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

Date of decision: 17.02.2025

+ BAIL APPLN. 4567/2024 & CRL.M.A. 37286/2024

SHAHBUDDIN

.....Petitioner

Through: Md. Muddassir, Advocate (Through
VC)

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Mr. Laksh Khanna, APP for State
along with SI Sonu Kumar, PS: Okhla
Indl. Area

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. The present application has been filed under Section 482 of the Bhartiya Nagarik Suraksha Sanhiyta, 2023 (BNSS) seeking grant of anticipatory bail in FIR No. 691/2024 registered under Sections 126(2)/110/3(5) BNS at Police Station of Okhla Industrial Area.
2. The case of the prosecution is based upon a complaint received on 12.11.2024 vide DD No. 114A regarding MLC N0.251/2024 from ESI Hospital. A report was received pertaining to injuries/physical assault on person named as Abdul Hasan [complainant] who is a resident of Jhuggi B-245 Gola Kuan, Tehkhand Gaon, Okhla Phase-I, New Delhi.
3. As per status report, two injuries were noted-a cut injury on the head and a cut injury on the left hand (index and middle fingers). The MLC,



which has been presented before the Court, notes that the injuries are simple and sharp, confirming that the injuries were caused by a sharp object.

4. In the statement of the complainant allegations made against the present Applicant/Shahabuddin is that, the Applicant was residing on the first floor of the jhuggi as the tenant of the complainant. He was asked by the complainant to vacate the same and upon hearing the same, the Applicant started abusing the complainant and later 2-3 more boys arrived and the Applicant held the hand of the complainant and thereafter, the boys attacked the complainant due to which he suffered injuries. It is further stated that at that time, one of the boys, whose name he did not know, hit him on the head with a wooden cot-leg, and another boy attacked him with the knife where he got injured on the hand. On this basis, FIR was registered and investigation ensued.

5. It is stated that no CCTV footage was useful since the camera does not cover the location of the incident. Subsequently, a wooden cot-leg lying near an electric pole was seized at the behest of the complainant.

6. It is stated that in addition to the Applicant herein two other accused have been identified i.e. Aamir alias Mohd. Dilshad and Vishal.

7. It is stated that the MLC of the victim received from ESI Hospital on 14.10.2024 confirms the injuries as simple and sharp, indicating that the injuries were caused by a sharp object.

8. It is stated that CDR and location charts show the presence of all the three accused at the crime scene of the incident.

**Submissions of the Applicant**

9. Learned counsel for the Applicant states that there is a prior history of disputes between the parties and the relationship between the parties is of landlord and tenant.

9.1. He states that the injuries, reported in the MLC, are simple and sharp, however, he states that the injuries were allegedly due to the assault by the other two co-accused and not by the Applicant.

9.2. He states that the Applicant is entitled to bail on the principles of parity since the co-accused Vishal has been granted regular bail by the Coordinate Bench of this Court in BAIL APPLN. 4045/2024 and another co-accused Aamir alias Mohd. Dilshad as well has been enlarged on regular bail by the Trial Court. He states that the allegation of blow on the head with a wooden cot-leg and attack with a knife are allegedly attributed to the co-accused.

9.3. Aside from this, he states that he has been falsely implicated in the matter and he has not committed any offence and the Applicant did not wield any weapon as is evident from the FIR. He states that the only allegation against the Applicant that he held the hand of the complainant herein.

9.4. He states that there are no criminal antecedents against the Applicant and he has never been arrested or prosecuted earlier in any case of any kind.

9.5. He states that as per the interim direction passed by the predecessor bench of this Court vide order dated 11.12.2024, the Applicant herein has joined and cooperated in the investigation and further as well remains ready and willing to join the investigation as and when called for by the IO. It is,



therefore, urged by the counsel for the Applicant that the Applicant be granted the anticipatory bail.

9.6. He states that the complainant in his MLC has stated that he was attacked by 2-3 persons. He states, thus, the inquiry from the I.O. with respect to an alleged assembly of 10 persons is mis-directed as this is not even the case of the complainant.

Submission of the Respondent

10. Mr. Khanna learned APP states that as stated in the status report, as per the directions issued by this Court, the Applicant herein, has joined the investigation on 13.12.2024 at 2:00 PM.

10.1. He states that the charge-sheets against the co-accused person i.e. Aamir alias Mohd Dilshad and Vishal have been filed on 12.11.2024 and the next date of hearing before the Trial Court is 28.02.2025.

Findings

11. This Court has heard the learned counsels for the parties and perused the record.

12. Before advertng to the facts of the present case it would be imperative to refer to the judgments of the Supreme Court on the subject matter of anticipatory bail.

13. It is well settled law that while considering an application with regards to anticipatory bail, the Court has to take into consideration the nature and gravity of the accusation, antecedents and possibility of applicant to flee from justice, etc. Normally, the Court should not exercise its discretion to grant anticipatory bail in disregard to the magnitude and seriousness of the matter (Re: **Lavesh vs. State (NCT of Delhi**¹)

¹ (2012) 8 SCC 730



14. The Supreme Court in the case of **Siddharam Satlingappa Mhetre v. State of Maharashtra**² while dealing with the law vis-à-vis for grant of anticipatory bail has succinctly observed as under:

“85. It is a matter of common knowledge that a large number of undertrials are languishing in jail for a long time even for allegedly committing very minor offences. This is because Section 438 CrPC has not been allowed its full play. The Constitution Bench in Sibbia case [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] clearly mentioned that Section 438 CrPC is extraordinary because it was incorporated in the Criminal Procedure Code, 1973 and before that other provisions for grant of bail were Sections 437 and 439 CrPC. It is not extraordinary in the sense that it should be invoked only in exceptional or rare cases. Some Courts of smaller strength have erroneously observed that Section 438 CrPC should be invoked only in exceptional or rare cases. Those orders are contrary to the law laid down by the judgment of the Constitution Bench in Sibbia case [(1980) 2 SCC 565 : 1980 SCC (Cri) 465].

.....

88. The gravity of charge and the exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the court.

89. It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided.”

(‘Emphasis Supplied’)

² (2011) 1 SCC 694



15. In the facts as noted above, the fact that the Applicant has joined the investigation and further the role of the Applicant at this stage is not alleged to be any graver than the role of the other co-accused person(s), who have already been enlarged on bail by the Co-ordinate Bench, therefore, no useful purpose as well will be served by keeping the Applicant in judicial custody.

16. The prosecution has failed to justify its need for custodial interrogation of the Applicant in the facts of this case, where the co-accused have already been apprehended.

17. The relationship between the Applicant and the complainant was akin to landlord and tenant. It is stated in the petition that the Applicant has vacated the complainant's jhuggi on 14.09.2024 at the direction of the Police and has shifted about 1 km. The Applicant is bound down to the said statement and shall not venture near the jhuggi of the complainant.

18. In light of the above, the Court is of the considered opinion that the Applicants are entitled to anticipatory bail in in FIR No. 691/2024 registered at Police Station (P.S) of Okhla Industrial Area. Consequently, it is directed that in the event of arrest, the Applicant be released on bail on furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount subject to the satisfaction of the arresting officer/IO/SHO concerned and further subject to the following conditions:

- i. The Applicant shall co-operate and join the investigation as and when directed;
- ii. The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and the complainant;



- iii. The Applicant shall provide his mobile number(s) to the Investigating Officer;
 - iv. In case of change of residential address and/or mobile number, the Applicant shall intimate the same to the Investigating Officer/Court concerned by way of an affidavit.
 - v. The Applicant shall not come within a distance of 1 km. of the jhuggi of the complainant where the incident of offence occurred.
19. Accordingly, the present petition is disposed of. Pending applications (if any) are disposed of as infructuous.
20. It is made clear that this Court has not dealt with the merits of the case and has restricted itself to the question of whether anticipatory bail can be granted to the Applicant or not. The observations made hereinabove shall not affect the merits of the case during trial.
21. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 17, 2025/mt/ms