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

+ BAIL APPLN. 3716/2022

RAHUL SINGH

..... Petitioner

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

versus

STATE OF GNCT DELHI

..... Respondent

Through: Mr. Raghuvender Verma, APP for the
State with SI, PS Badarpur.

+ BAIL APPLN. 3720/2022

HARSH KUMAR

..... Petitioner

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

versus

STATE OF GNCT DELHI

..... Respondent

Through: Mr. Raghuvender Verma, APP for the
State with SI, PS Badarpur.

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Date of Decision: 13.12.2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

CRL.M.A. 26064/2022 (exemption) in BAIL APPLN. 3716/2022

CRL.M.A. 26124/2022 (exemption) in BAIL APPLN. 3720/2022

Exemptions allowed subject to all just exceptions.

BAIL APPLN. 3716/2022 & BAIL APPLN. 3720/2022

1. These are the matters connected with BAIL APPLN. 3688/2022, whereby this Court vide order dated 09.12.2022 has granted anticipatory bail to one of the co-accused namely Gaurav Kumar in FIR No. 0406/2022. The present applications have been filed by the petitioners (remaining co-accused) namely Rahul Singh and Harsh Kumar, under section 438 CrPC for grant of anticipatory bail in FIR No. 0406/2022 registered at PS Badarpur under sections 323/341/506/34 IPC. The facts are identical in nature and the anticipatory bail is sought on grounds of parity with BAIL APPLN. 3688/2022, whereby this Court after considering the facts and circumstances of the case, has granted anticipatory bail to co accused i.e. Gaurav Kumar.

2. Briefly stated the facts are that FIR No. 0406/2022 was lodged pursuant to the complaint of Mr. Sohan s/o Pancha Ram alleging therein that on 05.09.2022 at around 8.30 a.m. while he was going to gym, the accused persons namely Harsh Kumar @ Tinku s/o Raj Kumar, Gaurav s/o Rohtash and Rahul s/o Udal came in a white colour car and attacked him. The accused persons were armed with wooden sticks (Danda) and iron rods. The complainant alleged that he was assaulted on his 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 IPC. Admittedly, the petitioners were admitted to police bail by the Investigation

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BAIL APPLN. 3720/2022*

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Officer (IO) as the offences were bailable in nature. It is also not disputed that the petitioners were 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 petitioners instead of attending the investigation, moved an application for anticipatory bail before the learned Sessions Court.

4. In reply to the bail application, the 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 petitioners upon rejection of the bail application from Sessions Court, apprehending their arrest, have invoked the jurisdiction of this court. Learned counsel for the petitioners submits that once the petitioners/accused persons have 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 petitioners apprehend their arrest upon adding of Section 195-A IPC. Learned counsel for the petitioners has submitted that Section 195-A IPC is not at all made out in the present case.

6. It is an admitted case that the petitioners were 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 IPC 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 persons is required. Thus, the apprehension of the petitioners that they may be arrested is well founded.

7. It is a matter of record that the petitioners/accused persons were 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 petitioners were admitted to bail. Learned counsel for the petitioners submits that the petitioners shall adhere to all the conditions imposed by this Court and shall join the investigation as and when directed by the IO.

8. It is a settled proposition that the basic rule of criminal jurisprudence is bail and not jail. The Supreme Court and this court have time and again held that the courts must enforce this principle in practice. It is also settled law that denial of bail amounts to deprivations of personal liberty. It is however imperative to bear in mind that the consideration governing exercise of discretion for granting anticipatory bail are materially different from those of an application for bail. Anticipatory bail is not to be granted as a matter of rule, it should be granted when the Court is convinced that the person would not misuse his liberty.

9. This court deems it appropriate to reiterate that discretion vested under section 438 Cr. P. C. should be exercised with care and circumspection depending upon the facts and circumstances of each case justifying its exercise. Thus, the discretion vested should be exercised with caution and prudence. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. The grant or refusal of

anticipatory bail should necessarily depend on the facts and circumstances of each case. As observed in ***Gurbaksh Singh Sibbia vs State of Punjab***, AIR 1980 SC 1632 and reiterated in a catena of other judgements, the Courts must exercise their jurisdiction under Section 438 CrPC by a wise and careful use of their discretion, which by their long training and experience they are ideally suited to do.

10. The Supreme Court in ***Siddharam Satilingappa Mhetre vs. State of Maharashtra*** (2001) 1 SCC 694, while considering a matter relating to grant of anticipatory bail and after exhaustively analysing the rights under Article 21 *inter alia* held that great ignominy, humiliation, and disgrace is attached to an arrest. It was further held that an arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community.

11. 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.

12. In the present case initially, the petitioners had been joining the investigation. During the course of the investigation Section 325 IPC and

Section 195A 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 considering that the petitioners have always been joining the investigation and have undertaken to join the same in future also.

13. This Court while keeping in mind the parameters for grant of anticipatory bail i.e. the nature and gravity of offence, the role attributed to the applicant, the past antecedents of the applicant, the possibility of the applicant to flee from justice, and the facts and circumstances of the case, granted anticipatory bail vide order dated 09.12.2022, to one of the co-accused in FIR No. 0406/2022 namely Gaurav Kumar in "*Gaurav Kumar vs State of GNCT Delhi*" in BAIL APPLN 3688/2022. The facts of the case are identical in nature and the present applications seeking grant of anticipatory bail filed by the remaining co - accused in FIR No. 0406/2022, namely Rahul and Harsh have been sought on grounds of parity.

14. Considering the parity of the case, the nature and gravity of offence, the role attributed to the applicants, the past antecedents of the applicants of the case, and that the petitioners will join the investigation as and when directed by the IO, I consider that in the totality of the facts and circumstances, the petitioners namely Rahul Singh and Harsh Kumar, in the event of arrest be admitted to anticipatory bail on furnishing a personal bond in the sum of Rs.20,000/- each, with one surety of the like amount to the satisfaction of Investigation Officer subject to the following conditions:

- a) the Applicants shall cooperate in the investigation and appear before the Investigating Officer of the case as and when required;
- b) the Applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
- c) the Applicants shall provide his/her mobile number(s) to the Investigating Officer and keep it operational at all times;
- d) the Applicants 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 Applicants shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.
- f) the applicants shall also inform the investigation officer about any change in their address.

15. The bail applications stand disposed of in the above terms.

DINESH KUMAR SHARMA, J

DECEMBER 13, 2022
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