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

+ **BAIL APPLN. 3343/2024**

ANKIT SIROHI

.....Petitioner
Through: Mr. Sumeet Singh
Shokeen, Ms. Pradnya
Kulkarni, Mr. Kartikey
Anand & Mr. Ankit
Kumar Jha, Advs.

versus

**STATE GOVT OF NCT
OF DELHI**

.....Respondent
Through: Mr. Ajay Vikram Singh,
APP for the State
SI Rakesh Kumar, PS-
Wazirabad
Mr. Atul Kumar Sharma,
Adv. for victim (through
VC)

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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17.09.2024

CRL.M.A. 28021/2024 (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 pre-arrest bail in FIR No. 546/2024 dated 18.07.2024 registered at Police Station Wazirabad for offence under Section 109(1) of the Bharatiya Nyaya Sanhita, 2023.
4. The FIR was registered when the Police was informed by the complainant that one person has been stabbed. On 18.07.2024, the victim was taken to the hospital and the statement was, thereafter, recorded on 28.07.2024.
5. The learned counsel for the applicant submits that even if

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the case of the prosecution is taken at the highest, the applicant was merely standing with the accused who inflicted the injury. He submits that no role can be attributed on the applicant for the alleged stabbing of the victim.

6. I have perused the case diary and have gone through the statement of the victim recorded under Section 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

7. The victim stated that he had gone with his friends on the night of 17.07.2024 when he saw the applicant along with the co-accused, Lakshay – who came to him and started having conversation. The victim stated that before he could say anything, the co-accused, Lakshay, took a knife out and stabbed him due to which he got seriously injured and fell down. It is further stated that he begged the applicant for his life. The accused persons then ran away and the victim became unconscious and was taken to the hospital by his friend, Ankur.

8. It is pertinent to note that serious allegations have been made against the applicant. Though allegations do not seem to be of inflicting the injury, however, clearly it is stated that both the accused persons came together and, at this stage, can be said to have come with the intention of causing injuries. Injuries were inflicted by a knife which led to serious injuries.

9. It cannot be said that the applicant has been unnecessarily implicated in the present case.

10. It is not denied that personal liberty of the accused is sacrosanct, however, at the same time, the right of the victim also has to be given equal weightage.

11. It is to be kept in mind that the investigation is currently at a nascent stage. 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 **BAIL APPLN. 3343/2024**

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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.”

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 Session Judges and the High Courts through Section 438 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*]. 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. The allegations, at this stage, cannot be called frivolous or be said to have been made to humiliate and injure the applicant.

15. In view of the above, no ground is made out for grant of pre-arrest bail and the present bail application is dismissed.

16. It is clarified that nothing stated herein be taken as an expression of opinion on the merits of the case.

AMIT MAHAJAN, J

SEPTEMBER 17, 2024
“SS”