



2024:DHC:1337



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 20.02.2024***+ **BAIL APPLN. 2834/2023****VIMAL KUMAR**

..... Applicant

Through: Mr.Mir Akhtar Hussain,
Ms.Sonia Goswami, Mr.Rakesh
Pant, Advs.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr.Aman Usman, APP with
Inspector Parvesh and SI Amit.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This application has been filed by the Applicant under Section 438 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), praying for Anticipatory Bail in FIR no. 254/2023 registered with Police Station: Vivek Vihar, Shahdara District, Delhi under Sections 307/186/353/332/341/506/34 of the Indian Penal Code, 1860 (in short, 'IPC') and Sections 53/116 of the Delhi Police Act, 1978 (in short, 'DP Act').

Case of the prosecution:

2. It is the case of the prosecution that on 29.06.2023, when Head Constable Anuj was on patrolling duty, he got information about



2024:DHC:1337



the Applicant herein, against whom an externment order had been passed, was present at his residence despite such order. Head Constable Anuj along with Constable Kailash reached near the Applicant's residence, where they were confronted by his son Akshay Rathi @ Ashu, who is the Applicant in Bail Application no.3118/2023, titled ***Akshay v. State (NCT of Delhi)***.

3. It is alleged that Head Constable Anuj and Constable Kailash enquired from Akshay about his father's whereabouts. Akshay started abusing Head Constable Anuj and pushed him and thereafter, Akshay called his family members and relatives and attacked both Head Constable Anuj and Constable Kailash. In the scuffle, Head Constable Anuj and Constable Kailash, both suffered injuries and were medically examined at Dr. Hedgewar Hospital.
4. FIR was registered against the accused Akshay, the wife of the Applicant-Smt. Poonam Rathi, as also the Applicant.
5. It is further alleged that when Head Constable Anuj reached the police station, he felt dizzy and fell down near the DO Room at the police station. He was immediately shifted to Gupta Nursing Home, Vivek Vihar. In his medical examination, it was reported that he had suffered grievous injuries and had to be kept under medical supervision in ICU/Ward in the hospital for more than 20 days.



2024:DHC:1337



Submissions of the learned counsel for the Applicant:

6. The learned counsel for the Applicant submits that the entire case against the Applicant is an act of vendetta by the SHO of the concerned police station. He submits that wife of the Applicant had earlier made a complaint against the concerned SHO on 26.01.2023 regarding the SHO and other police officials from the concerned police station harassing the Applicant and his family members in the middle of the night for no cause. He submits that such incidents are also captured in CCTV footage of 02.02.2023 and 04.03.2023. He submits that an application under Section 156(3) of the Cr.P.C. was also filed on 25.03.2023 against the concerned SHO and other police officials of the said police station for having committed offences under Sections 354/502/509/506 of the IPC and Sections 3 and 4 of the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989. He submits that out of the vendetta, the present case was concocted, as due to the illness of his wife, the Applicant had visited his residence on 29.06.2023 for taking her for medical care.
7. He submits that on getting the information of the visit of the Applicant, Head Constable Anuj and Constable Kailash came to the residence of the Applicant to harass him and his family members and started forcefully taking him into custody. He submits that the family members of the Applicant merely tried to intervene and persuade the said police officers to let go of the



2024:DHC:1337



Applicant. He has drawn my attention to various photographs which have been annexed along with the application, to contend that the said police officials suffered no injuries and, in fact, walked away threatening the Applicant and his family members of dire consequences.

8. He submits that when these police officials were trying to forcefully drag the Applicant to the police station, he escaped from the clutches and ran away from them. The police officials took away the wife and the son of the Applicant without even an FIR being registered against them, which came to be registered only at 1.30 PM.
9. Placing reliance on the judgment of the Supreme Court in ***Hari Singh v. Sukhbir Singh***, (1988) 4 SCC 551, he submits that for attracting Section 307 of the IPC, the Court has to see whether the act complained of, irrespective of its result, can show the intention or knowledge on the part of the accused to commit murder. He submits that in the present case, Section 307 of the IPC has been invoked by the prosecution only to somehow keep the Applicant in custody and prolong the incarceration.
10. He submits that though the prosecution alleges that the Applicant is involved in other cases, the same cannot be a ground to deny the Anticipatory Bail to the Applicant, if he is otherwise entitled to the same. In support, he places reliance on the judgments of the Supreme Court in ***Prabhakar Tewari v. State of U.P. & Anr.***



2024:DHC:1337



(2020) 11 SCC 648; of the Punjab & Haryana High Court dated 27.04.2022 in CRM-M-16587-2022, titled *Vipul v. State of Haryana*; and of this Court in *Mumtaz v. State (NCT of Delhi)*, 2022 SCC OnLine Del 4617.

11. He further submits that the five co-accused have already been granted Anticipatory Bail, while the wife of the Applicant has been released on Bail after custody of one week. He submits that this would be an important circumstance for granting Anticipatory Bail to the Applicant. In support, he places reliance on the judgment dated 27.04.2023 of the Supreme Court in Special Leave Petition (Criminal) No. 1830/2023, titled *Shahrukh @ Banti v. The State of Madhya Pradesh*; and of this Court in *Parvez v. State*, 287 (2022) DLT 77.
12. He further submits that this Court, by its Order dated 24.08.2023, has granted *interim* protection to the applicant in the form of no coercive steps being taken against him on the condition that he joined the investigation as and when called for by the IO. He submits that the Applicant, in compliance with the said order, has joined the investigation six times as and when he was called by the IO. He submits that, in fact, the chargesheet already stands filed and nothing is to be recovered from the Applicant. He submits that, therefore, there is no reason to deny the Anticipatory Bail to the Applicant. In support, he places reliance on the judgment of this Court in *Sanjeev Jain v. State & Anr.* Neutral Citation no.2023:DHC:6867.



2024:DHC:1337



13. He submits that for entering Delhi in spite of the externment order, the Applicant could only have been prosecuted under Sections 53/116 of the DP Act, for which the punishment can be extended only to 6 months and the inquiry can be conducted only by the DCP concerned under whose order the FIR can be lodged. He submits that it is a Summons Case and, therefore, for the same, the Applicant could not have been forcefully dragged from his residence on the date of the incident in the manner it was being done, especially when there was no FIR against him as on that date.
14. He submits that for resisting such illegal arrest, the Applicant cannot be charged under Sections 186/353/332 of the IPC.

Submissions of the learned APP:

15. On the other hand, the learned APP for the State submits that the present case raises grave and serious charges against the Applicant, who is a bad character of the area and had been externed.
16. He submits that not only Head Constable Anuj, due to the injury suffered by him, had to remain hospitalized for a period of 20 days, but there is also an allegation of assault on a police official while he was discharging his official duties. He submits that it is a serious offence, which shakes the confidence of the general public on the police and the State Machinery.
17. He submits that the incident is duly captured in the CCTV.



2024:DHC:1337



18. He further submits that post the incident also, the Applicant has tried to bribe the police officers and also threaten them to cause harm to the SHO of the concerned police station and HC Anuj. He has also not fully cooperated with the prosecution inasmuch as the video footage of the incident that are in his possession, have not been handed over by him to the prosecution for the purposes of investigation.
19. He further submits that the plea of the Applicant that the present FIR has been lodged as a result of personal vendetta is totally incorrect inasmuch as the other incidents that the Applicant is relying upon are of January, February and, March of 2023, having no connection with the present case, and were in fact, concocted by him in order to threaten the police officers not to take action against him.
20. He submits that the Applicant, in fact, admits that he was in violation of the externment Order. He submits that it is also interesting to note that the Applicant or his family members did not make any complaint of the incident on 29.06.2023 and till 01.07.2023, when the first complaint is lodged, which shows that it is completely an afterthought.
21. He submits that the Applicant is involved in other criminal cases as well. He further submits that the Applicant was absconding and proceedings under Section 82 of the Cr.P.C. were also initiated against him by the learned Trial Court.



2024:DHC:1337



Submissions of the learned counsel for the Applicant in rejoinder:

22. The learned counsel for the Applicant, in rejoinder, submits that the wife and the son of the Applicant had been taken into illegal custody by the police immediately after the alleged incident. The Applicant was on the run and, therefore, could not lodge a complaint till 02.07.2023. He submits that the delay, however, cannot in any manner cast a doubt on the fact that it was the police who initiated the incident leading up to the illegal arrest of the wife and the son of the Applicant.

Analysis and findings:

23. I have considered the submissions made by the learned counsels for the parties.
24. As both the parties were claiming that the incident, at least in part, is covered by the CCTV footage; the Applicant was, in fact, also claiming that it had been videographed by the daughter of the Applicant, therefore, both, the Applicant and the IO, were directed to produce the relevant footage of the CCTV /videography that were made or collected.
25. I have perused the videography as well as the CCTV footage of the incident. The video produced by the Applicant itself shows that initially there was an attempt to prevent the police officials from taking away the Applicant, thereafter, there was a brutal assault by the Applicant and the other members, including by



2024:DHC:1337



Akshay Rathi @ Ashu, who is the Applicant in Bail Application no.3118/2023, on the police officials. Such assault in the open public would clearly denude the confidence of the public in the police as well as the State Machinery.

26. At this stage, this Court is not to opine as to whether the assault is sufficient to make out a charge under Section 307 of the IPC against the Applicant. The fact remains that there was an assault on police officials while they were performing their duty and one of them has reportedly suffered grievous injuries.
27. The Applicant admits that he was in Delhi in the violation of the externment order that had been passed against him.
28. The offence by which the Applicant has been charged is rather grave, therefore, in my opinion, the Applicant has not made out any ground for grant of Anticipatory Bail to the Applicant.
29. The fact that the Applicant has appeared before the police in purported compliance of the order dated 24.08.2023 of this Court, cannot also come to the aid of the Applicant inasmuch as the respondent maintains its stand that the CCTV footage and the videography of the incident that is available with the Applicant has not been given to the IO in spite of several demands. Mere appearance before the IO cannot be said to be participating in the investigation and cooperating in the same.
30. It is equally important to note that merely because the chargesheet stands filed, it cannot be said that the Applicant



2024:DHC:1337



cannot be now taken into custody. The investigation clearly is ongoing. The Applicant could not be arrested due to the *interim* protection granted by this Court. The extension of such *interim* protection, on the facts of the present case, is not found warranted.

31. In view of the above, I find no merit in the present Bail application. The same stands dismissed.

NAVIN CHAWLA, J

FEBRUARY 20, 2024
RN/AS

Click here to check corrigendum, if any