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

+ **BAIL APPLN. 1357/2024**

ANURAG SINGH

..... Applicant
Through: Mr. M.S. Khan, Mr.
Prashant Prakash & Ms.
Qausar Khan, Advs.

versus

STATE (NCT OF DELHI)

..... Respondent
Through: Mr. Mukesh Kumar, APP
for the State with Mr.
Abhishek Pundhir, Adv.
SI Arvind Kumar, PS-
Sangam Vihar

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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23.04.2024

1. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 seeking grant of pre-arrest bail in FIR No. 673/2023 dated 10.09.2023, registered at Police Station Sangam Vihar for offence under Section 307/34 of the Indian Penal Code, 1860 (**IPC**).
2. It is alleged that on 09.09.2023 a PCR call regarding admission of injured namely, Dilshad was received and the same was recorded vide GD No. 156A whereafter, it was put up for necessary action. The injured was allegedly found in critical condition. Hence, the present FIR was registered under Section 307/34 of the IPC.
3. On 10.09.2023, information regarding death of injured Dilshad was received and Section 307 of the IPC was substituted by Section 302 of the IPC.



4. During investigation, the CCTV footage from the place of the alleged incident was retrieved wherein, several boys (CCLs) were seen beating the deceased mercilessly. It is further revealed from the footage that at the time of the alleged incident two persons came on a motorcycle. The applicant was sitting as pillion rider and took CCL Pankaj on their motorcycle and fled the spot.
5. The applicant, on the apprehension of arrest moved an application seeking pre-arrest bail before the learned Trial Court which was dismissed by order dated 27.03.2024. Hence, the present application.
6. The learned counsel for the applicant submits that the applicant was a mere passerby at the time of the alleged incident and has no participation, association or involvement in the said offence. He submits that none of the witnesses cited by the prosecution in the chargesheet has named the applicant.
7. He submits that the applicant was not riding the bike but was only sitting as a pillion rider on the bike and had only reached the spot at the fag end of the alleged incident.
8. He submits that even the CCTV footage retrieved capturing the alleged incident demonstrates that the applicant was present at the spot as a bystander and did not engage in any criminal activity.
9. *Per contra*, the learned Additional Public Prosecutor for the State opposed the grant of any relief to the applicant. He submits that the allegations against the applicant are serious in nature.
10. I have heard the learned counsel for the parties and perused the record.
11. 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.

12. 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 Kundu : (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.”

13. 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.

14. Upon perusal of the CCTV footage by this Court, it is seen that the deceased was subjected to brutal assault by multiple individuals, resulting in the loss of a young life. At this juncture, the portrayal of the applicant as a mere bystander does not appear credible.

15. 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 applicant. The nature and the gravity of the allegations are serious. Specific allegations have also been made that the applicant was part of the group of



persons who assaulted the deceased. It is apparent that the applicant came on a motorcycle and fled the spot of the alleged incident and took one of the accused with him.

16. Even though, it is alleged that the applicant has been falsely implicated by the police officials, the same, at this stage, is not a relevant fact for deciding the present application.

17. It is further indicated that during investigation, the raids were conducted at the house of the applicant but he deliberately evaded arrest.

18. The investigation is at a nascent stage and the role of the applicant in the present FIR is a subject matter of further investigation which ought not to be denied to the investigating authority.

19. Considering the above, and the nature of the offence, no ground for grant of anticipatory bail to the applicants is made out.

20. The present application is accordingly dismissed.

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

APRIL 23, 2024

“SS”/UG