



2024:DHC:5133



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

Date of Order: 12 July, 2024

+ BAIL APPLN. 2096/2024
BIBHAV KUMAR

.....Petitioner

Through: Mr. N. Hariharan, Sr. Advocate with
Mr. Karan Sharma, Mr. Mohd. Irshad,
Mr. Rajat Bhardwaj, Mr. Mohit
Siwach, Mr. Kaustabh Khanna,
Mr. Siddarth Yadav, Ms. Punya
Rekha and Mr. Sharian Mukherji,
Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Sanjay Jain, Sr. Advocate with
Mr. Yudhvir Singh Chauhan and
Mr. Atul Shrivastava APPs and
Mr. Akhand Pratap Singh, Advocate
with Ms. Anjitha Chepyala, IO,
Additional DCP North and Inspector /
SHO Rajeev Kumar, PS: Civil Lines.
Mr. Sameer Rohatgi, Mr. Sanjeev
Sahay, Mr. Shagun Saproo, Mr. Karan
Deep Singh and Mr. Kartikey Singh,
Advocates for Complainant with
Complainant-in-person.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

ANOOP KUMAR MENDIRATTA, J.

1. An application under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the petitioner for grant of regular bail in FIR No.277/2024 under Section 308/341/354B/506/509 IPC registered at PS: Civil Lines.



2. In brief, as per case of the prosecution, complainant alleged that on 13.05.2024 about 9:00AM, she had visited the residence of Chief Minister of Delhi at 6, Flag Staff Road, Civil Lines, Delhi. On reaching, she went inside the Camp Office and called Chief Minister's PS Bibhav Kumar (petitioner) but could not get through, whereupon she sent him a message on his mobile number through WhatsApp. Thereafter, she entered the residential area through main door of CM house as done in the past, since petitioner was not available and informed the staff present to tell the Chief Minister that she had come to meet him. She was informed that CM was present in the house and told to wait in the drawing room. Accordingly, she sat in the drawing room, when suddenly Bibhav Kumar (petitioner) barged into the room and without any provocation, started screaming and abusing her. When complainant asked him to stop and call the CM, he kept saying "तू कैसे हमारी बात नहीं मानेगी? कैसे नहीं मानेगी? साली तेरी औकात क्या है कि हमको न कर दे। समझती क्या है खुद को नीच औरत। तुझे तो हम सबक सिखाएंगे।" Further, without any provocation, petitioner started slapping her with full force and slapped 7-8 times. In order to protect herself, complainant screamed for help and pushed the petitioner with her legs. At aforesaid time, the petitioner pounced on her, brutally dragged her and pulled her shirt up. Consequently, her shirt's buttons opened and shirt flew up. She further landed on the floor, while hitting her head on the centre table. Complainant continued to scream but no one came to her help. Further, petitioner did not relent and attacked her repeatedly in chest, stomach and pelvis area with his legs. Complainant kept repeatedly telling the petitioner to stop as she was having periods and let her go but petitioner continued to attack her with full force. Complainant somehow managed to get herself free and called on number 112. Petitioner



further threatened her "कर ले जो तुझे करना है। तू हमारा कुछ नहीं बिगाड़ सकती। तेरी हड्डी पसली तुड़वा देंगे और ऐसी जगह गाड़ेंगे किसी को पता भी नहीं चलेगा।" Thereafter, having realized that complainant had called on number 112, petitioner went out and came back with security personnel working at the main gate of Chief Minister's Camp Office. Complainant was further asked by security personnel to leave at the behest of the petitioner and taken outside the Chief Minister's Office, wherein she sat briefly on the floor outside his house being in deep pain. Further, being in a dazed position, complainant walked towards her previous residence in Civil Lines though the PCR reached the spot. The police personnel who had accompanied her called an auto at her request and she started towards her house. Complainant further alleged that somehow she mustered strength and asked the auto to head to PS: Civil Lines to report the matter and informed the SHO about the incident. However, being in terrible pain and since she started receiving lots of calls from media and not wanting to politicize the incident, she left the police station without filing the complaint. The complaint was finally lodged by the complainant after a gap of three days on 16.05.2024 leading to registration of present FIR.

Submissions on behalf of the petitioner

3. Learned counsel for the petitioner submits that allegations levelled by the complainant against the petitioner are false and fabricated and FIR was registered after deliberations only on 16.05.2024, after delay of three days though the alleged incident took place on 13.05.2024. He further submits that entire version given by the complainant is improbable as there was no motive for alleged assault. Allegations are contended to have been made by the complainant, who is a sitting MP, for reasons best known to her. It is



pointed out that nature of injuries alleged to be suffered by the complainant is 'simple' and Section 308 IPC has been wrongly invoked.

4. Learned counsel for the petitioner further submits that a complaint of trespass against the complainant has also been lodged on 17.05.2024 but the same has not been registered by the police. It is urged that petitioner was arrested on 18.05.2024 at about 4:00PM rendering his application for anticipatory bail infructuous. The offences invoked are stated to be punishable upto seven years of imprisonment. It is emphasized that the petitioner has remained in custody for a period of 54 days and is no more required for investigation. The mobile phone of the petitioner is also stated to have been seized during investigation.

5. Learned counsel for the petitioner also contends that petitioner was merely dealing with political appointments of the Chief Minister and there was no reason for the complainant to call the petitioner, as he was merely an employee. The CCTV footage is stated to have been further handed over by the concerned JE, PWD, in respect of which petitioner did not have any role.

6. Learned counsel for the petitioner also refers to 'Breach Report' dated 13.05.2024 given by Deepak Dikshit, Assistant Section Officer posted at Chief Minister's Residence cum Office to the Section Officer informing that complainant had on her own proceeded to the Waiting Room despite being informed that petitioner was not present. Complainant is further stated to have entered inside the Chief Minister's residence without there being any information and despite being requested by the official to not to enter the residence. Thereafter, Deepak Dikshit waited in the 'vehicle parking area' till 9:20AM for the petitioner and upon arrival of the petitioner informed him about arrival of the complainant. Thereafter, Deepak Dikshit returned



to office and was informed by Sachin and Nitin that petitioner had called for security personnel posted at the gate for informing as to who gave the entry to the complainant. Complainant is stated to have been respectfully brought out of CM residence.

Submissions on behalf of the State

7. On the other hand, application has been vehemently opposed by Shri Sanjay Jain, learned Senior Advocate for the State. He submits that alleged report given by Deepak Dikshit, Assistant Section Officer posted at Chief Minister's Residence Office on 13.05.2024 is not a part of investigation made by the police, since a copy of the same was not forwarded to the IO. Further, security violation, if any, had to be immediately reported by the concerned official to the police personnel posted at the Chief Minister's Office, instead of forwarding a report to the Section Officer. On a query by the Court, learned counsel submits that aforesaid report by Deepak Dikshit would also be further looked into and informs that chargesheet shall be filed within stipulated period in the coming week.

8. Learned senior counsel for the State further submits that petitioner being a powerful functionary in the Chief Minister's Office, is in a position to tamper the evidence and influence the witnesses. He points out that selective portion of CCTV footage was handed over in a pen drive to the Investigating Agency by the concerned officials and crucial data is missing in the CCTV footage. It is urged that though the mobile phone of the petitioner was seized, the same was formatted by the petitioner prior to being handed over to the police, thereby destroying the valuable evidence. The appointment register is also stated to have not been provided by the Chief Minister's office which is normally maintained for appointments.



9. Learned Senior Counsel for the State also informs that petitioner was also involved in FIR No.102/2007 under Section 353 IPC and does not have clean past antecedents. Section 308 IPC is stated to have been invoked by the prosecution, since the assault was made by the petitioner on vital parts of the body of the complainant. He further points out that delay in filing of FIR is self explanatory, since the complainant is a public figure and was traumatised by the assault. He further emphasizes that there could not have been any motive to implicate the petitioner, in case no such incident had occurred.

Submissions on behalf of the complainant

10. Learned counsel for the complainant also vehemently opposes the application and reiterates the contentions made on behalf of the State. It is pointed out that threatening messages have also been received by the complainant and she apprehends danger to her life.

Complainant, who is present in person also submits that she was brutally assaulted and apprehends danger to her life. She further urges that she is being trolled in media and her image has been negatively projected.

Findings

11. The factors which are to be borne in mind while considering an application for bail amongst other circumstances have been reiterated in ***Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496*** and may be beneficially referred:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;



- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

12. Allegations of assault at the Chief Minister's Office cum Residence made by the complainant(a sitting Member of Parliament) against PS to the Chief Minister, cannot be disbelieved merely on account of delay in registration of FIR, since the events unfolded after the incident, reflect that complainant was in a traumatized condition faced with the unprovoked brutal assault. Complainant would not have herself made a call on 112 during the course of assault, in case no such incident had occurred. The utterances made by the petitioner during the course of assault as reflected in FIR, reflect that there was a deeper conspiracy or motive to be achieved. Since the complainant herself is a dignified member of a political party, she had second thoughts to lodge the complaint, considering the powerful position of the petitioner. As such, despite mustering the courage to visit the police station on the same day and informing the SHO, complainant returned without lodging the FIR. In the peculiar facts and circumstances, it may be preposterous at this stage to infer that petitioner has been falsely implicated and allegations have been concocted, since apparently the complainant had no motive to implicate the petitioner.

13. It has also been pointed out by learned Senior Counsel for the State that there has been an effort to suppress the crucial evidence since only



selective portion of the CCTV footage at CM Residence cum Office was handed over during the course of investigation. The same would have shed a better light on the factual events. The report forwarded by Deepak Dikshit, Assistant Section Officer posted at CM Office to the Section Officer on 13.05.2024 is yet to be investigated as the same was not handed over to the police. Ordinarily any such serious security breach should also have been immediately reported to the officials of Delhi Police for necessary action, apart from sending a report to the Senior Officers. The fact that the mobile phone seized from the petitioner was also formatted prior to seizure, also reflects that there is an effort to conceal some vital evidence as message is alleged to have been forwarded by the complainant to the petitioner through WhatsApp on reaching the CM Office.

14. No doubt, the petitioner happens to be only designated as a PS but the facts and circumstances reflect that he yields considerable influence and it cannot be ruled out that witnesses may be influenced or evidence may be tampered with, in case the petitioner is released on bail, at this stage. Keeping in view the nature and gravity of accusation and apprehension of the witnesses being influenced, no grounds are made out for releasing the petitioner on bail, at this stage. Application is accordingly dismissed. Pending applications, if any, also stand disposed of.

Nothing stated herein shall tantamount to an expression of opinion on the merits of the case.

(ANOOP KUMAR MENDIRATTA)
JUDGE

JULY 12, 2024/sd