

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

% *Date of decision : 22.03.2023*

+ **BAIL APPLN. 3812/2022**

VIVEK @ GAURAV

..... Petitioner

Through: Mr. Rakesh Kumar and Ms.
Deepali Aggarwal, Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Through: Ms. Priyanka Dalal, APP for
the State

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR, J (ORAL)

1. The present bail application has been filed by the petitioner under Section 438 Cr.P.C. for seeking anticipatory bail in case FIR No. 436/2022 under Sections 365/384/389/34 IPC registered at Police Station GTB Enclave.
2. In brief the facts of the case are that on 15.10.2022 when the complainant, namely, Shiv Ram Khutiya, was going to his house from his office from I.T.O. by his car having registration number DL7CP4501 of Hyundai EON model, one white colour Maruti Breeza bearing registration no. DL-5CS-7963, which was coming from behind, stopped in front of his car and three persons who were in that car approached the complainant introducing themselves to be the police officials from Delhi Crime Branch. Thereafter, one person who was driving the

Breeza Car slapped the complainant and dragged him forcefully on the back seat of his car while his associate sat on the driving seat. The third associate took out a revolver and extorted Rs.35,000/- cash from the complainant's pocket and took him to District Lines Shahdara and GTB Hospital, where they demanded Rs.5 lacs. For this purpose, complainant told them that he had only Rs.1 lac at his home, they asked him to bring the said amount from his house, further they kept waiting for the complainant on the road outside the Tahirpur Village. The complainant then handed over Rs.50,000/- in cash, thereafter they further transferred Rs.45,000/- from complainant's mobile through Phone Pe application to another mobile having phone no. 9560753852. Before letting him go and they gave him beatings and threatened the complainant to implicate him and his family in a police case, As a result, the complainant registered a case FIR No. 436/22 against the petitioner and the co-accused.

3. It is submitted by learned counsel for petitioner that petitioner has been falsely implicated in this case. It is further submitted that three co-accused persons are police officials one being the head constable and other two are constables and are already on bail, hence the present petitioner claims parity with the co-accused persons. It is further submitted by him that petitioner was only a pawn in the hands of those police officials and he was working under their instructions. It is further submitted that being afraid of them as they were police officials,

petitioner herein had no option but to follow their dictate. It is further submitted that this Court vide order dated 20.12.2022 petitioner granted interim protection and since then he has been joining the investigation. It is further submitted by learned counsel for the petitioner that according to the prosecution the alleged amount of Rs.45,000/- was transferred to the bank account of the wife of the petitioner. It is further submitted that petitioner has clean past antecedents and deep roots in the society having family to support. It is further submitted that petitioner without prejudice to his rights and contention is ready to deposit the alleged amount of Rs. 45,000/- with the Registrar General of this Court. Lastly, he prays that petitioner be granted anticipatory bail.

4. On the other hand, learned APP for the State while opposing the present bail application of the petitioner submits that allegations against the petitioner are serious in nature. It is further submitted that though the petitioner has joined the investigation but he is not cooperating. It is further submitted by learned APP that as per the CDR, the petitioner was near the spot of the incident and 38 calls were made to the petitioner by the co-accused, namely, Amit, the Head Constable. It is further submitted that TIP of the petitioner is yet to be conducted.

5. In the instant case, it is pertinent to mention here that there is nothing on record to show that petitioner has not cooperated in the investigation apart from bald averments made by the Investigating Officer and as far as the contention of

learned APP regarding the TIP which is yet to be conducted is concerned, I am unable to understand as to why the TIP was not conducted when the petitioner is on interim protection since 20.12.2022 and has been joining the investigation.

6. Keeping in view the entire circumstances and the fact that the petitioner is joining the investigation and the role assigned to the petitioner is much lesser than to the co-accused persons, therefore, he is entitled to parity with the co-accused persons. Since three co-accused persons are already on bail, the present petition is allowed and in the event of arrest, the petitioner be released on bail subject to his furnishing a personal bond in the sum of Rs.30,000/- with one surety in the like amount to the satisfaction of the Investigating Officer/Arresting Officer/SHO concerned. However, the petitioner shall join the investigation as and when required by the Investigating Officer and shall also cooperate in TIP.

7. Without prejudice to his rights and contentions, as stated by the learned counsel for the petitioner, the petitioner is directed to deposit the alleged amount of Rs. 45,000/- with the Registrar General of this Court within two weeks.

8. The bail application along with pending application, if any, stands disposed of accordingly.

RAJNISH BHATNAGAR, J

MARCH 22, 2023/p