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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 22nd April, 2024

Pronounced on: 21st May, 2024

+ BAIL APPLN. No.2112/2023 & CRL.M.A. 16653/2023 (Stay)

RAJAN KUMAR @ ASHU CHAUHAN Petitioner

Through: Mr. Sunil Dalal, Sr. Advocate with
Mr. Vishesh Wadhwa & Ms. Swadha
Gupta, Advocates.

versus

STATE OF N.C.T OF DELHI Respondent

Through: Mr. Amit Ahlawat, APP for the State
with SI Mahendra, P.S. Vasant Kunj,
South.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present application under Section 438 of the Code of Criminal Procedure, 1973 (hereinafter referred as "Cr.P.C.") seeks anticipatory bail in case FIR No. 450/2022 under Sections 323/325/341/506/509 /378/452/147/148/149/34 of the Indian Penal Code, 1860 (hereinafter referred as



“IPC”) and Section 30 of the Arms Act, 1959 (hereinafter referred as “Arms Act”), registered at PS: Vasant Kunj (South).

2. The case of the prosecution as per the status report authored by Insp. Sahdev Singh Rana, SHO, P.S. Vasant Kunj (South) is as under:

“The brief facts of the case are that the present petition pertains to FIR No. 450/22 dated 25.09.2022 Police Station Vasant Kunj (South) Delhi:

i) On 24/09/22, a PCR Call regarding quarrel was received at PS Vasant Kunj (South), New Delhi vide GD No. 91A and subsequently another PCR Call regarding MLC was received from ISIC Hospital, Vasant Kunj, New Delhi vide GD No. 94A.

ii) Upon receipt of both PCR calls, SI Manoj Kumar reached at ISIC Hospital Vasant Kunj and where three persons namely (1) Sh. Manoj Arya S/o Sh. Omender Pal Singh R/o B-611, Vasant Kunj Enclave, New Delhi (2) Manish Agarwal S/o Late Sh. Vijay Kumar R/o B-360A, Vasant Kunj Enclave, New Delhi (3) Naveen Chander Bhatt S/o Kate Sh. H.D. Bhutt R/o B-610, Vasant Kunj Enclave, New Delhi, were found admitted.

iii) SI Manoj collected the MLC's wherein doctor mentioned Alleged History of (A/H/O) Physical Assault on all three MLC's. of Naveen Bhatt, Manoj Arya & Manish Agarwal and kept nature of injury under evaluation.

iv) Thereafter the Investigating Officer recorded the statement of Sh. Manoj Arya S/o Sh. Omender Pal Singh R/o B-611, Vasant Kunj Enclave, New Delhi wherein he alleged that on 24.09.2022 the RWA members alongwith other local residents of the society (i.e. Vasant Kunj Enclave United Residents Welfare Association) had carried out a peaceful demonstration outside the Calvin Studio & Gym, situated at B-541, Vasant Kunj Enclave, and thereafter returned back to their meeting place.

v) He further alleged that after about 20 minutes of their return around 5 persons came to them and asked that Aashu Chouhan (Petitioner herein) has called for a meeting at his office at Calvin Fitness Studio, to which he, others residents/office bearers denied.



vi) He further alleged that after 15-20 minutes Aashu Chouhan (petitioner herein) alongwith his goons out of which some were carrying weapon came in vehicles at their meeting place i.e. B-607/608, Vasant Kunj Enclave, Delhi and started beating him and other persons namely Manish Aggarwal & Naveen Bhutt. He further alleged that the accused alongwith his other associates attacked on him & other victims and had taken their two gold chains and two mobile phones. He also alleged that the accused/Petitioner and his associates extended threats to kill on the point of weapon and they also abused the ladies. Thus, on the basis of the said statement, FIR No. 450/22 U/s 323/341/506/509/379/34 IPC has been registered at PS Vasant Kunj (South).

That the investigation of the case was taken up and during investigation it was revealed that the petitioner & other accused persons came to the spot on 04 Cars and 03 Motorcycles. It is stated that all the 04 cars i.e.(1) Scorpio registration No. DL-10C-G-3438, (2) Fortuner bearing registration no. HR-13Q-0004 (used by petitioner to reach at the spot) (3) Eco Sport bearing registration No. DL-3C-C-2765 & (4) Maruti Breeza bearing registration DL-3C-CM-2626 have been recovered and seized. Further, Motorcycles bearing registration No. DL-8C-K-8696, DL-3SCR-2479 and DL 3SEX-9060 have also been seized.

During investigation, the CCTV footage of nearby premises had been collected and analyzed. On the perusal of the same it revealed that the accused Aashu Chouhan @ Rajan Kumar (petitioner herein) alongwith approx. 30 persons were involved in the incident. Therefore, section 452/147/ 148/149 IPC were added in the case.

The Doctor gave the opinion on MLC's which stated that one injured sustained grievous injuries whereas other injured persons sustained Simple Injuries and thus section 325 IPC was also added to the FIR.

During investigation, it was further revealed that at time of the incident the PSOs & Guard of accused Ashu Chauhan (petitioner herein) were carrying fire-arms and till now, three weapons have been seized. On further investigation it was found that one of the PSO namely Anand was having valid license for UP only but he was carrying the weapon in Delhi area



without having any valid permission from the competent authority, thus, section 30 Arms Act has also been invoked in the case.

Accused Aashu Chouhan @ Rajan Kumar petitioner herein had applied the anticipatory bail which was dismissed by the Ld. Court of Sh Devender Kumar Jangala, ASJ, Patiala House Courts, Delhi vide order dated 28.09.2022 on the grounds that *“The investigation is at the initial stage and the applicant/accused is reported to be BC of the area, there is every possibility of apprehension of threat to the witness. The photographs of incident captured in CCTV, showed by the IO clearly reflects that the accused has no respect for law and his henchmen are wielding the weapons freely.”*

After analyzing the CCTV footage of the cameras installed by PWD, the series (chronological) of arrival of accused persons may comprehend with the help in tabulate format mentioned below:

S. No.	Time	Particulars of incident	Number of persons (including female) in vehicles
1.	14:04:46	One Scorpio car two motorcyces	One Scorpio- 6 persons two motorcycles- 2+3 persons
2.	14:04:57	One motorcycle	02 persons
3.	14:05:38	PCR Vans	02 police personnel
4.	14:05:50	One Fortuner car	05 persons including Aashu Chouhan @Rajan
5.	14:06:05	One Breeza car	03 persons
6.	14:06:23	One Eco Sport car	07 persons



The CCTV footage further revealed that the people who came on vehicles mentioned at S No 1 & 2 waited outside the meeting place of the Complainant till the arrival of Aashu Chouhan @ Rajan (the petitioner herein) in the vehicle mentioned at serial no. 4. It was further revealed that as soon as the accused Aashu Chouhan reached the spot alongwith other persons mentioned at S. No 5 & 6, all the persons including the people who were waiting there immediately entered in the premises behind Aashu Chouhan @ Ranjan where brawl took place. It is pertinent to mention here that the CCTV footage revealed that the PCR van arrived at the spot, but the police personnel did not de-board the PCR and all the accused without waiting the police personnel entered in the premises/meeting place of the complainant. The CCTV Footage also revealed that approx. 30 accused persons in a preplanned manner came at the spot (in vehicles and by foot) and entered in the premises/meeting place of the complainant with ill intention on the behest of the accused Aashu Chouhan (the petitioner herein).

That during investigation, statement U/S 164 Cr.P.C. of witnesses cum victim namely Smt. Krishna Dhun W/o Sh. Manphool Singh R/o B-241, Vasant Kunj Enclave, New Delhi (2) Smt. Sushma Gurang W/o Sh. Mohan Kumar Gurang R/o B-203, Vasant Kunj Enclave, New Delhi (3) Smt. Shakuntla Devi W/o Sh. Angrej Singh R/o B-77, Vasant Kunj Enclave, New Delhi were recorded before Hon'ble Court wherein they corroborated the incident of brawl and further stated they were abused by the accused and his associates during the incident.

The accused/petitioner herein again applied for anticipatory bail and was granted the same by Ld. Court of Sh. Harjot Singh Bhalla, ASJ, Patiala House Courts, New Delhi vide order dated 19.10.2022 with the conditions that *"the accused will join the investigation and the accused shall not visit the area for a period of one month so that the investigation can be carried out without any interference from him. The second condition laid down in the order was that the accused shall visit the area only after giving prior intimation to the IO at least telephonically or by SMS."*

It is worth to mention here that after granting the anticipatory bail, the accused Aashu Chouhan @ Rajan Kumar petitioner herein has joined the investigation on 05.02.2023 and during the interrogation in questionnaire



format he submitted that he will share the details of other accused persons who were appearing in the video footage and he will facilitate in fixing the identification of the those accused persons within seven days, but in spite of notices, neither he shared any details of other accused persons nor submitted any reply to the notices issued to him at that time.

It is also pertinent to mention here that despite the knowledge that the registered office of the RWA (complainant of present FIR) is situated at B Block and the alleged Calvin fitness studios of accused Aashu Chouhan Petitioner herein is also situated at B block, the accused not only conducted a meeting at B-20, B block on 26.12.2022 but also found visiting in the area with his PSO Ashok Kumar who was carrying weapon. Further, Some complaints regarding the presence of accused Aashu Chouhan @ Rajan Kumar and Ashok in the B Block and threatening the members of RWA/local residents were received, subsequently after enquiry, the accused was booked U/s 110 G Cr.PC PS Vasant Kunj (South) on 04.01.2023 and produced before SDM Vasant Vihar who after hearing the matter bound the accused Aashu Chouhan by furnishing Personal Bond of Rs 5000/- for keeping a good behaviour for a period of three months.

It is respectfully submitted as such accused was found visiting the area without informing the investigation agency which is one of the mandatory anticipatory bail condition of applicant herein, he was found violated the conditions of the anticipatory bail, therefore a petition cum application for cancellation of his bail was filed by the investigation agency before the Ld ASJ Court of Sh Devender Kumar Jangla, ASJ, Patiala House Courts, Delhi.

Aggrieved by the order dated 19.10.2022 whereby the petitioner was granted anticipatory bail, the complainant Mr. Manoj Arya filed a petition bearing no. Crl. M. No. 618/2023 titled "Manoj Arya vs. State & Anr." before the Hon'ble High Court of Delhi. The matter was first listed on 31.01.2023 and the Hon'ble Court passed an order of stay on the operation of impugned order dated 19.10.2022 till next date of hearing i.e. 11.05.2023.

Aggrieved by the said order dated 31.01.2023, the accused /petitioner herein filed applications bearing Crl. M.A. No. **3972/2023** and Crl. M. A. no. 3962/2023 in Crl. M.C. 618/2023.

On **14.02.2023** during the hearing of the matter before the Hon'ble Court it



was stated by the state that the state has already filed an application for cancellation of anticipatory bail granted to the accused before the Ld. ASJ and the same is listed for hearing today. The Hon'ble High Court after hearing the said submissions ordered "This application is therefore disposed of with the directions that the state may place their submission before the Ld. ASJ particularly regarding the legal Principles adverted to above in order that considered decision may be taken." And listed the matter for hearing on i.e. **618/2023** for **11.05.2023**.

On 22.02.2023, the LD ASJ Sh Devender Kumar Jangla, Patiala House Court, after hearing the parties and after perusal of the material on record, cancelled the anticipatory bail of accused Aashu Chouhan @ Rajan.

It is further submitted that during investigation, initially 08 accused persons were arrested including the accused Aashu Chouhan @ Rajan Kumar petitioner herein (who was formally arrest on the basis of the anticipatory, bail granted to him vide order 19.10.2022) but none of the arrested /identified accused persons were ready to co-operate in the identification of the other accused persons who were appearing in the video footage and were involved in the incident/who were came with them in the vehicles whereas it seems that all the accused persons are acquaintance with each other as they came at the spot with each other. However, due to persisted efforts and repeated analysis of CCTV footage, the identity of about 15 more persons were fixed and now total 23 accused persons have been arrested/bound down.

It is pertinent to mention here that on 24.09.2022 another PCR call regarding quarrel was received which was made by the accused Suraj vide GD No 79A and upon being receipt of the same, on the basis of statement, a cross Case vide FIR No. 451/22 U/S 323/341/506/509/354/34 IPC, was also registered at PS Vasant Kuni (S), New Delhi against the complainant of case FIR No. 450/22 & others regarding the same incident.

That the record of the PS has also been retrieved manually which revealed that the accused Rajan Kumar @ Aashu Chouhan is previously involved in various cases and has been declared History Sheeter of bundle A of the area of PS Vasant Kunj South vide order dated 2032/SO/DCP/SW Dated 17.03.2021.



S. no.	FIR no. and U/s	Present position of the case	Police Station
1.	91/21 U/s: 447 IPC & 8/24 of Delhi Tree Conservation Act	Pending Trial NDOH: 06.03.2024	Vasant Kunj (South)
2.	353/17 U/s: 420/406/120B IPC	Pending Trial NDOH: 16.09.2023	Kotla Mubarak Pur
3.	03/19 U/s: 323/354/354B/509 IPC	Pending Trial NDOH 05.10.2023	Lodhi Colony
4.	AC-1/2017, 004 U/s: 08 PC Act r/w 129B IPC	Pending Trial NDOH: 19.07.2023	CBI

That the accused petitioner herein earlier on his examination submitted that he has only three PSOs and shared their details, but *on perusal of the CCTV Footage revealed that 05 persons seems to be PSOs to accused Aashu Chouhan @ Rajan Kumar came at the spot and leave the same with the accused Aashu Chouhan @ Rajan Kumar. It's also revealed that one more person later on identified as Mohit is came at the spot and investigation revealed that he is residing with the accused Aashu Chouhan @ Rajan*

Signature Not Verified

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By: AMIT SHARMA
Signing Date: 21.05.2024
19:44:28

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Kumar at A-9/A-15, Vasant Kunj Enclave, Delhi. Thus, NBW against accused Aashu Chouhan @ Rajan Kumar and Mohit S/o Naresh Kumar was taken and he was still at large. Despite issuance of NBW and still absconding, proceeding U/s 82 Cr.P.C has also been initiated against accused Aashu Chouhan @ Rajan Kumar (Petitioner herein) and Mohit Kumar and fixed for 28.08.2023.

Further, the proceeding under section 47 DP Act are also going on against the petitioner which are pending before the Addl. DCP/South west District and the Baillable Warrant against him in the above matter has already been issued, but the petitioner did not appear during the hearing and the BW against him is now fixed for 01.08.2023.

It is respectfully submitted that custodial interrogation is required of the petitioner herein for the identification/arrest of the other persons who are visible in the CCTV footage and are involved in the incident. The investigation in the case is in progress and being conducted diligently.

It is also to submitted here that aggrieved from the Ld ASJ Order Dated 22.02.2023, the applicant has filed a petition before the Hon'ble High Court of Delhi vide Crl. M C No 1386/2023, but later on he withdraw the petition on 26.05.2023 with the liberty to file appropriate proceedings before the competent court. Accordingly, the applicant has filed another Anticipatory bail application before the Ld ASJ Court of Sh Pawan Kumar, ASJ, Patiala House Courts and after hearing the due submission, the LD ASJ Court dismissed the anticipatory bail application of applicant vide order dated 03.06.2023. It is also to submit here that, the applicant again filed anticipatory bail application before the Ld ASJ Court of Sh Rajender Singh, Patiala House Courts, Delhi and similarly, the Ld ASJ Court after hearing the submission dismissed the application of applicant vide order dated 16.06.2023. Thus, aggrieved from the cancellation of his Anticipatory Bail by the various Session Courts, the applicant has filed the instant petition before the Hon'ble High Court of Delhi on 26.06.2023 whereby he has been granted interim relief till 27.07.2023 with the subject to join the investigation. Accordingly, in compliance to the directions of Hon'ble High Court of Delhi, the applicant has joined the investigation and shared the details of 06 accused persons which resulted the arrest/bound down of total accused persons to 23.



In response to the grounds submitted by the applicant herein in the present petition, it is submitted that, the case has been registered on the basis of complaint received from complainant Manoj Arya which disclose commission of cognizable offence and the incriminating evidence against the applicant regarding his presence and brawl with the complainant and other persons came on record which are already cited above. Further, CCTV footage revealed that the accused persons waited there in a pre planned manner with ulterior motives and they were entered in the premises as soon as applicant arrived at the spot. However, as far as the matter of applicant's ground regarding, non-breaching of condition of anticipatory bail is concerned, it is submitted that if the accused was called by local municipal councilor on 26.12.2022 for meeting, he should have to inform/convey the information of the same to the investigation agency prior to visit at the place of meeting which is a mandatory condition of Anticipatory bail order of Hon'ble ASJ dated 19.10.2022, but he did not bother to adhered to the conditions and found violated the same. Further, during the hearing of cancellation of aniticipatory bail application before the Ld ASJ Court of Sh Devender Kumar Jangla Dated 22.02.2023, the Hon'ble Court after perusal of the Delhi Medical Council report observed that the doctor is not a registered with Delhi Medical Council whereas he is practicing in Delhi. Thus, no concocted story of non -registration of doctor has been formed by the investigation agency. Further, the grounds regarding the applicant is not BC of the area and cases are not pending against him in the Court are also seems to be motivated as it is a matter of record and the accused has already been involved in criminal cases and declared Active History Sheeter of the area vide order 17.03.2021.

The applicant is directly involved in the crime and the CCTV footage revealed that the accused persons in a pre planned manner came at the spot and gain entry in the premises on the behest of the applicant. Further, he found hiring as well as roaming with the private PSO who does not have proper license of weapon to carry the same in Delhi. Further, he is already found breaching the condition of Anticipatory Bail and was not found co-operating the investigation in fixing the identity of accused persons during joining the investigation as presently he fixed the identity of 06 nos persons whereas all the accused persons are clearly seems to be his acquaintance and gain entry in the premises on his behest. Further, about 04-05 alleged



persons are yet to be identified. The custodial interrogation of accused is required for the purpose of investigation. Thus, keeping in view of the gravity of the offence, previous conduct, non-cooperation of accused in the investigation and his actively involvement in the crime, the anticipatory bail application is strongly opposed.”

SUBMISSIONS ON BEHALF OF THE APPLICANT:

3. Learned Senior Counsel for the applicant submits that the applicant peacefully runs his business of gymnasium, namely, ‘Calvin Studio & Gym’ at his farmhouse and the complainant Manoj Arya belongs to a political party and has a history of intimidating, blackmailing and extorting money from the residents of the colony and business persons. It was further submitted that the complainant used to harass the applicant coercing him to pay money in order for the applicant to operate his gymnasium. However, the applicant did not succumb to the complainant’s demands. Therefore, on account of rivalry, on the date of the incident, i.e., on 24.09.2022, the complainant claiming himself to be the President of a Resident Welfare Association (hereinafter referred as “RWA”), illegally and forcefully barged into the farm house of the applicant and sexually molested and caused grievous hurt to the employees of the applicant. On a PCR call from the applicant’s employees, GD No. 79-A was recorded at PS Vasant Kunj (South) which was later registered as FIR No. 451/2022.
4. It is further submitted that the complainant colluded with the local police to have an FIR registered as counterblast against the applicant, on the very same day, i.e., 24.09.2022. It is submitted that the applicant was called by the local Councillor at a RWA meeting (the complainant claims to be the president of



such RWA) to sort out issues in presence of other members; however, the complainant and his goons started beating the applicant and his associates and hurled/pelted stones, bricks causing damage to the vehicles of the applicant as well causing grievous injuries to his employees. The complainant and his goons dialled PCR and GD Nos. 91-A and 94-A were recorded, which, later got registered as FIR No.450/2022, despite the fact that the aforesaid incident happened at a later point of time. The GD Nos. 91-A and 94-A as compared to the applicant's GD No. 79-A were recorded at a later point of time on 24.09.2022. Copies of the photographs of the alleged incident and the video link have been placed on record. It was also submitted that no action on the FIR of the applicant, i.e., FIR No. 451/2022 has been taken till now, whereas in pursuance of the FIR No. 450/2022, the applicant's associates have been arrested.

5. It is further submitted that pursuant to the anticipatory bail granted to the applicant *vide* order dated 19.10.2022, the applicant joined the investigation and did not violate any condition. On 26.12.2022, the applicant went to Vasant Kunj Enclave, on being invited by the local Municipal Councillor of the area, where he remained for a brief period and left immediately as soon as the meeting got over. It was submitted that as soon as the complainant got aware of the said fact, he hatched a concocted story that the applicant during his aforementioned visit has threatened the members of RWA and other residents, particularly, the persons who were witnesses in the present FIR No. 450/2022.

6. It is further submitted that the Learned ASJ cancelled the anticipatory bail granted to the applicant *vide* order dated 22.02.2023 arbitrarily, mechanically and on the basis of false and frivolous reply by the IO without application of



judicial mind as the applicant has been falsely implicated in the aforesaid case, as was evident from the mismatched chronology of the GDs recorded and FIRs registered. Besides, it is submitted that the complainant has made material contradictions in the allegations made in the present FIR which suggests his *malafide* intent.

7. It is further submitted that the police have been deliberately making wrong submissions before the Court. Even the order dated 19.10.2022 granting anticipatory bail to the applicant records the same.

8. It is further submitted that the applicant had already joined the investigation before the Investigating Officer and the only reason for his non-appearance was his health issues, as he is seriously suffering from heart ailments, high blood pressure, diabetes, infection of liver and varicose veins. It was further stated that the surgery of the applicant has already been done twice and his condition deteriorates further with each passing day.

9. Learned Senior Counsel appearing on behalf of the applicant further submits that chargesheet in the present FIR has already been filed. It is submitted that the other accused persons whose names were given by the applicant had already been granted bail. It is further submitted that interim protection was granted by this Court *vide* order dated 23.06.2023 and thereafter, no instance has been cited by the prosecution for violation of any conditions. It is further submitted that the order of externment dated 30.01.2024 allows the applicant to join the proceedings of the concerned Learned Trial Court. It is further submitted that the externment order is not in nature of preventive detention.



SUBMISSIONS ON BEHALF OF THE STATE:

10. Learned APP for the State submits that there are incriminating evidence against the applicant with respect to his presence at the time of the incident and subsequent brawl with the complainant and other residents of the RWA; as the analysis of the CCTV footage reveals that the applicant's associates waited at the place of the incident in a pre-planned manner and they barged into the concerned premises as soon as the applicant reached the spot. This suggests pre-planned action by the applicant and his associates. Furthermore, the applicant was found hiring private Personal Security Officers (hereinafter referred as “PSOs”) who were carrying firearms at the time of the incident and one of the PSOs of the applicant, namely, Anand was having a valid weapon licence for Uttar Pradesh only and yet was carrying the same in Delhi without any valid permission.

11. As far as the applicant’s ground for non-breaching of the bail condition(s) is concerned, it is submitted that the applicant was supposed to inform the Investigating Agency prior to visiting the place of meeting with the local Municipal Councillor as it was a mandatory condition in the order dated 19.10.2022; however, he violated the same.

12. It is further submitted that the Court of Learned ASJ, Sh. Devender Kumar Jangala while cancelling the anticipatory bail *vide* order dated 22.02.2023 observed that the medical reports produced by the applicant was from a doctor who was not registered with the Delhi Medical Council.



13. As far as the grounds of the applicant regarding him not being a Bad Character (hereinafter referred as “BC”) of the area of Vasant Kunj (South) and his clean antecedents are concerned, it is submitted that the order 2032/SO/DCP/SW dated 17.03.2021 records the applicant as a “History Sheeter of Bundle A” of the area of PS Vasant Kunj (South).

14. Furthermore, it is submitted that the applicant was not cooperating with the investigation as he had identified only 06 accused persons, although, he seems to be acquainted with all of them. Besides, 04-05 alleged accused persons are yet to be identified. Therefore, the custodial interrogation of the applicant is necessary.

15. It is further pointed out that after the protection granted by this Court *vide* order dated 23.06.2023, another FIR, i.e., FIR No. 0118/2024 dated 21.02.2024, under Section 188 of the IPC and Section 461 of the Delhi Municipal Corporation Act, 1957 (hereinafter referred as “DMC Act”) has been registered with P.S. Vasant Kunj (South) in relation to breaking of seals affixed by Municipal Corporation of Delhi (hereinafter referred as “MCD”), on the applicant’s gymnasium.

ANALYSIS:

16. Heard the parties and perused the record.

17. It is a matter of record that the present applicant was granted anticipatory bail *vide* order dated 19.10.2022 by the Learned ASJ, observing as under:-

“32. In the absence of any direct allegation of theft or molestation against the applicant/accused, as also, considering the statements u/s 164 of Cr.P.C.



of the eye-witnesses, this is a fit case where it is directed that the accused be admitted to bail in the event of his arrest in the present case on furnishing of bail bond/surety bond in the sum of Rs. 20,000/- to the satisfaction of the concerned MM/officer arresting the accused.

33. Needless to say that in case any other section or any heinous offence is added by the IO later on after investigating, the prosecution may be at liberty to approach the Court for cancellation.

34. However, it is further directed that the condition that was proposed by the counsel for the accused, at bar, that accused shall not visit the area for a period of one month so that the investigation can be carried out without any interference from him is also accepted and imposed. It is further directed that till the completion of investigation, accused shall visit the area only after giving prior intimation to the IO, at least, telephonically or by SMS. He is directed to join investigation and co-operate in the same.”

18. Subsequently, on application moved by the State under Section 439 (2) of the Cr.P.C, the Learned ASJ *vide* order dated 22.02.2023 cancelled the aforesaid anticipatory bail granted to the applicant, while observing as under :-

“The State has filed the present application on the ground that non-applicant/accused has visited the area without informing the investigating officer and threatened the shopkeepers and violated the directions and condition of the anticipatory bail order. It is also stated that Resident Welfare Association/Society has also filed the complaint against non-applicant/accused on 03.01.2023 and 04.01.2023 on which the non-applicant/accused was also booked under Section 110 (G) Cr.PC. It is also alleged by the state that applicant/accused is also not co-operating in the investigation.

Ld. Bail Roster Judge while granting the anticipatory bail on 19.10.2022 has been pleased to impose two conditions upon the accused.

The first condition imposed was that accused shall not visit the area for a period of one month so that investigation can be carried out without any interference of him. The state has not place on record any material regarding



violation of this condition, as no material with regard to the visit of the accused within one month is placed on record.

Ld. Bail Roster Judge has also imposed another condition that till the completion of investigation the accused shall visit the area after informing the IO by telephonically or SMS. It is relevant to note that the contention of the prosecution with regard to the violation of this condition is supported with documentary evidence. Prosecution has placed on record the photographs and CCTV recordings showing the presence of accused in the area in violation of this condition. The accused neither in the reply nor during the course of arguments could furnish any material that prior intimation in this regard was given to the investigating officer.

It is not out of place to mention that in the present matter non-applicant/accused was directed to appear in person before this court vide order dated 08.02.2023 & 14.02.2023 at the time of hearing of the application but despite specific directions of the court the accused has fails to appear on 15.02.2023. No explanation in this regard was furnished by the accused on 15.02.2023 regarding non-appearance.

It is not out of place to mention that accused in the present matter has furnished the medical certificate by one Doctor Gopal Bhagat and the said medical certificate appeared to be doubtful. Accordingly the verification of the said medical certificate was got done and it was found that the said doctor was not even registered with Delhi Medical Council and Delhi Medical Council has disclosed that the same is punishable offence u/s 27 of the Delhi Medical Council Act, 1997.

In view of the above discussion and considering specific non-compliance of the condition of the anticipatory bail order, I am of the considered opinion that the non-applicant/accused does not deserve the liberty of anticipatory bail. Accordingly, anticipatory bail granted to non-applicant/accused namely Ashu Chauhan @ Rajan Kumar vide order dated 19.10.2022 is cancelled.”

19. The aforesaid order of cancellation of bail was challenged by the applicant before this Court, which was withdrawn by him on 26.05.2023 with liberty to file appropriate proceedings before the competent Court. Thereafter, the



applicant moved a fresh application under Section 438 of the Cr.P.C. before the Learned ASJ and *vide* order dated 03.06.2023, the Roster Judge dismissed the same by observing that the applicant was a “History Sheeter of Bundle A” of the area of Vasant Kunj (South) and externment proceedings under section 47 of the Delhi Police Act, 1978 (hereinafter referred as “DP Act”) had also been initiated against him. It was further observed that the applicant had been abstaining from investigation and proclamation under Section 82 of the Cr.P.C. had been published against him for 01.07.2023. Thereafter, the present applicant filed another application under Section 438 of the Cr.P.C., which was dismissed by the Learned Vacation Judge, ASJ-06 *vide* order dated 16.06.2023 on the ground that the applicant had failed to specifically show any change in circumstances with effect from 03.06.2023, i.e., when the previous anticipatory bail application of the applicant was dismissed. Thereafter, the present application was moved, whereby interim protection was granted to the present applicant *vide* order dated 23.06.2023.

20. The issue, therefore, before this Court, is whether the present applicant deserves the grant of concession of anticipatory bail, considering the aforesaid facts and circumstances of the case and his conduct.

21. The conduct of an accused is a relevant factor for determination of an application of anticipatory bail and in a given case, conduct of an accused can dis-entitle him for the grant of anticipatory bail.

22. Hon’ble Supreme Court in **Vipin Kumar Dhir vs. State of Punjab & Anr. 2021 INSC 598**, has held as under:-



“10. In addition to the caveat illustrated in the cited decision(s), bail can also be revoked where the court has considered irrelevant factors or has ignored relevant material available on record which renders the order granting bail legally untenable. The gravity of the offence, conduct of the accused and societal impact of an undue indulgence by Court when the investigation is at the threshold, are also amongst a few situations, where a Superior Court can interfere in an order of bail to prevent the miscarriage of justice and to bolster the administration of criminal justice system. This Court has repeatedly viewed that while granting bail, especially anticipatory bail which is *per se* extraordinary in nature, the possibility of the accused to influence prosecution witnesses, threatening the family members of the deceased, fleeing from justice or creating other impediments in the fair investigation, ought not to be overlooked.”

23. The main thrust of the learned Senior Counsel for the applicant was that chargesheet in the present FIR has been filed and that the applicant had cooperated with the investigation and on account of which, the other accused persons were also arrested. It is pointed out that the said persons have also been granted regular bail. It was further argued that the first order dated 19.10.2022, granting anticipatory bail to the present applicant had recorded the reasons for granting such a concession after examining the facts and materials, meticulously. It is argued that the Learned ASJ, while granting anticipatory bail, had seen CCTV footage and after having been satisfied with regard to the case of the present applicant, proceeded to grant him anticipatory bail. It was further submitted that alleged non-compliance of the condition granting him anticipatory bail, was on account of the fact that he was invited by the local Municipal Councillor of the area to examine the possibility of a settlement.

24. As noted above, the Hon’ble Supreme Court in **Vipin Kumar Dhir** (*supra*), has categorically observed that the conduct of an accused while



considering their plea for anticipatory bail, is required to be examined. Thus, this Court cannot be expected to ignore the conduct of the applicant while dealing with his application seeking anticipatory bail. The parameters for determining the conduct of an accused would depend on the factual matrix of a particular case. The discretion, which vests in the Court, has to be exercised keeping in view the aforesaid factor in mind. In the present case, as pointed out hereinabove, the anticipatory bail granted to the present applicant on account of his conduct was cancelled by a reasoned order. The contention on behalf of the learned Senior Counsel that he was called by the local Municipal Councillor is of no consequence, as in terms of the order dated 19.10.2022, the applicant was supposed to inform the Investigating Agency prior to visiting the place, which he blatantly violated. It is also noted that in the order dated 22.02.2023, cancelling the anticipatory bail granted to the present applicant, the Learned ASJ has further observed that the prosecution had placed on record photographs and CCTV recordings, showing the presence of the applicant in the area in violation of the aforementioned condition. It is also observed that in the said proceedings, the Learned ASJ had directed the present applicant to appear in person *vide* orders dated 08.02.2023 and 14.02.2023, at the time of hearing of the application, seeking cancellation of the anticipatory bail. It is further observed that despite specific directions from the Court, the applicant failed to appear and no explanation in this regard was furnished with regard to his non-appearance. It is also a matter of record that, after granting of anticipatory bail, the present applicant was booked under Section 110(g) of the Cr.P.C., which provides as under:-



“**110. Security for good behaviour from habitual offenders.**—When an Executive Magistrate receives information that there is within his local jurisdiction a person who—

.....

(g) is so desperate and dangerous to render his being at large without security hazardous to the community, such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit.”

25. The aforesaid proceedings were initiated on the complaint of the Head Constable of the concerned police station. It is further noted that subsequent to protection granted by the predecessor bench of this Court *vide* order dated 23.06.2023, another FIR No. 0118/2024, dated 21.02.2024 under Section 188 of the IPC and Section 461 of the DMC Act has been registered with Police Station Vasant Kunj (South), on account of the fact that the seals fixed by the MCD on the property bearing number and address: Calvin Fitness Studio, P. No. B-541, B-Block, Vasant Kunj Enclave, Anita Kumari Ward No. 133, were found broken and the owners/occupiers had occupied the premises illegally by tampering/breaking the seals. It is an admitted case that the said gymnasium was operated by the present applicant. It is also matter of record that the present applicant has been declared “Bad Character” (BC) of the area of Vasant Kunj (South) *vide* order dated 17.03.2021. It is pertinent to note that, even during the proceedings before this Court, a categorical statement was made on behalf of the applicant that the gymnasium being run by him was having a valid license on the date of incident and accordingly, the same was sought to be placed on record as



recorded in the order dated 11.01.2024. The said licence was handed up in Court on 23.02.2024 and this Court observed that the said licence was issued on 26.09.2022; whereas, the date of registration of the present FIR was 25.09.2022. It is also a matter of record that the present applicant had come to the spot with his private PSOs alongwith weapons, which was seen in the CCTV footage. One of the PSOs, namely, Anand, who was arrested in this case was having an armed licence which was valid only for the area of Uttar Pradesh and not for the NCT of Delhi. It is also a matter of record that the aforesaid PSOs have been arrested in the present FIR and three weapons have been recovered. The applicant was externed by the competent authority under Section 47 of the DP Act *vide* order dated 30.01.2024 and his appeal under Section 51 of the said Act has been dismissed by the Hon'ble Lieutenant Governor *vide* order dated 13.03.2024. A petition, i.e., W.P.(CRL) 955/2024, challenging the aforesaid orders is being disposed of by this Court *vide* an order of the same date.

26. In view of the above facts and circumstances as well as considering the conduct of the present applicant, this Court is not inclined to exercise its discretion to grant anticipatory bail to the present applicant.

27. In view of the above, the present application is dismissed and disposed of.

28. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and any observation(s) made are only for the purpose of the present application.

29. Interim order dated 23.06.2023 stands vacated.



30. Pending application(s), if any, also stand disposed of.
31. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
JUDGE

MAY 21, 2024/bsr/nk

Signature Not Verified

Digitally Signed
By: AMIT SHARMA
Signing Date: 21.05.2024
19:44:28

BAIL APPLN. 2112/2023