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- * **IN THE HIGH COURT OF DELHI AT NEW DELHI**
- + **BAIL APPLN. 392/2024 & CRL.M.A. 3385/2024**
- + **BAIL APPLN. 532/2024 & CRL.M.(BAIL) 266/2024**
- + **BAIL APPLN. 571/2024 & CRL.M.(BAIL) 289/2024**
- + **BAIL APPLN. 576/2024 & CRL.M.A. 5075/2024**
- + **BAIL APPLN. 639/2024 & CRL.M.A. 5624/2024**

Present: Mr. Sanjeev Kumar Choudhary, Mr. Swetank Shantanu and Ms. Shradha Choudhary, Advs. for applicants in Item Nos. 70 – 74.

Mr. Ajay Vikram Singh, APP for the State with Mr. Jatin Kadam, Mr. Kunal Popli and Mr. Vishal Sharma, Advs. with SI Rishi Kant Mishra, PS VK North in Item Nos. 70 – 74.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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20.05.2024

1. The present applications are filed under Section 438 of the Code of Criminal Procedure, 1973 ('CrPC') seeking grant of pre-arrest bail in FIR No. 336/2023 dated 06.11.2023 for offence under Sections 308/34 of the Indian Penal Code, 1860 ('IPC'), registered at Police Station Vasant Kunj.
2. The FIR was registered at the behest of the Sh. Malkhan Singh/complainant, alleging that on 05.11.2023, while the complainant was sleeping in his house when, at about 1:30 am, the applicants/accused persons – Sunny @ Manjeet Sehrawat, Mukul @ Mukul Sehrawat, Sudhir Kumar, Chiku @ Sahil, and Mangal Singh along went to the complainant's house looking for his brother Harish. The accused - Sunny @ Manjeet Sehrawat demanded the whereabouts of complainant's brother Harish and threatened of dire consequences if complainant's brother Harish was not found.

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3. It is alleged that the complainant's brother Harish arrived, they decided to visit the neighbours' house to discuss the situation. Upon reaching the neighbours' house, the complainant, his brother Harish, and their parents were met with abuse from the applicants who also threatened them. Thereafter, they returned to their house, but the accused persons along with other persons came back to the complainant's house, armed with stones and lathis, and started shouting and threatening to kill them.

4. It is alleged that when the complainant, his brother Harish, and their father approached the gate to talk, they were pulled out and beaten with stones and lathis on their heads and bodies by the applicants. During the altercation, the complainant's father and brother got injured and fainted. The police were called and the injured were taken for treatment at Safdarjung Hospital.

5. A cross FIR bearing No. 337/2023 was registered by the complainant, who is the mother of the accuseds/applicants namely, Sunny @ Manjeet Sehrawat and Mukul @ Mukul Sehrawat alleging altercations between them and their neighbour – Harish, who is the victim in FIR No. 336/2023. It is alleged that Harish and his friends had verbally abused and physically attacked the applicant- Sunny on the road. In an attempt to resolve the conflict, the complainant visited Harish's residence, spoke to them, and returned home believing the matter had been settled. However, the situation escalated further when Harish, along with his father - Malkhan, and their uncle Harendra, later arrived at the complainant's residence armed with lathis and iron rods. It is alleged that they created a commotion at the main gate and when the complainant approached to calm the situation, she was subjected to verbal threats and physical violence.



6. The applicants, on the apprehension of arrest moved an application seeking pre-arrest bail before the learned Trial Court which was dismissed by order dated 19.01.2024. Hence, the present application.

7. The learned counsel for the applicants submits that the applicants are innocent with no involvement in the alleged offence. He submits that none of the offences as alleged by the prosecution are made out against the applicants.

8. He submits that the learned Trial Court has failed to appreciate that a plain reading of the FIR indicates false implication of the applicants by the police. He submits that the incident happened on 05.11.2023 at about 1.30am, and both FIRs were lodged on 06.11.2023 after manipulation and wrongful intention towards the applicants. He submits that the complainant, along with his brother, father, and other family members, came to the applicants' house, abused, and outraged the modesty of their mother, prompting the applicants to protect her.

9. The learned counsel for the applicants submits that the complainant and the accused persons are neighbours and a scuffle took place between the family members of the applicants and the complainant, which led to registration of the cross FIRs. A cross FIR was also registered, being FIR No. 337/2023 dated 06.11.2023 registered at Police Station Vasant Kunj, North for offences under Sections 323/354/509/34 of the IPC.

10. He submits that the applicants have no criminal antecedents and have never been involved in any criminal activities. He submits that the mother of the accuseds/applicants namely, Sunny @ Manjeet Sehrawat and Mukul @ Mukul



Sehrawat is a widow, and they are the sole breadwinners for the family.

11. *Per contra*, the Additional Public Prosecutor for the State vehemently opposed the bail application. He submits that there are specific allegations against the applicants and the allegations are grave and serious in nature. He submits that the applicants in connivance with each other have inflicted grievous injuries to the family members of the complainant.

12. He submits that during investigation, MLCs of all the four injured persons opined that the nature of injuries in respect of two injured namely – Harish and Harender as- grievous in nature and nature of injuries in respect of two other injured namely- Malkhan (complainant) and Virender has been opined as - simple in nature.

13. He submits that the applicants have not cooperated with the investigation and also did not disclose any facts regarding other co accused persons and weapon of offence.

14. I have heard the learned counsel for the parties and perused the record.

15. It is to be kept in mind that the investigation is currently at a nascent stage. The considerations governing the grant of pre-arrest bail are materially different than those to be considered while adjudicating application for grant of regular bail, as in the latter case, the accused is already under arrest and substantial investigation is carried out by the investigating agency.

16. It is trite law that the power to grant a pre-arrest bail under Section 438 of the CrPC is extraordinary in nature and is to be exercised sparingly. Thus, pre-arrest bail cannot be granted in a routine manner. The Hon'ble Apex Court, in the case of ***State of***



A.P. v. Bimal Krishna Kumar (1997) 8 SCC 104, held as under:

“8. A three-Judge Bench of this Court has stated in Pokar Ram v. State of Rajasthan [(1985) 2 SCC 597 : 1985 SCC (Cri) 297 : AIR 1985 SC 969] : (SCC p. 600, para 5)

“5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal.”

9. Similar observations have been made by us in a recent judgment in State v. Anil Sharma [(1997) 7 SCC 187 : 1997 SCC (Cri) 1039 : JT (1997) 7 SC 651] : (SCC pp. 189-90, para 8)

“The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest.”

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12. We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on “the career of millions of students”, learned Single Judge should not have persuaded himself to exercise the discretion which



Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order.”

17. It is settled law that the custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the CrPC [***State v. Anil Sharma : (1997) 7 SCC 187***]. Granting anticipatory bail to the applicant would undoubtedly impede further investigation. An order of bail cannot be granted in a routine manner so as to allow the applicant to use the same as a shield.

18. The presence of the accused persons has not been denied at the place of incident. The alleged events led to cross FIRs and allegations of serious offences, including threats and physical assault, highlighting a deeply contentious and violent dispute between the parties. The ground of self-defence, *prima facie* is not available at this stage to the applicants as they have extensively acceded the right of self- defence.

19. It will be the prosecution’s effort to prove during trial as to who had caused which injuries. The plea of the petitioners that they had no knowledge that grievous injuries can be the ultimate result, cannot be appreciated at this stage only on the ground that there were large number of persons who were part of a crowd, which attacked the complainant and his family members and caused grievous injuries.

20. Considering the status report filed by the State, it cannot be held, at this stage, that the investigation is being carried out with the intention to injure or humiliate the applicants. The nature and the gravity of the allegations are serious. Specific allegations



have also been made that the applicants were part of the group of persons who assaulted the complainant and his family members and cause serious injuries. Other accused persons involved in the alleged incident are yet to be identified. It is important to note that leniency cannot be sought merely because the parties involved are neighbours. Being neighbours does not grant anyone the right to inflict grievous injuries on others, even under the claim of self-defence. Such actions are unacceptable and cannot be excused on the basis of proximity or acquaintance.

21. Allegations and defence though would be tested during the trial, it cannot be denied that the investigation is at a nascent stage and other accused persons are yet to be identified. Right of the State to further investigate and seek custodial interrogation ought not to be denied in the facts of the present case. The applicants have to be interrogated in custody and there are no grounds available to them on the basis which they can be enlarged on pre-arrest bail.

22. Considering the above, and the nature of the offence, no ground for grant of pre-arrest bail to the applicants is made out.

23. The present applications are accordingly dismissed.

24. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

AMIT MAHAJAN, J

MAY 20, 2024