

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

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Reserved on: 16th January, 2023
Pronounced on: 25th January, 2023

+ BAIL APPLN. 3013/2022

DEEPAK GUPTA

..... Petitioner

Through: Sh. Ramesh Gupta, Senior
Advocate alongwith
Mr. Shailendra Singh and
Mr. Ishaan Jain, Advs.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Sh. Ritesh Kumar Bahri, APP for
State alongwith SI Sumit, PS
Sangam Vihar.
Sh. Shubham Karnwal, Advocate
for complainant.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

1. This petition has been filed for seeking regular bail in FIR No.242/2022 under sections 307/323/341/452/IPC at PS Sangam Vihar. The petitioner was arrested on 25th May, 2020 and charge-sheet has been filed and the matter is listed for arguments on charge on 11th February, 2023.

2. Learned counsel for the petitioner has contended that the case of the prosecution rests on the complaint of one Omkar Gupta (58 years old) who had been admitted in JPN Trauma Centre vide MLC No.500309652/2022 after being injured in a quarrel. As per the MLC he

was declared “*unfit for statement*”. The opinion, as per the doctor in MLC, was injury “*wound (1) abrasion over right side of mid tibia region*” and the nature of the injury was pending investigation.

3. On 16th April, 2022 the said complainant stated that he lives at Sangam Vihar, New Delhi along with his friend’s son namely Mr. Atul Sisoda and his wife. For the last two years, the complainant’s second wife namely Mrs. Pinky Gupta, brother-in-law Mr. Deepak Gupta (the petitioner herein), sister-in-law Smt. Baby Gupta and mother-in-law Smt. Kanti Devi had been pressurising him to transfer his property in their name and since he did not give in to their demands, they registered a false case of POCSO against him and his son. It is noted that FIR No.106/2022 under POCSO Act is pending against the complainant Omkar Gupta which was registered on the complaint of his minor step-daughter, niece of the petitioner.

4. On 14th April, 2022 at about 10.30 p.m. the complainant along with Atul Gupta and his wife were present at his house when the petitioner along with Baby Gupta, Sunil Negi and other unknown persons barged into his house with sticks and rods. When the complainant tried to stop them, they started attacking him and the petitioner assaulted him with a baseball bat and co-accused Sunil Negi attacked him with a bamboo stick. On the basis of this complaint, FIR was registered. Later the injury was opined by the doctor as ‘*Dangerous; Kind of Weapon used: Blunt*’. Complainant was discharged on 19th April, 2022 (considering that injury on ribs takes time to heal on their own).

5. As per the petitioner, an earlier FIR No. 236/2022 was registered on 15th April, 2022 for offences under section 323/341/506/34 IPC on

the complaint of one Mr. Deepak Gupta s/o Dinesh Gupta, friend of the petitioner and co-accused, who had been injured with a sharp object by the complainant Omkar Gupta in same date of incident i.e. 14th April, 2022. There was an eye witness to the said incident, one lady Anita, who was the tenant in the premises. It was stated that on 14th April, 2022 as soon as petitioner with his friend came to the house of Omkar Gupta, he gave a blow with a sharp object to Deepak Gupta s/o Dinesh Gupta and since the blow hit him on the chest and back, he started bleeding and then a quarrel ensued. It is the case of the petitioner that Omkar Gupta was the aggressor and Deepak Gupta s/o Dinesh Gupta had first received injury with sharp object pursuant to which the quarrel ensued and simple injury was inflicted on complainant Omkar Gupta.

6. It is further contended by the petitioner that in FIR No. 242/2022 it could not have been a case of section 307 IPC as injury caused to Omkar Gupta was not likely to cause death of the injured. The petitioner submitted that the present FIR, registered 4 days after the incident, is a counterblast to the FIR lodged by Deepak s/o Dinesh. The ladies alleged to be involved in the dispute namely Kanti Devi, Baby Gupta and Pinky Gupta were interrogated and were bound down without arrest. It is further stated that the petitioner has no previous criminal background.

7. As per the Ld. APP injury was dangerous in nature and was a chest injury as is evident from the FIR which notes the same.

8. As per the status report it is stated that CCTV cameras were found installed at the place of incident and the DVR has seized for data retrieval. It further states that the accused-petitioner Deepak Gupta had surrendered before the police.

9. As per the copy of MLC, it is evident that the case was of assault and wound was an abrasion over the right side of mid tibia region and treatment for the same had been given.

10. The Hon'ble Supreme Court in **Satender Kumar Antil v. CBI**, (2022) 10 SCC 51 observed as follows:

“12. The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India...”

(emphasis added)

The Hon'ble Supreme Court also noted the observations made by Krishna Iyer, J., in **Gudikanti Narasimhulu v. Public Prosecutor**, (1978) 1 SCC 240 as under:

“1. ... the issue [of bail] is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. ... After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of “procedure established by law. The last four words of Article 21 are the life of that human right.”

(emphasis added)

The Hon'ble Supreme Court further made note of their observations in **Sanjay Chandra v. CBI**, (2012) 1 SCC 40 as under:

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable

amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances."

(emphasis added)

11. Considering that basis of the dispute is a family related issue and there are accusations both by the complainant and petitioner regarding attempts to hurt each other, and further that the investigation is complete, charge-sheet has been filed and the petitioner is in incarceration for about the last 8 months and the trial is likely to take substantial time, this Court is of the considered view that it is a fit case for grant of bail to the petitioner.

12. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 25,000/- with one surety of

the like amount subject to the satisfaction of the Ld. Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
- ii. Petitioner shall provide permanent address to the Ld. Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- iv. Petitioner shall join investigation as and when called by the IO concerned.
- v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned. The mobile location be kept on at all times.
- vi. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.

Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

13. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

14. The petition is disposed of accordingly. Pending applications (if any) are disposed of as infructuous.

15. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

JANUARY 25, 2023/sm

