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

+ **BAIL APPLN. 2773/2024**

**JAVED ALAM**

.....Petitioner

Through: Mr. Akbar Siddiqui, Mr. Abhishek Singh, Mr. Parv K. Garg, Mr. Parwez Akhtar, Mr. Mohd. Osama, Mr. Harsh Kumar singh, Mr. Aditya Verma, Adv.

versus

**THE STATE OF NCT OF DELHI**

.....Respondent

Through: Mr. Digam Singh Dagar, APP for State and W/SI M. Tiamenlu, ASI Surender Pal, PS Geetal Colony.

**CORAM:**

**HON'BLE MR. JUSTICE DINESH KUMAR SHARMA**

**ORDER**

**06.08.2024**

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**CRL.M.A. 23191/2024**

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

**BAIL APPLN. 2773/2024**

3. The present application has been filed under Section 482 r/w 528 BNSS for grant of anticipatory bail on behalf of the applicant/petitioner in case FIR No. 321/2024 under Section 333/115(2)/126(2)/351(2)/3(5) BNS registered at PS Geeta Colony.
4. The facts of the matter in brief are that, On 01.07.2024, at around 09:00 pm, the applicant, along with three other accused persons, allegedly



visited the complainant's flat, threatened him for filing a court case, and subsequently assaulted the complainant and his son, with accused Parvez Alam striking the son with a danda, while accused Waseem brandished a pistol and threatened to kill the complainant. The incident escalated to the street where the complainant and his son were beaten further. The FIR was filed the next day under multiple sections at PS Geeta Colony, and the applicant's anticipatory bail application was dismissed by the Sessions Court on 08.07.2024.

5. The applicant contends that the FIR is a result of a property dispute and that the injuries sustained by the complainant's son were accidental, with the complainant's family being the aggressors during the altercation, as shown in video evidence and photographs. The applicant claims he was falsely implicated and was actually beaten during the scuffle, as evidenced by photographs showing his torn clothes.
6. Learned counsel for the petitioner submits that as per the FIR No. 321/2024 under Section 333/115(2)/126(2)/351(2)/3(5) BNS all the offences are punishable for the punishment less than seven years. However, learned counsel for the petitioner submits that the investigating agency may arrest petitioner without service of the notice as required under Section 41 of the Cr.P.C. Learned counsel for the petitioner submits that the story of the prosecution is also falsified by the photographs placed on the record. Learned counsel submits that as per the FIR the entire quarrel took place within the flat whereas the photographs show that the quarrel took place in the street. Learned counsel for the petitioner further submits that the petitioner is a resident of the same building where the incident took place.



7. Issue notice. Learned APP for the State has accepted the notice. Learned counsel appearing on behalf of the complainant also accepts the notice.
8. Learned APP for the State and learned counsel for the complainant have opposed the bail application. It has been submitted that the bail application of co-accused Mohd. Shakir was dismissed as withdrawn by this court. It has further been submitted that the allegations in the FIR revealed that the accused persons were trying to threaten the complainant party in respect of a civil suit. It has also been submitted that some of the complainants had suffered serious injuries as revealed in the photographs.
9. The jurisdiction of anticipatory bail has to be exercised sparingly only when there is an apprehension that the petitioner may be arrested in a false case. There are conditions enumerated in Section 438 Cr.P.C. on the existence of which such exercise can be exercised. The court has to look into the nature and gravity of the accusation, the antecedents of the applicant and the possibility of the applicant to flee from justice. The relevant consideration of exercise of jurisdiction is whether the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested.
10. The Apex Court in ***Sushila Aggarwal & others. v. State (NCT of Delhi) & another*** (2020) 5 SCC 1 wherein it was inter alia held that Courts should consider the nature and gravity of the offences, the applicant's role, and the case's facts when deciding on anticipatory bail. Granting bail and imposing special conditions are discretionary and depend on the case's specifics.



11. In the present case, the narrative in the FIR shows that the accused persons went to the flat of the complainant and started beating them. Some of the complainants were dragged outside. This kind of incident shows the mob tendency where certain persons get together and then threaten or give the beating to the other party. The incident seems to be premeditated.
12. I consider that this can never fall within the category of exercising the jurisdiction of anticipatory bail. However, as far as the legal procedure in the Cr.P.C. is concerned the police will certainly bound to follow this in accordance with law. The fact that the petitioner is the resident of the same building is rather more a reason for not exercising the discretion of anticipatory bail as there is a possibility of threatening the witnesses.
13. In view of the above, the present application stands dismissed.

**DINESH KUMAR SHARMA, J**

**AUGUST 6, 2024/AR/NA..**