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

+ **BAIL APPLN. 2312/2023**

JATIN RANA

.....Applicant
Through: Mr. Dhruv Sharma, Adv.
(through VC)

versus

**THE STATE OF NCT DELHI
ANR**

.....Respondent
Through: Mr. Sunil Kumar Gautam,
APP for the State
Mr. Suresh Kumar, Adv.
for complainant (through
VC)

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

**ORDER
01.08.2024**

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1. The present application is filed seeking grant of pre-arrest bail in FIR No. 185/2023 dated 04.07.2024, registered at Police Station Moti Nagar, for offences under Sections 323/354/354(B)/506 of the Indian Penal Code, 1860 ('IPC'). Chargesheet has been filed against the applicant for the offences under Sections 323/354/354B/506/34 of the IPC.

2. The present FIR was registered at the instance of the complainant who alleged that on 02.07.2024, at around 3 pm, when she was coming back from the terrace, the applicant (neighbour of the complainant) came at the gate of the terrace and started passing obscene comments. Thereafter, when the complainant objected, the applicant asked the complainant to withdraw the cases filed by her. It is alleged that when the

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complainant refused to do the same, the applicant assaulted her and tore her t-shirt.

3. It is alleged that the father of the applicant came at the spot and started beating the complainant with a cricket bat. After hearing the scream of the complainant, the complainant's sister also came to the terrace, who was also beaten by the applicant and his father as well. As a result of the beating, the complainant's sister suffered injuries on her head and became unconscious.

4. Thereafter, it is alleged that the applicant and his father ran away. Subsequently, the complainant called the police whereafter the police officials took the complainant and her sister to the Hospital. The complainant's sister was referred to Safdarjung Hospital where her CT scan was done.

5. It is further alleged that later that night when the complainant reached home, the applicant threatened to take the complainant's life and throw acid on her if she lodged a case against the applicant.

6. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. He submits that the present complaint is nothing but a counterblast action by the complainant pursuant to the past animosity between the parties.

7. He submits that the complainant has a history of creating nuisance and fighting with her neighbours. He submits that on 02.07.2023, the complainant had thrown garbage in front of the applicant's house which led to a quarrel. He submits that the complainant started quarrelling with the applicant's mother as well.



8. He submits that the applicant's mother ignored the abusive words, however, the complainant along with her family members started hitting the applicant's mother and the applicant's mother barely managed to save herself and locked herself inside the house.

9. He submits that the applicant's mother had called the police three times between 3:30 and 4:00 PM at the time of the alleged offence and informed about the incident and requested for help as soon as possible.

10. He submits that a few hours later, a PCR van came to the applicant's house and started asking question with regards to the quarrel but the police officer left without registering a complaint. He states that they however took the complainant and her sister in the PCR van.

11. He submits that the applicant only came to know about the FIR being registered when a notice under Section 41A of the CrPC was served upon the applicant.

12. He submits that after receiving the notice, the applicant realised that a false FIR has been registered against him even when he was not present at the time of the alleged quarrel.

13. He submits that the complainant has a tendency of fighting with the applicant's family members on a daily basis, and the applicant had installed CCTV cameras outside his house to ensure the safety of the family members, some of which were broken by the complainant herself.

14. He submits that the applicant in the past had called the police due to the antics of the complainant and a *kalandra* under Sections 107/150 of the CrPC was registered. He submits that after the registration of the *kalandra*, the complainant started dumping garbage on the roof and door of the applicant's house



and also fed street cats and dogs in the common gallery thereby creating a lot of filth in the vicinity.

15. He submits that there have been several complaints lodged against the complainant by the other neighbours. He also points out that the incident took place on 02.07.2023, however, the FIR was only registered on 04.07.2023.

16. He further submits that during the pendency of the present bail application, the investigating agency has already filed the chargesheet and therefore there is no need of any custodial interrogation of the applicant.

17. *Per contra*, the learned Additional Public Prosecutor for the State has opposed the grant of present bail application. He submits that the allegations levelled against the applicant are serious in nature.

18. He submits that the applicant threatened the complainant to withdraw the cases registered by her against the applicant and his family members. He submits that though the applicant has taken a defence that he has the CCTV footage showing the complainant breaking the CCTV cameras, whereas no CCTV footage is ever produced before the investigating officer till date.

19. He further submits that during the course of investigation the complainant has also produced the torn clothes which were allegedly torn by the applicant and the same were seized.

20. I have heard the learned Counsel for the parties.

21. While determining the parameters in granting pre-arrest bail, the Hon'ble Apex Court in ***Siddharam Satlingappa Mhetre v. State of Maharashtra : (2011) 1 SCC 694*** held as under:

“112.

(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 over implication 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."*

22. It is the case of the prosecution that the applicant allegedly misbehaved with the complainant and passed obscene comments against her. It is alleged that the applicant also tore her clothes in the altercation. It is further alleged that the applicant and his father had beaten the complainant and her sister resulting in some injuries.



23. The past animosity between the family of the applicant and the complainant is not denied. It is true that no person has right to commit an offence as serious as alleged in the present case for the reason of acrimony between the parties, however, the false implication, in such circumstances, also cannot be ruled out. It is also mentioned that the mother of the applicant had, on an earlier occasion, given a complaint against the prosecutrix and her sister about the nuisance being created. It is true that the allegations can be sustained only on the basis of the mere statement of the victim. The Courts, however, are not to believe every statement as a gospel truth. The same are tested during the course of trial.

24. Further, it would be pertinent to note that the Hon'ble Apex Court has laid down guidelines pertaining to cases wherein chargesheet has been filed without arrest of the accused. In ***Satender Kumar Antil v. Central Bureau of Investigation : (2021) 10 SCC 773***, Hon'ble Apex Court has observed that if an accused has not been arrested during investigation and has cooperated in the investigation, then certain guidelines must be adhered to while considering the grant of bail. The guidelines have been reproduced as under:

“3. We are inclined to accept the guidelines and make them a part of the order of the Court for the benefit of the courts below. The guidelines are as under:

“Categories/Types of Offences

(A) Offences punishable with imprisonment of 7 years or less not falling in Categories B and D.

(B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

(C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA [Section 43-D(5)], Companies Act [Section 212(6)], etc.

(D) Economic offences not covered by Special Acts.

Requisite Conditions

(1) Not arrested during investigation.



(2) Cooperated throughout in the investigation including appearing before investigating officer whenever called.

(No need to forward such an accused along with the charge-sheet *Siddharth v. State of U.P.* [*Siddharth v. State of U.P.*, (2022) 1 SCC 676])

Category A

After filing of charge-sheet/complaint taking of cognizance

(a) Ordinary summons at the 1st instance/including permitting appearance through lawyer.

(b) If such an accused does not appear despite service of summons, then bailable warrant for physical appearance may be issued.

(c) NBW on failure to appear despite issuance of bailable warrant.

(d) NBW may be cancelled or converted into a bailable warrant/summons without insisting physical appearance of the accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.

(e) Bail applications of such accused on appearance may be decided without the accused being taken in physical custody or by granting interim bail till the bail application is decided.

Category B/D

On appearance of the accused in court pursuant to process issued bail application to be decided on merits.

Category C

Same as Categories B and D with the additional condition of compliance of the provisions of bail under NDPS (Section 37), Section 45 of the PMLA, Section 212(6) of the Companies Act, Section 43-D(5) of the UAPA, POCSO, etc.”

25. In the present case, the maximum punishment attracted out of the offences as alleged against the applicant is seven years for the offence under Section 354B of the IPC.

26. This court by order dated 13.07.2023, has granted interim protection to the applicant. The investigation is already complete and the chargesheet has already been filed.

27. The chargesheet in the present case was admittedly filed against the applicant without the State finding any necessity to take him into custody.



28. The Hon'ble Apex Court in the case of **Mohd. Asfak Alam v. State of Jharkhand** : (2023) 8 SCC 632 has observed as under:

“15. What appears from the record is that the appellant cooperated with the investigation both before 8-8-2022, when no protection was granted to him and after 8-8-2022, when he enjoyed protection till the filing of the charge-sheet and the cognizance thereof on 1-10-2022. Thus, once the charge-sheet was filed and there was no impediment, at least on the part of the accused, the court having regard to the nature of the offences, the allegations and the maximum sentence of the offences they were likely to carry, ought to have granted the bail as a matter of course. However, the court did not do so but mechanically rejected and, virtually, to rub salt in the wound directed the appellant to surrender and seek regular bail before the trial court. Therefore, in the opinion of this Court, the High Court fell into error in adopting such a casual approach.

16. The impugned order of rejecting the bail and directing the appellant, to surrender and later seek bail, therefore, cannot stand, and is hereby set aside. Before parting, the Court would direct all the courts seized of proceedings to strictly follow the law laid down in Arnesh Kumar [Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449 : (2014) 8 SCR 128] and reiterate the directions contained thereunder, as well as other directions.”

29. It is not in doubt that an order for grant of pre-arrest bail cannot be passed in a routine manner so as to allow the accused to use the same as a shield. At the same time, it cannot be denied that great amount of humiliation and disgrace is attached with the arrest. In cases where the accused has joined investigation, he is cooperating with the Investigating Agency and is not likely to abscond, the custodial interrogation should be avoided.

30. Ergo, in the light of the aforementioned discussion and the mandate of the Hon'ble Apex Court in **Satender Kumar Antil v. Central Bureau of Investigation** (*supra*), in the opinion of this



Court, custodial interrogation of the applicant is not required for the purpose of further investigation.

31. In view of the above, the applicant is admitted on bail on furnishing a personal bond for a sum of ₹50,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant shall join and cooperate with the investigation, if required, as and when directed by the IO;
- b. The applicant shall not leave the Country without the prior permission of the learned Trial Court;
- c. The applicant shall not contact the complainant / witnesses or tamper with the evidence in any manner;
- d. The applicants shall appear before the learned Trial Court as and when required.

32. It is clarified that the observations made in the present order are for the purpose of deciding the present pre-arrest bail application, and should not influence the outcome of the trial. The said observations should not be taken as an expression of opinion on the merits of the case.

33. The present application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

AUGUST 1, 2024