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

+ **BAIL APPLN. 2795/2023**

PAWAN

..... Petitioner

Through: Mr. Vivek Kumar Gaurav, Mr. Shubham Prajapati, Mr. Md. Shawez and MR. Archana, Advs.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Hemant Mehla, APP and Insp. Ranbir Singh, ASI Anand Swaroop, PS Adarsh Nagar.

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Date of Decision: 22.08.2023.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

CRL.M.A. 22498/2023

Exemption allowed subject to all just exceptions.

Application stands disposed of.

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1. The present application has been filed seeking grant of anticipatory bail in the case FIR No. 646/2023 under Section 308/34 IPC registered at

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PS Adarsh Nagar.

2. Learned counsel submits that the offence alleged under Section 308 IPC entails a maximum punishment of 7 years or fine, or both.
Learned counsel further submits that IO has not served the notice to petitioner in accordance with Section 41A of Cr.P.C.
3. Learned counsel further submits that a Coordinate Bench of this court in *Amandeep Singh Johar vs. State NCT of Delhi*, W.P.(C.) 7608/2017 *inter-alia* held that police officer should be mandatorily required to issue a notice under Section 41-A Cr.P.C in the prescribed format in the manner and in accordance with the terms and procedures contained in chapter 6 of the Cr. P.C..
4. Furthermore, Learned counsel submits that even the model format was also provided in the said judgment. Learned counsel submits that since the formal notice has not been served and the petitioner may be given protection.
5. Learned counsel also submits that he will be satisfied if an appropriate notice under Section 41-A Cr.P.C. is served upon the petitioner. Learned counsel further submits that he is ready to join the investigation upon service of notice under Section 41-A Cr.P.C. in accordance with the law.
6. I have perused the notice served upon the petitioner dated 17.08.2023 which is apparently in accordance with Section 41A Cr.P.C and the directions of this court in *Amandeep Singh Johar (Supra)*.
7. Learned APP for the State submits that it was merely a technical flaw



and petitioner is intentionally avoiding joining the investigation.

8. I consider the procedure must be followed in the manner it is laid down in the law.
9. It is a matter of grave concern that despite repeated directions, IO in the present case has not served the notice in accordance with the law.
10. Let a notice under Section 41-A Cr.P.C. be served upon the petitioner in accordance with the law.
11. The petitioner shall join the investigation in accordance with the law. If the IO upon service of notice under Section 41A Cr.P.C. and joining of investigation by the petitioner feels the necessity of affecting the arrest of the petitioner he shall serve a notice of minimum 3 weeks to the petitioner.
12. The petition stands disposed of.

DINESH KUMAR SHARMA, J

AUGUST 22, 2023/AR