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

+ **BAIL APPLN. 3688/2022**

GAURAV KUMAR

..... Petitioner

Through: Mr.Shiv Chopra, Ms.Aadhyaa
Khanna and Mr.Siddharth Arora,
Advocates

versus

STATE OF GNCT DELHI

..... Respondent

Through: Mr.Raghvinder Verma, APP for the
State.
SI Jitendra Kumar, PS Badarpur

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Date of Decision: 09.12.2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. This is an application for grant of anticipatory bail filed under Section 438 of the Code of Criminal Procedure (Cr.PC) in FIR No.0406/2022 registered under Section 323/341/506/34 IPC at PS Badarpur.
2. The FIR was lodged on the application of Mr.Sohan s/o Pancha Ram alleging therein that on on 05.09.2022 at around 8.30 a.m. while he was going to gym, the accused persons i.e. Harsh Kumar @ Tinku s/o Raj Kumar, Gaurav s/o Rohtash and Rahul s/o Udal came in white colour car and attached him. The accused persons were armed with Danda and iron rods. The complainant alleged that he was assaulted on his

BAIL APPLN. 3688/2022

Page 1 of 6

hands and legs with iron rod and danda on account of which he suffered injuries and was taken to hospital.

3. Initially, an FIR was lodged under Sections 323/341/506/34. Admittedly, the petitioner was admitted to police bail by the Investigation Officer (IO) as the offences were bailable in nature. It is also not disputed that the petitioner was joining the investigation in pursuance to the notice under Section 41A Cr.PC. However, subsequently, Section 325 IPC was added as the injuries were opined to be grievous in nature. The petitioner instead of attending the investigation, moved an application for anticipatory bail before the learned Sessions Court.
4. In reply to the bail application, IO stated that upon certain materials, which have come on record, Section 195-A IPC has also been added as allegedly the accused persons were threatening the complainant and his mother on different dates. The anticipatory bail application was rejected by the learned sessions court.
5. The petitioner upon rejection of the bail application from Sessions Court has invoked the jurisdiction of this court. Learned counsel for the petitioner submits that once the petitioner/accused has been admitted to bail by the police, the only recourse left upon for the investigating agency is to move an application for cancellation of bail. It has been submitted that the petitioner apprehends his arrest upon adding of Section 195-A IPC. Learned counsel for the petitioner has submitted that Section 195-A IPC is not at all made out in the present case.

6. Per contra, learned APP for the State has opposed the bail application on the ground that firstly, in the bail application the petitioner has only sought the bail under Sections 323/341/506/34 IPC. Learned APP submits that since bail has not been sought under Sections 325 IPC and 195-A IPC, the bail application itself is defective. Secondly, learned APP has submitted that the petitioner was not granted bail by any court at any point of time and IO has simply admitted the petitioner on police bail as the offences at that time were bailable in nature. Thirdly, learned APP has submitted that recovery of car is yet to be effected and therefore, the IO would be required to do custodial interrogation of the petitioner for recovery of the car and for the offence under Section 195-A IPC.
7. It is an admitted case that the petitioner was admitted to police bail by the IO on 21.11.2022. The incident was of 05.09.2022 however the FIR was lodged on 11.09.2022. Section 325 IPC was added later on. The offence under Section 325 IPC is also bailable in nature. The problem arose when Section 195-A was added which is cognizable and non-bailable. Learned APP for the State has himself stated in the Court that the custodial interrogation of the accused is required. Thus, the apprehension of the petitioner that he may be arrested is well founded.
8. Learned counsel for the petitioner, in support of his contention that once the accused is admitted to bail, cannot be re-arrested unless the bail cancelled by the competent court of law has relied upon *Manoj Suresh Jadhav and Others vs. State of Maharashtra* (2019) 17 SCC 362, *Sukhpal vs. State of Rajasthan*, 1988 SCC OnLine Raj 614 and *Dhivan vs. State*, 2010 SCC OnLine Mad 3076.

9. It is a matter of record that the petitioner/accused was not released on bail in this case by any court at any point of time. The offences initially were bailable in nature and thus, the petitioner was admitted to bail. Learned counsel for the petitioner submits that the petitioner shall join the investigation as and when directed by the IO.
10. It is a settled proposition that the basic rule of criminal jurisprudence is bail and not jail. This court and the Supreme Court has said this time and again held that the courts must enforce this principle in practice. It has to be borne in mind that denial of bail amounts to deprivation of personal liberty.
11. In the case of *Siddharam Satilingappa Mhetre vs. State of Maharashtra* (2001) 1 SCC 694, the Supreme court while considering matter relating to grant of anticipatory bail and after exhaustively analysing the rights under Article 21 inter alia held that a great ignominy, humiliation and disgrace is attached to the arrest. It was further held that arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community.
12. In *Nathu Singh v. State of U.P.* (2021) 6 SCC 64, the Supreme Court inter alia held that grant or rejection of an application under Section 438 Cr.PC has a direct bearing on the fundamental right to life and liberty of an individual. Thus, while considering the bail this court has to look into the facts and circumstances of the case so as to ensure that there is no infringement of fundamental rights. Further it was also inter alia held that Section 438 Cr.P.C. needs to be read liberally, and

considering its beneficial nature, the courts must not read in limitations or restrictions that the legislature have not explicitly provided for.

13. The parameters for grant of anticipatory bail are the nature and gravity of offence, the role attributed to the applicant and the facts of the case. The court also has to consider whether the accused will be available during investigation or not. It is also pertinent to mention here that the Supreme Court has laid down time and again that unnecessary restrictions or conditions should not be imposed in routine manner. The conditions, which limit the grant of anticipatory bail may be imposed only if they are required in the facts of any case(s). Reliance may be placed upon *Sushila Aggarwal v. State (NCT of Delhi)* (2020) 5 SCC 1.
14. In the present case initially the petitioner had been joining investigation. During the course of investigation Section 325 IPC and Section 195-A IPC were added. It is correct that the complainant has suffered serious injuries and still stated to be in hospital. But this alone cannot be a ground to reject the anticipatory bail, particularly in view of the fact that the petitioner has always been joining the investigation and undertaken to join in future also.
15. I consider that in the totality of the facts and circumstances, the petitioner in event of arrest be admitted to anticipatory bail on furnishing a personal bond in the sum of Rs.20,000/- with one surety of the like amount to the satisfaction of Investigation Officer subject to the following conditions:
 - a) the Applicant shall cooperate in the investigation and appear before the Investigating Officer of the case as and when required;

- b) the Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
 - c) the Applicant shall provide his/her mobile number(s) to the Investigating Officer and keep it operational at all times;
 - d) the Applicant shall drop a PIN on the Google map to ensure that his location is available to the Investigating Officer; and
 - e) In case of change of residential address and/or mobile number, the Applicant shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.
 - f) the applicant shall also inform the investigation officer about any change in his address.
16. The bail application stands disposed of in the above terms.

DINESH KUMAR SHARMA, J

DECEMBER 09, 2022

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