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

+ **BAIL APPLN. 2540/2024 & CRL.M.A. 24308/2024**

ARSHAD ALI

.....Applicant

Through: Ms. Pratiksha Tripathi,
Mr. Divyesh Pratap Singh
& Mr. Amit Sangwan,
Advocates.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Naresh Kumar
Chahar, APP for the State
with Mr. Mayank Mishra,
Mr. Vedant Vashisht, Mr.
Abhinav & Mr. Yash A
Jodhani, Advocates.
Mr. Amit Gupta, Advocate
for Complainant.
SI Saurabh (P.S. Malviya
Nagar).

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

23.08.2024

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1. The present application is filed seeking regular bail in FIR No. 612/2023 dated 21.11.2023, registered at Police Station Malviya Nagar, for the offences under Sections 323/341 of the Indian Penal Code, 1860 ('IPC'). The applicant has been charge sheeted in the supplementary chargesheet for the offences under Sections 307/354/325/341/506/34 of the IPC.

2. The present FIR was registered on a complaint made by the injured Arif, who is the half-brother of the applicant. It is

BAIL APPLN. 2540/2024

Page 1 of 8



alleged that a PCR call was received on 20.11.2023 by a female who informed that 3-4 men had beaten her brother. It is alleged that when the police officers reached the spot, they found that the injured had been shifted to the hospital. At the hospital, the injured stated that he could not give the statement as he was in a lot of pain.

3. It is alleged that the injured Arif in his statement on 24.11.2023 stated that he had bought a property from the applicant's brother Ashraf who was not handing over the documents for the same. He stated that there was friction between the parties due to water supply as well. He alleged that on 19.11.2023, a quarrel took place between the parties where he had sustained a blow to his head by a danda and his brother Asif had fractured his hand while trying to intervene.

4. He further stated that on 20.11.2023, when his sisters were present at the office, an acquaintance of the complainant told him that he will talk to Ashraf and the applicant to compromise the matter. He stated that thereafter, the accused persons, including the applicant, came there and the applicant hit him on his head with an iron chair. He alleged that the applicant also threatened that he would kill him. He stated that the applicant also molested one of his sisters when she tried to intervene. He alleged that the applicant again hit him on the head with a danda. He alleged that the accused persons chased them with sticks and rods. He alleged that the accused persons were carrying a knife and screwdriver and tried to kill the injured complainant.

5. The FIR records that the injury was simple in nature and the same was inflicted from a wooden rod by a known person— 'Harshad Ali'.

6. During course of investigation, subsequent opinion in

BAIL APPLN. 2540/2024

Page 2 of 8



regard to the injuries sustained by the victims was obtained by the IO. The injury suffered by the complainant were opined to be simple in nature while the injuries sustained by the injured Asif were determined to be serious in nature.

7. The applicant was arrested on 18.04.2024.

8. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case even though no weapon was recovered at his instance.

9. He submits that the present FIR was lodged due to a property feud between two factions of a family who are half-blood siblings. He submits that the applicant and the other accused persons in the present FIR were born out of the first marriage of the petitioner's father while four children, including the complainant, were born out of the second marriage of the applicant's father.

10. He submits that in March, 2023, the applicant's widowed sister, namely, Uzma, had purchased a flat in the same building from where the complainant was running his Real Estate business. He submits that the complainant had cut-off the water supply of Uzma's house whereafter when Uzma along with their sister Asma went to the shop of the complainant to request him to open the lock, the complainant and his brother Arif hurled expletives at them and outraged their modesty. He submits that Uzma also sustained injuries during the incident.

11. He submits that on the next day, the complainant along with his siblings and his henchmen attacked the applicant and his family members with wooden and iron rods. He submits that the applicant and his family members suffered serious injuries in the altercation. He submits that the incident was recorded on a CCTV footage.

BAIL APPLN. 2540/2024

Page 3 of 8



12. He submits that a cross-FIR was also registered at the instance of the applicant's sister regarding the incident.

13. He submits that the injury suffered by complainant Arif was found to be simple in nature in the MLC conducted at Max Hospital right after the incident. He submits that four days after the incident, the complainant Arif recorded his statement before the IO, due to which Section 308 of the IPC was added, which was later converted to Section 307 of the IPC.

14. He submits that co-accused Asma, Uzma and Saba *alias* Alina have already been granted anticipatory bail by this Court. He further submits that the co-accused Zeeshan Khan, Rubina Begum and Sameer have also been granted regular bail by the learned Trial Court.

15. He submits that the minor son of the applicant is suffering from severe mental ailments. He further submits that the trial will likely take a long time to conclude and the applicant cannot be subjected to indefinite incarceration in such a case that was evidently borne out of enmity between family members.

16. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposes the present application.

17. He submits that the applicant is a relative of the injured victim and he resides in the same locality. He submits that in such circumstances, the possibility of the applicant influencing or threatening the complainant cannot be ruled out.

18. I have heard the counsel and perused the record.

19. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; circumstances which are peculiar to the accused; likelihood of

BAIL APPLN. 2540/2024

Page 4 of 8



the offence being repeated; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc.

20. It is not disputed that the parties involved in the present case are related to each other. The incident happened on 19.11.2023 and 20.11.2023, and cross FIRs were registered. An FIR was also registered at the instance of the applicant and his family members being FIR No. 613/2023, under Sections 323/354/341/509/34 of the IPC.

21. The women in the family were also named as accused persons in the FIRs registered at the instance of both the parties. Other family members of the applicant, who were also co-accused in the present FIR, namely, Sameer and Zeeshan Khan were granted bail by the learned Trial Court. The accused Sameer was also seen in the CCTV footage inflicting blow to the victim. It is contended that the blow inflicted by the present applicant was more severe and therefore, he cannot seek parity with the accused Sameer.

22. It is undisputed that the incident was captured in the CCTV, where large number of accused, including some of the women were seen inflicting blows on the victim and other family members of the victim. As noted above, the family of the victim and family of the applicant are related to each other being siblings from two wives. In such circumstances when the allegations have been made against a large number of people for inflicting injuries, it cannot be contended that one injury was more severe than the other. Therefore, it cannot be said that the accused who is alleged to have given a more serious injury is not

BAIL APPLN. 2540/2024

Page 5 of 8



entitled for bail, whereas the accused who has inflicted a lesser injury can be released on bail.

23. It is the case of the prosecution that due to a long festering family dispute, an altercation took place between the parties where the victim Arif sustained certain injuries.

24. It is relevant to note that the present case seems to relate to two incidents that happened on 19.11.2023 and 20.11.2023 respectively. The role ascribed to the applicant is in relation to the blows dealt by him on the head of the complainant with a danda and an iron chair on 20.11.2023.

25. All accused persons have been charged for the same offence by virtue of Section 34 of the IPC. The applicant had initially absconded but thereafter surrendered on his own and was taken into custody on 18.04.2024 and is in custody since then. The chargesheet has already been filed in the present case. It is not denied that the applicant has deep roots in the society and has clean antecedents.

26. During the course of the arguments, the learned counsel for the applicant has undertaken on behalf of the applicant that if released on bail, the applicant will not reside in the NCT of Delhi. Even otherwise, the apprehension in regard to the applicant fleeing from justice or threatening the witnesses can be taken care of by putting appropriate conditions.

27. The learned counsel for the complainant has also shown the WhatsApp messages which were allegedly received by the complainant from the brother of the applicant who has still not been arrested and is absconding. It is alleged that the brother of the applicant is threatening the complainant of dire consequences. A complaint in that regard has been given to the State and appropriate action will undoubtedly be taken.

BAIL APPLN. 2540/2024

Page 6 of 8



28. The learned counsel for the applicant submits that the applicant is in custody and is undoubtedly not in touch with his brother. She submits that the applicant cannot be made to suffer for the act of his brother and the police is at liberty to take appropriate action.

29. The chargesheet has already been filed in the present case and the applicant is in custody since 18.04.2024. Without commenting further on the merits of the case, I am of the opinion that the applicant has made out a case for grant of bail. The applicant is, therefore, directed to be released 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 cooperate in any further investigation as and when directed by the concerned IO;
- b. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- c. The applicant will not reside in the NCT of Delhi and is only allowed to enter in the NCT of Delhi as and when called by the IO for further investigation and as and when directed by the learned Trial Court;
- d. The applicant shall under no circumstance leave the country without the permission of the learned Trial Court;



- e. The applicant shall appear before the learned Trial Court as and when directed;
- f. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- g. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

30. 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.

31. 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.

32. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

AUGUST 23, 2024

'Aman'/'SK'