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

+ **BAIL APPLN. 1101/2024**

ASHRAF ALI @ BHURA ..... Applicant  
Through: Mr. Mukesh Kalia and Mr.  
Sunny Sharma, Advs.

versus

THE STATE N.C.T OF DELHI ..... Respondent  
Through: Mr. Yudhvir Singh  
Chauhan, APP for the  
State with Mr. Ashwani  
Kumar, Adv. with SI  
Raghubir Prasad, PS  
Naraina.

**CORAM:**  
**HON'BLE MR. JUSTICE AMIT MAHAJAN**

% **ORDER**  
**01.04.2024**

**CRL.M.A. 9678/2024** (*exemption from filing the certified copy and true typed copy of dim annexures and photocopies of the same be ordered to be taken on record*)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present application is filed under Section 438 read with Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') seeking pre-arrest bail in FIR No. 308/2023 dated 23.06.2023 registered at Police Station Khyala, for offences under Sections 323/341/34 of the Indian Penal Code, 1860 ('IPC').

4. The applicant apprehending arrest filed an application seeking grant of pre-arrest bail under Section 438 of the CrPC on  
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an earlier occasion, before the learned Additional Sessions Judge, Tis Hazari Courts, Delhi which was dismissed by order dated 27.09.2023.

5. The applicant had thereafter filed an application before this Court being Bail Application No. 3508/2023. The said application was heard and when the Court was not inclined to pass any order, the applicant sought liberty to withdraw the application and the same was dismissed as withdrawn by order dated 01.02.2024.

6. Yet another application is filed by the applicant before this Court under Section 438 of the CrPC which is the second attempt by the applicant before this Court in succession without there being any change in circumstances.

7. The learned counsel for the applicant submits that the allegations against the applicant are baseless.

8. He submits that the applicant was granted bail by the learned Trial Court by order dated 18.07.2023 with the observation that the offences alleged (at that stage) were bailable in nature.

9. He submits that Section 329 of the IPC was thereafter added in the present FIR during the pendency of the case. He submits that the second application for grant of anticipatory bail was preferred by the applicant before the learned Trial Court after the addition of the offence under Section 329 of the IPC which was dismissed.

10. He further submits that Section 304 of the IPC was also added erroneously during the pendency of the case, even though, there were no such allegations when bail was initially granted to the applicant.

11. The learned Additional Public Prosecutor for the State  
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objects to the maintainability of the present application. He submits that there has been no change in circumstances since this Court had dismissed the application filed by the applicant under Section 438 of the CrPC by order dated 01.02.2024.

12. He further submits that dismissal of bail application as withdrawn should be treated as rejection on merits because as a matter of practice, the counsel withdraw the bail application only when they find that the Court is not inclined to exercise the discretion in their favour. He submits that the filing of successive pre-arrest bail applications is abuse of process of Court.

13. He submits, on instructions from the Investigating Officer, that Sections 329/304 of the IPC had been added in the present FIR before the dismissal of the previous bail application of the applicant.

14. As noted above, this is the second bail application filed by the applicant seeking the same relief before this Court. The bail application filed by the applicant had already been dismissed by order dated 27.09.2023, passed by the learned ASJ. It was specifically noted that another FIR had been lodged against the accused persons in relation to injuries inflicted by them upon the relatives of the victim. The learned Trial Court after hearing the arguments had opined that the offence under Section 329 of the IPC is grave in nature wherein the main allegation was regarding injuries suffered by victim when he was constrained by the accused persons to settle another rape case.

15. It is pertinent to note that the applicant in the present case had withdrawn the pre-arrest application filed on an earlier occasion, before this Court. It is pertinent to note that the previous bail application was withdrawn not even a month back with no liberty to file afresh.

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16. It is a settled law that dismissal of bail application as withdrawn should be treated as rejection on merits because as a matter of practice, the counsel withdraws the bail application only when they find that the Court is not inclined to exercise the discretion in his favour. [Ref: *Rajkumar v. State (NCT of Delhi)*: 128 (2006) DLT 264]

17. It is not the case of the applicant that there has been any material change in circumstances since the dismissal of the previous application. No arguments to this effect have been made in the bail application of the applicant either.

18. It is also pertinent to note that inclusion of Sections 329/304 of the IPC in the FIR happened before the previous bail application of the applicant was dismissed.

19. The Hon'ble Apex Court in *G.R. Ananda Babu v. State of T.N.*: (2021) 16 SCC 725 deprecated the practice of filing of successive anticipatory bail applications and held that the same ought not to be entertained by the Courts. The same also has an effect in increasing the pendency of the proceedings before the Courts. The Courts while entertaining the successive bail applications also have to waste the precious time which can be devoted for consideration of other pending cases.

20. The grant of pre-arrest bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of pre-arrest bail. The pre-arrest bail not to be granted as a matter of routine and it has to be granted only when the court is convinced that circumstances exist to resort to that extraordinary remedy. Custodial interrogation is a recognized mode of investigation which is not only permitted but is held to be more effective.

21. Interrogation of an accused, while in custody, is  
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qualitatively different from that undertaken while the accused is enjoying protection under an order of a Court against his arrest. This is a well-recognized position in law. It is the right of the investigating agency to conduct a proper and fair investigation.

22. The Hon'ble Apex Court in the case of ***CBI v. Anil Sharma : 1997 7 SCC 187***, held that investigating a person appearing before the Investigating Officer under the protection of the Court order under 438 of the CrPC is qualitatively different from custodial interrogation which would lead to better collection of evidence, thereby ensuring a proper investigation.

23. The present case is one where the injured victim suffered grave injuries and subsequently died within twelve days of suffering the injuries. While the applicant was granted bail earlier by the learned ASJ on 18.07.2023, it was specifically noted that the bail was only granted for the offences under Sections 325/341/34 of the IPC. It was specifically noted that the postmortem of the victim had been done and the opinion of the autopsy surgeon regarding the cause of death was awaited. The learned ASJ had explicitly considered the possibility of further sections being added by the prosecution after getting the opinion of the autopsy surgeon. In such circumstances, at this stage, the mere addition of further sections in the FIR does not seem to have been made with the object of maliciously implicating the applicant.

24. The allegations involved in the present case are of serious nature. In such a case, this Court is of the opinion that grant of pre-arrest bail would harm the investigation.

25. Keeping in view the aforesaid facts, this Court finds no merit in the present application and the same is dismissed.

26. It is clarified that any observations made in the present  
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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**

**APRIL 1, 2024/KDK**