



\$~97, 100 & 101

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

+ **BAIL APPLN. 4138/2024& CRL.M.A. 34095/2024**

MOHIT

.....Applicant

Through: Mr. Vinay Kumar Sharma,
Mr. Prince, Mr. Aaditya,
Ms. Ritu Kumari & Mr.
Amit Kumar, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Raj Kumar, APP for
the State.
SI Ram Dayal (P.S. Palam
Village).

100

+ **BAIL APPLN. 4151/2024 & CRL.M.A. 34189/2024**

KARAN

.....Applicant

Through: Mr. Vinay Kumar Sharma,
Mr. Prince, Mr. Aaditya,
Ms. Ritu Kumari & Mr.
Amit Kumar, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Raj Kumar, APP for
the State.
SI Ram Dayal (P.S. Palam
Village).

101

+ **BAIL APPLN. 4155/2024 & CRL.M.A. 34208/2024**

JATIN

.....Applicant

Through: Mr. Vinay Kumar Sharma,
Mr. Prince, Mr. Aaditya,
Ms. Ritu Kumari & Mr.
Amit Kumar, Advocates.

versus

STATE OF NCT OF DELHI



& ANR.

.....Respondents

Through: Mr. Raj Kumar, APP for
the State.
SI Ram Dayal (P.S. Palam
Village).

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
14.11.2024

%

1. The present applications are filed seeking pre-arrest bail in FIR No.575/2024 dated 06.10.2024, registered at police station Palam Village, for offence under Sections 118(1)/126(2)/351(2)/3(5) of the Bharatiya Nyaya Sanhita, 2023 ('BNS').

2. The FIR was registered on a complaint given by one Ajay Kumar alleging that on 05.10.2024 at around 09:00 PM, when he was returning from Mangalpuri Market, the applicants/accused persons, namely, Karan and Jatin along with another co-accused person namely Himanshu, who is stated to be a minor, stopped the complainant and demanded money from him. Upon refusal, it was alleged that the accused – Mohit hit the complainant on his head with a brick. The accused – Jatin hit the complainant with some sharp object near his stomach and accused – Karan and co-accused – Himanshu started throwing kicks and punches at the complainant, after which, the complainant lost his consciousness.

3. The learned counsel for the applicants submits that the applicants have been falsely implicated in the present case. He submits that the accused – Himanshu was, in fact, molested by the complainant for which the complaint has already been registered with the police. However, the police did not take any action. He submits that the present FIR was registered as a counterblast.

BAIL APPLN. 4138/2024 & Connected Matters

Page 2 of 5



4. The learned Additional Public Prosecutor for the State submits that non-bailable warrants have already been issued against the applicants.

5. He submits that the serious injuries have been caused to the complainant/victim and he was hospitalized in Deen Dayal Upadhyaya hospital for a period of five days due to the injuries caused.

6. The MLC of the complainant shows multiple injuries caused from sharp object and multiple abrasions have also been noted.

7. Certain complaints have been annexed with the present application indicating that a complaint was filed against the complainant by the accused Himanshu, alleging sexual harassment. However, as noted by the learned Trial Court, while dismissing the applications filed by the applicants, that at this stage, the complaints appears to be an afterthought. The incident which relates to the registration of the present FIR is of 05.10.2024 whereas the complaints were admittedly given thereafter.

8. 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.

9. It is trite law that the power to grant a pre-arrest bail under Section 482 of the BNSS 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.”

xxxx

xxxx

xxxx

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.”



10. 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 482 of the BNSS [*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.

11. The FIR is registered under Sections 118(1)/126(2)/351(2)/3(5) of the BNS. Serious injuries have been caused to the complainant. Moreover, 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.

12. Keeping in view the gravity and seriousness of the offence, I am not inclined to entertain the present applications.

13. The applications are, therefore, dismissed.

14. A copy of the order be placed in all the matters.

15. 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

NOVEMBER 14, 2024

'Aman'