

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on : November 30, 2016

+ BAIL APPLN. 2410/2016
MOHD.ANWAR

..... Petitioner

Through: Mr.Ajayinder Sangwan, Mr.S.N. Sharma, Mr.Tarunesh Kumar, Mr.Kunal Chopra, Mr.Rohan Sharma, Mr.V.P. Singh, Mr.Anirudha Kumar, Mr.Irfan Firdous, Ms.Richa and Mr.Narendra Singh, Advs.

versus

STATE GOVT. OF NCT OF DELHI Respondent

Through: Mr.Ashish Dutta, Additional Public Prosecutor for the State with Sub-Inspector Sachin Kumar, Police Station Amar Colony, New Delhi.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. The present application has been filed by the petitioner under Section 438 of the Code of Criminal Procedure, 1973 for the grant of anticipatory bail in FIR No. 609/2016 under Section 384/308/34 of IPC, Police Station Amar Colony, New Delhi.

2. In a nutshell, the FIR of this case was registered at the instance of Muzammil, who stated in his complaint that on 10.10.2016 at about 3.15 AM, the petitioner alongwith his three sons came to his stall and

demanded Rs.5,000/-. The petitioner alongwith his three sons namely Imran, Shahrukh and Salman had assaulted him to extort money from him. They demanded monthly money from him for running his shop inside the Okhla Sabzi Mandi, Delhi and when he refused, the petitioner instigated his sons to kill him. Thereafter, reacting to the instigation, Imran struck the complainant with a stick on his head and all other sons beat the complainant with iron rod and danda. Shahrukh hit the complainant with iron rod on his head and Salman also assaulted the complainant and ran behind the brother of the complainant with a knife to kill him. The complainant sustained multiple head injuries and was admitted in AIIMS Trauma Centre for treatment. On the statement of the complainant the present case was registered.

3. During investigation, accused Salman was arrested on 11.10.2016. After interrogation, he admitted his involvement in the offence alongwith his associates. Another accused Shahrukh was also arrested on 12.10.2016, however accused Imran @ Sahil surrendered before the Court on 15.11.2016. Weapon of offence i.e., danda/stick were recovered from him.

4. Bail application preferred by Salman and Shahrukh has been dismissed vide order dated 16.11.2016 passed by learned Additional Sessions Judge-01, South East District, Saket courts, New Delhi. However, the petitioner – Imran had surrendered before the area magistrate, Saket Court Complex, New Delhi on 15.11.2016 after his

anticipatory bail was rejected.

5. So far as the petitioner – Mohd. Anwar is concerned, he has yet to join investigation and proceedings under Section 82 of Cr. P.C. have already been initiated against him.

6. Learned counsel for the petitioner contended that the petitioner Mohd. Anwar is a handicapped person and is suffering from high AK amputation 'Right Side' and is 80% disabled. With regard to the facts of the case, it is contended that a false case has been registered against him as well as his sons. According to the petitioner Mohd. Anwar, he was sleeping in his house and was not at all present at the place of incident. He was informed by his employee that when a vehicle was entering at Okhla Sabzi Mandi to deliver vegetables at the petitioner's Shop No.199, the complainant created a hurdle in the entry of the vehicle and started abusing and misbehaving with the farmers who came to deliver vegetables at the shop. The complainant created a ruckus, manhandled and snatched Rs.40,000/- from his clerk and the complainant caused injuries to himself. Thereafter, with the help of the local police lodged the present FIR and falsely implicated the applicant.

7. It is further contended on behalf of the petitioner Mohd. Anwar that the complainant was discharged from the hospital on the same day and the injuries suffered by the complainant was opined to be of simple in nature. It is further urged that the petitioner Mohd. Anwar had filed a complaint before the DCP South-East on 13.10.2016

against the complainant regarding the alleged conduct of the complainant and creating hurdle in the ingress and egress of the vehicle supplying vegetables to the shop of the petitioner and also misbehaving and abusing the farmers.

8. Learned counsel for the petitioner further contended that there is no allegation qua him of giving any blow of iron rod and the only role attributed to the petitioner is of exhortation to his sons that 'kill him'. It is argued on behalf of the petitioner Mohd. Anwar that the ingredients of Section 383 and 384 of IPC are not made out because delivery of property is sine-qua non for the commission of offence under Section 383 and 384 of IPC. Moreover there is no allegation of inducement and thereby delivery of the property, therefore the ingredients of offence under Section 384 of IPC is also not satisfied. However, at the most, the offence under Section 385 of IPC can be said to have been committed, which is a bailable offence. So far as ingredients of Section 308 are concerned, the same are also missing as the complainant was discharged from hospital within an hour after giving first aid and the MLC of the complainant records the injury was simple in nature and it was not sufficient to cause death, and at best the offence under Section 323 of IPC could be said to have been committed, which is also a bailable one.

9. It is submitted by learned counsel for the petitioner that nothing remains to be recovered from the petitioner and moreover, he is ready to join the investigation as and when desired. Therefore, the petitioner

be granted anticipatory bail in the present case. In support of his arguments, the petitioner Mohd. Anwar relied upon the decisions in *Joginder Kumar vs. State of U.P.*, 1994 (4) SCC 260; *Gurbaksh Singh Sibbia vs. state of Punjab*; *Savitri Aggarwal & others vs. state of Maharashtra & Ors.*, AIR (2009) SC 3173. He has also relied upon the decision of this court in CrI. A. No.965/2009 titled as *Ramesh vs. state*, decided on 22.01.2010.

10. Mr. Ashish Datta, Additional Public Prosecutor for the State has vehemently opposed the aforesaid contents raised on behalf of the petitioner Mohd. Anwar. The State has also filed a Status report. According to the status report it is informed that the petitioner Mohd. Anwar is involved in many heinous criminal cases in the area and is a BC of Bundle A of Police Station Amar Colony New Delhi. During the investigation, the NBW was taken against the petitioner and now the proceedings under Section 82 of Cr. P.C. have been initiated against him on 15.11.2016. He is still absconding. Therefore, in such a situation, bail application preferred by the petitioner Mohd. Anwar seeking anticipatory bail in the present case be rejected.

11. The contentions, arguments and legal submissions made on behalf of the petitioner Mohd. Anwar are heard, the status report filed on behalf of the State and the material placed on record, have been perused.

12. For granting anticipatory bail to the person against whom the allegations are leveled, the factors that need to be taken into

consideration while dealing with anticipatory bail, are; (a) The nature and gravity of the offence and the exact role of the accused must be properly comprehended before arrest is made; (b) The possibility of the applicant to flee from justice; (c) The possibility of the accused's likelihood to repeat similar or other offences; (d) while considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused; (e) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant and unless there are peculiar and special facts and circumstances in a given case, the Court would not be justified in extending the benefit of anticipatory bail to such a person.

13. So far as the different version of the prosecution story, as submitted by the petitioner Mohd. Anwar, the same can only be adjudged before the concerned court by leading cogent evidence. The issue before this court is whether in the circumstances of this case, petitioner is entitled to anticipatory bail or not and whether the learned Additional Sessions Judge was justified in rejecting the anticipatory bail to the petitioner. The judgments relied upon by the petitioner is of no help to the case of the petitioner as in criminal jurisprudence, every case is to be adjudged on its own facts and situations.

14. In the case at hand, on a careful scrutiny of the record, this court

observes that the petitioner Mohd. Anwar is a BC of the area, involved in many heinous crimes in the area and despite NBWs directed against him, he is evading from his arrest. Proceedings under Section 82 of Cr. P.C. have also been initiated against him. There is also an instigation from the petitioner Mohd. Anwar to his sons, when he said, 'kill him'.

15. *Past involvement in criminal cases is one of the relevant factors to be considered at the time of granting of anticipatory bail. Particularly, recording of the name of accused as history sheeter, must be taken into consideration while granting the anticipatory bail.*

16. In the facts and circumstances of the present case this court observes that the trial of this case is at the initial stage; as per FIR, the petitioner has been attributed the role of instigating his sons by saying "kill him". It is further observed that the petitioner is absconding from arrest despite the NBW being issued and proceedings under Section 82 of Cr. P.C. being initiated against him, therefore, the facts emerging from the record culminates into dismissal of the present bail application. Accordingly, the present bail application filed by the petitioner is dismissed.

17. Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for anticipatory bail made by the petitioner.

Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

18. With aforesaid direction, the present bail application, filed by the petitioner stands disposed of.

NOVEMBER 30, 2016
pkb

(P.S.TEJD)
JUDGE

