzed in the presence of husband of complainant where he clearly identified the applicant and his family members, but some other persons were also seen in the footage who could not be identified by him. It is further stated that custodial interrogation of accused/applicant is required to trace the remaining accused persons and also for the recovery of baseball bats/dandas as seen in the CCTV footage.

5. I have heard the rival contentions and perused the record.

6. In the present case, it is seen that the allegations against the applicant are of outraging the modesty of victim and several other offences including causing sexual harassment, voluntarily causing hurt, criminal intimidation as well as insulting the modesty of a women through words, gesture or acts. The power under Section 438 Cr.P.C. remains discretionary power of the Court and needs to be used in exceptional circumstances.

7. The Hon'ble Supreme Court of India on 21.10.2022 in ***Crl. Appeal no. 1834/2022***, while cancelling the anticipatory bail granted to the respondent by the High Court, has made certain important observations for grant of anticipatory bail, which are as under:

“...In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to

grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. 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, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail...”

8. Thus, three points that have to be kept in mind for grant of anticipatory bail, to sum up, are (i) *prima facie* case against accused, (ii) nature of offence, and (iii) severity of the punishment. The gravity of the offences in the present case is apparent from the fact that specific allegations of outraging the modesty of complainant ‘R’ have been levelled by her, which finds mention in both her complaint as well as in the statement recorded under section 164 Cr.P.C. Whether any cross FIRs or cross complaints have been filed or are pending, at this stage, have no bearing on the facts of the present case.

9. When the facts of the present case are tested in the light of the above judgment, gravity of the offence and the seriousness of the allegations do not persuade this Court to grant anticipatory bail to the present accused/ applicant. In case the applicant is aggrieved by the

fact that the complaints filed by him against the other party have not been entertained by the police, he may take appropriate action in law regarding the same.

10. The judgments relied upon by the learned senior counsel does not help the case of the applicant. As regards the reliance placed upon the judgment in *Sushila Aggarwal (supra)*, even in this case, the Apex Court in para nos. 85.5 and 92.4 held that the considerations for grant of anticipatory bail would be the nature and gravity of the offences, role attributed to the applicant and the facts of the case.

11. In view of the above facts and circumstances of the case, this Court is of the considered view that no ground is made out for exercising discretion of grant of anticipatory bail to the accused/applicant.

12. Accordingly, the petition, along with pending application, moved on behalf of the accused/applicant stands dismissed.

13. It is, however, clarified that the observations made in this order shall have no effect on the merits of the case during trial.

SWARANA KANTA SHARMA, J

OCTOBER 31, 2022/kss