



2024:DHC:7043



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 12th September, 2024*+ **BAIL APPLN. 3243/2024****CHRIS AUSTIN GODIN**

.....Applicant

Through: Mr. Mohit Mathur, Sr.
Adv. with Mr. Nitesh
Mehra, Mr. Harsh
Gautam, Ms. Aashi Arora,
Mr. Priyam Kaushik, Mr.
Harshith Pottangi & Mr.
Vignesh, Advs.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Sanjeev Bhandari,
ASC for the State with
Ms. Charu Sharma, Mr.
Arjit Sharma, Mr.
Vaibhav Vats & Mr.
Nikunj Bindal, Advs.
Mr. Medhanshu Tripathy,
Ms. Garima Tripathy, Mr.
Harish Sharma & Mr.
Tushar Tokas, Advs.

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)****CRL.M.A. 27000/2024 (for exemption)**

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present application is filed seeking grant of pre-arrest Bail in FIR No. 0185/2024 dated 25.08.2024 registered at Police Station Vasant Kunj North, New Delhi, for offence under Sections 110/3(5) of the Bhartiya Nyaya Sanhita, 2023 ('BNS').

4. It is alleged that on the intervening night of 24-25.08.2024, at about 12:40 AM, the complainant entered the Bergamo Club at The Grand Hotel, Vasant Kunj, New Delhi, to meet friends for a party. Around 2:00 AM, while returning from the washroom, the complainant was confronted by the accused, Chris Austin Godin/applicant, who allegedly pushed and verbally abused him with derogatory language. Chris then threatened to kill the complainant if he did not leave the place immediately. It is alleged that before the complainant could respond, Chris put his hand around the complainant's neck and began beating him. Chris was soon joined by his associates—Guransh Bami, Mayank Chopra, Yash Sejwal, and Lakshya Chaudhary—who collectively assaulted the complainant. During the altercation, Chris allegedly struck the complainant on the head with a whiskey glass, while Guransh and Mayank used a sharp object, causing severe injuries. The complainant lost consciousness and was taken away from the accused persons by the club's bouncers and security staff. He was subsequently taken to a nearby hospital by friends, where his MLC was conducted and the report indicated three lacerated wounds on his head, one measuring 4x1 cm.

5. The learned Senior Counsel for the applicant submits that the applicant has been falsely implicated in the present case and

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that the ingredients of Section 110 of BNS are not made out. He submits that the alleged altercation was not pre-meditated but occurred in the heat of the moment. He contends that the complainant and his associates were the initial assailants, who allegedly passed lewd comments towards the applicant's sisters, leading to the physical confrontation. He states that the applicant acted in self-defence and had no intention to inflict the injuries that occurred. He further contends that, during the altercation, the applicant attempted to repel the complainant without any intention of causing deliberate harm. As a result, the complainant's injuries were purely accidental and non-grievous/simple in nature.

6. He submits that the MLC report has reserved the opinion that the injuries were simple in nature in the form of lacerated wounds.

7. He submits that the applicant has already cooperated with the investigation, providing the necessary information to the Investigating Agency and that his custodial interrogation is unnecessary as the required information has been disclosed, and he has no prior criminal antecedents.

8. *Per contra*, the learned Additional Standing Counsel for the State vehemently opposes the present application and states that the gravity of offence committed by the applicant is severe in nature. He submits that since the investigation is at a nascent stage, there is an apprehension that the applicant might try to influence the witnesses or might tamper with the evidence.

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9. He submits that the applicant is being uncooperative in the investigation as the applicant upon interrogation supplied the police with the mobile numbers of the co-accused persons however, no addresses were provided by the applicant.

10. I have heard learned counsel for the parties.

11. It is to be kept in mind that the considerations governing the grant of pre-arrest bail are materially different than those to be considered while adjudicating the application for grant of regular bail, as in the latter case, the accused is already under arrest and substantial investigation is carried out by the investigating agency.

12. It is trite law that the power to grant a pre-arrest bail under Section 438 of the CrPC is extraordinary in nature and is to be exercised sparingly. Thus, pre-arrest bail cannot be granted in a routine manner. The Hon'ble Apex Court, in the case of **State of A.P. v. Bimal Krishna Kundu : (1997) 8 SCC 104**, held as under:

“8. A three-Judge Bench of this Court has stated in Pokar Ram v. State of Rajasthan [(1985) 2 SCC 597 : 1985 SCC (Cri) 297 : AIR 1985 SC 969] : (SCC p. 600, para 5)

“5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal.”

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9. Similar observations have been made by us in a recent judgment in State v. Anil Sharma [(1997) 7 SCC 187 : 1997 SCC (Cri) 1039 : JT (1997) 7 SC 651] : (SCC pp. 189-90, para 8)

“The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest.”

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12. We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on “the career of millions of students”, learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order.”

13. It is settled law that the custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the CrPC [*State v. Anil Sharma : (1997) 7 SCC 187*].

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Granting pre-arrest bail to the applicant would undoubtedly impede further investigation. An order of pre-arrest bail cannot be granted in a routine manner so as to allow the applicant to use the same as a shield.

14. This Court has carefully perused the MLC report, which indicates that the injuries sustained by the complainant are classified as 'simple'. However, the complainant received three lacerated wounds on head which is a vital part of the body and required 15 – 20 stitches. The same is a significant indicator of the severity of the injuries. It would be a mischaracterization to describe such injuries, particularly those involving the head, as 'simple' given the number of stitches required to treat them.

15. Furthermore, this Court has reviewed the CCTV footage of the alleged incident, which clearly shows that an altercation occurred between the applicant and the complainant, leading to the complainant suffering three distinct wounds on his head. It is undisputed that these injuries necessitated 15 – 20 stitches. While the footage does not definitively reveal whether the complainant was struck with a glass or another object, it is evident that such injury could not have been caused without the use of an external object.

16. It is also pertinent to note that the learned trial court had previously granted bail to the co-accused, Guransh Bami and Mayank Chopra taking into consideration the submission that the main allegations were directed against the applicant, and the co-accused were not seen in the CCTV footage wielding any weapon or glass.

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17. At this stage, the critical fact remains that the complainant sustained severe head injury—a wound to a vital part of the body—that required multiple stitches. This fact underscores the gravity of the offence.

18. The investigation conducted thus, so far does not indicate that the applicant is sought to be falsely implicated. The material presented by the prosecution establish a prima facie involvement of the applicant. The investigation is at a nascent stage and the investigating agency needs to be given a fair play in the joints to investigate the matter in the manner they feel appropriate.

19. The present application is accordingly dismissed.

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.

AMIT MAHAJAN, J

SEPTEMBER 12, 2024

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