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

+ BAIL APPLN. 2086/2024, CRL.M.A. 18273/2024 &
CRL.M.A. 18275/2024

KANWAR LAL

.....Applicant

Through: Mr. Nipun Katyal, Ms.
Anam Siddiqui, Mr.
Naved Ahmed, Mr.
Nischay Johri & Ms.
Kinjal Sharma, Advocates.

versus

STATE OF NCT OF DELHI AND ANR.Respondents

Through: Mr. Ajay Vikram Singh,
APP for the State
alongwith Mr. Prem
Narain, Mr. Hitesh Kumar
Yadav, Ms. Mohita Yadav
& Mr. Ashish Mishra,
Advocates.
SI Shiv Dayal Kumar &
ASI Vaibhav (P.S. Harsh
Vihar).

+ BAIL APPLN. 2087/2024, CRL.M.A. 18276/2024 &
CRL.M.A. 18278/2024

HEMANT KUMAR

.....Applicant

Through: Mr. Nipun Katyal, Ms.
Anam Siddiqui, Mr.
Naved Ahmed, Mr.
Nischay Johri & Ms.
Kinjal Sharma, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Ajay Vikram Singh,
APP for the State
alongwith Mr. Prem
Narain, Mr. Hitesh Kumar
Yadav, Ms. Mohita Yadav



& Mr. Ashish Mishra,
Advocates.
SI Shiv Dayal Kumar &
ASI Vaibhav (P.S. Harsh
Vihar).

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
18.07.2024

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1. The present applications are filed seeking pre-arrest bail in FIR No.107/2024 dated 16.01.2024, registered at police station Harsh Vihar, for offences under Sections 324/341/34 of the Indian Penal Code, 1860.
2. Admittedly, the FIR was registered on a complaint given by the complainant, namely, Arjun who alleged that on 10.08.2023 at about 08:30 PM, the complainant's brother-in-law (Rakesh/accused) and four unknown persons attacked him with sharp-edged weapons.
3. The learned counsel for the applicants submits that the applicants have been falsely implicated in the present case.
4. He submits that, admittedly, the complainant/victim was not aware of the identity of the four persons who accompanied the accused at the time of the alleged incident.
5. He submits that there is an inordinate delay in the registration of the FIR, as the offence had allegedly taken place on 10.08.2023, whereas the FIR was filed on 16.01.2024.
6. He submits that the sister of the applicants is married to the complainant and that the complainant is involved in a matrimonial dispute with her.
7. The learned Additional Public Prosecutor for the State opposed the grant of relief to the applicant.



8. He submits that the MLC prepared on the date of the alleged incident shows that serious injuries were caused to the complainant.

9. He submits that the names of the applicants were disclosed in a subsequent statement given by the complainant under Section 164 of the Code of Criminal Procedure, 1973 ('CrPC').

10. The Investigating Officer is present in Court and states that the complainant was informed about the hearing of the present bail application.

11. During the course of the arguments, it is pointed out that Arjun, who is the only person identified initially by the complainant during the alleged incident has already been admitted on bail under Section 167 (2) of the CrPC, by the learned Trial Court since the chargesheet was not filed in time.

12. Admittedly, the complainant has not mentioned the names of the applicants in the initial complaint given to the police. Moreover, it is not the case of the prosecution that the complainant did not know the applicants as they are closely related to each other. Thus, it does not seem prudent that the complainant, after having allegedly seen the applicants during the attack - was unable to identify them.

13. On perusal of the complaint which led to registration of the FIR, it is apparent that the victim was not aware of the identity of four persons who allegedly accompanied the accused Arjun.

14. This Court, by order dated 12.06.2024, directed the State not to arrest the applicants on them joining and cooperating with the investigation. It is submitted that the applicants have since joined the investigation.

15. It is not in doubt that 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 a great amount of humiliation and disgrace is attached with the arrest.

16. 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.”

17. It is not disputed that the applicant has joined the investigation and the chargesheet has already been filed. There are no chances of the applicant fleeing from justice or tampering with evidence. The apprehension, even otherwise, can be taken care of by putting appropriate conditions. It is trite law that where the court is of the view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, custodial interrogation



should be avoided since, a great ignominy, humiliation and disgrace is attached with arrest.

18. In view of the above, it is directed that the applicant, in the event of arrest, be released on bail on furnishing a bail bond for a sum of ₹25000/- each 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 investigation as and when directed by the Investigating Officer;
- b. The applicant shall not leave the country without the permission of the learned Trial Court;
- c. The applicant shall give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;
- d. The applicant shall appear before the learned Trial Court on every date of hearing.

19. In the event of there being any FIR/DD entry/ complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

20. 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.

21. The bail applications are allowed in the aforesaid terms.

22. A copy of the order be placed in both the matters.

AMIT MAHAJAN, J

JULY 18, 2024

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