



2024:DHC:5608



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

Date of decision: 30th JULY, 2024

IN THE MATTER OF:

+ BAIL APPLN. 1525/2024 & CRL.M.A. 13399/2024

ASHOK KUMAR

.....Petitioner

Through: Mr. Sanjay Padam Jain, Mr. Saurabh Kumar Singh, Mr. Gaurav Bishnoi, Mr. Ali Mehdi and Mr. Prateek Mathur, Advocates.

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Tarang Srivastava, APP for the State.
Mohammad Mubeen and Ms. Nasmaeen, Advocates for the Complainant.
SI Sapna, PS Aman Vihar

+ BAIL APPLN. 1534/2024 & CRL.M.A. 13443/2024

NANDU KUMAR

.....Petitioner

Through: Mr. Sanjay Padam Jain, Mr. Saurabh Kumar Singh, Mr. Gaurav Bishnoi, Mr. Ali Mehdi and Mr. Prateek Mathur, Advocates.

versus

STATE OF NCT OF DELHI & ANR. & ANR.

.....Respondents

Through: Mr. Tarang Srivastava, APP for the State.
Mohammad Mubeen and Ms. Nasmaeen, Advocates for the



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Complainant.
SI Sapna, PS Aman Vihar

+ BAIL APPLN. 1586/2024 & CRL.M.(BAIL) 765/2024

BABLU KUMAR

.....Petitioner

Through: Mr. Sanjay Padam Jain, Mr. Saurabh
Kumar Singh, Mr. Gaurav Bishnoi,
Mr. Ali Mehdi and Mr. Prateek
Mathur, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Tarang Srivastava, APP for the
State.
Mohammad Mubeen and Ms.
Nasmeen, Advocates for the
Complainant.
SI Sapna, PS Aman Vihar

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioners herein in the present applications being BAIL APPLN. 1525/2024, BAIL APPLN. 1534/2024 and BAIL APPLN. 1586/2024, who are brothers, have approached this Court for grant of bail in the event of arrest in FIR No.145/2024 dated 12.03.2024, registered at Police Station Aman Vihar, Delhi for offences punishable under Sections 506/323/354/451/376/34 IPC.
2. The allegation made in the FIR is that the Petitioners herein, who are brothers, entered the house of prosecutrix on 01.07.2023 and gave blows to the inmates of the house and committed rape on the prosecutrix and



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committed other offences. Material on record indicates that the FIR has been filed after about eight months from the date of incident. Material on record also indicates that on 01.07.2023, two General Diary (GD) entries were made in the Police Station Aman Vihar, being one by the accused and the other one by the prosecutrix and her family regarding a dispute over a property bearing No.134-A/1, Old Plot No.134-A, Area Measuring 25 Sq. Yds (Out of the total area measuring 130 Sq. Yds.) in the Revenue Estate of Village Kirari Suleman Nagar, now Colony/Abadi Known as Kirari Extension, Kirari Suleman Nagar, Delhi-110086 (*hereinafter referred to as "property in question"*).

3. Material on record discloses that both sides are claiming ownership of the said property. Material on record further indicates that a Civil Suit bearing No.CS (SCJ) 963/23 has been filed before the Ld. CJ, Rohini Court, Delhi from the side of the Petitioners. Material on record also indicates that a counter Civil Suit bearing No.CS (SCJ) No.823/2023 has also been filed from the side of the Prosecutrix in respect of the same property in question. Material on record further indicates that an FIR bearing No.202/2024 has been registered at the instance of the wife of the Petitioner in BAIL APPLN. 1525/2024 against the family members of the Prosecutrix at Police Station Aman Vihar for offences punishable under Sections 323/341/354(B)/442/34 IPC.

4. Learned Counsel appearing for the Petitioners contends that the allegation made in the FIR is a false and concocted one. He states that the FIR has got registered by the Prosecutrix after a period of 8 months from the date of incident for which there is no explanation. He states that there are disputes between the Petitioners and the Prosecutrix and her family



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members regarding the ownership of the property in question which is evident from the Suits filed by both sides. He states that due to the fact that there is a property dispute between both sides, the Prosecutrix has levelled false allegations against the Petitioners in order to pressurize them.

5. Learned Counsel for the Petitioners further draws attention of this Court to another FIR bearing No.531/2022 which has been filed at the instance of the same Prosecutrix herein against one Mewa Ram, from whom she had purchased the property, at Police Station Aman Vihar, Delhi for offences punishable under Sections 376/323/506/451/34 IPC. He states that the Prosecutrix created the similar kind of property dispute and got registered the said FIR against Mewa Ram. He states that the FIR in the present case being FIR No.145/2024 has been filed by the Prosecutrix only with the object of injuring or humiliating the Petitioners by having them arrested, and therefore, the Petitioners are entitled to bail in the event of arrest in the present FIR.

6. *Per contra*, learned Counsel appearing for the Complainant submits that the offences committed by the Petitioners are grave in nature. He states that the Prosecutrix is being threatened by the Petitioners. He states that the fact that there is a property dispute between the parties is actually a pointer that the offence under Section 376 IPC has been committed on the Prosecutrix by the Petitioners.

7. Learned APP appearing for the State placed the facts in all fairness by pointing out that on the date of incident, there were two GD entries by both sides. He states that investigation is more or less complete. He also states that three FIRs have been by the Prosecutrix, including the FIR in the present case.



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8. Heard learned Counsel appearing for the Parties and perused the material on record.

9. The facts of the case reveal that there is a dispute between both sides regarding the ownership of the property in question and both sides are claiming ownership. Civil Suits have been filed by both the parties which are pending adjudication. On the date of incident i.e., 01.07.2023, two General Diary (GD) entries were made in the Police Station Aman Vihar, one by the Petitioners and the other one by the prosecutrix and her family and the FIR has got registered by the Prosecutrix after a period of 8 months from the date of incident for which there is no explanation. This clearly indicates that the FIR has been filed only because the dispute between the parties is aggravated. The Prosecutrix has also filed one more FIR being FIR No.531/2022 against one Mewa Ram and a reading of the said FIR indicates that a similar kind of allegation has been made by the Prosecutrix in the said FIR as well.

10. The allegation against the Petitioners herein is one of rape and the arrest of the Petitioners is imminent and, therefore, apprehending their arrest, the Petitioners have approached this Court by filing the present bail applications for grant of bail in the event of arrest.

11. Section 438 Cr.P.C itself lays down various factors which have to be taken into consideration while granting bail in the event of arrest which are, (i) nature and gravity of the accusation; (b) antecedents of the Applicant as to whether he has undergone any imprisonment or conviction by a Court; (c) possibility of the Applicant to flee from justice and (d) if the accusation has been made with object of injuring or humiliating the Applicant by having him arrested.



12. The factors and parameters for grant of anticipatory bail have been laid down by the Apex Court in various judgments. The Apex Court in Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 has laid down the following parameters:

“112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The



cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

13. Applying the aforesaid parameters in the fact and circumstances of the present case, this Court is of the opinion that in view of the fact that there is a property dispute between both sides, the possibility of the present FIR being filed by the Prosecutrix with the object of injuring or humiliating the Petitioners by having them arrested cannot be ruled out. It is pertinent to mention that on 01.07.2023, a GD entry was filed at the instance of the Prosecutrix, however, there is no explanation, at this juncture, as to why the



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FIR has got registered by the Prosecutrix after a period of 8 months from the date of incident. The facts of the case reveal that Prosecutrix and her family members know about their rights and have approached the Courts for relief which actually fortifies that there is no reason as to why the present FIR has got registered by the Prosecutrix belatedly.

14. In view of the above, this Court is inclined to grant bail to the Petitioners in the event of arrest in the present FIR. In case Police feels that the Petitioners should be arrested, the Petitioners be released on bail, subject to the Petitioners furnishing a personal bond in the sum of Rs.10,000/- each with two sureties each of the like amount to the satisfaction of the SHO/Investigating Officer. Petitioners are directed to co-operate with investigation.

15. With these observations, the bail applications are disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JULY 30, 2024

S. Zakir