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

Judgment delivered on: 19.01.2024

+ **BAIL APPLN. 3772/2023 & CRL.M.A. 30740/2023**

BHARAT YADAV

..... Petitioner

Through: Mr. P.K. Dubey, Sr. Adv. with Mr. Ajay Kumar Pipaniya, Ms. Aditi, Mr. Harjas P. Singh and Mr. Aditya, Adv.

versus

STATE (GOVT. OF NCT OF DELHI) AND ORS..... Respondents

Through: Mr. Hemant Mehla, APP for State with Insp. Arun Chauhan, SHO, PS. Jahangir Puri.

Mr. Ashok Kumar Singh, Sr. Adv. with Mr. Manoj Sharma, Ms. Saloni Singh, Ms. Meghna Butolia, Mr. Yagya Kumar Gautam, Mr. Rajat Joshi and Ms. Rachna Yadav, Adv. for complainant.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. This is a petition filed by the petitioner under Section 438 CrPC seeking anticipatory bail in connection with FIR No. 445/2023 under Sections 302/120B/34 IPC and Sections 25/27 of Arms Act registered at Police Station Jahangir Puri.



2. The case of the prosecution as borne out from the status report is that on 22.05.2023, information was received at Police Station Jahangir Puri regarding MLC No. 227681/23 of Bijender Yadav S/o Lt. Kartar Singh R/o Bhalaswa Village, Delhi. On the MLC, the doctor mentioned “*Alleged history of gunshot injury*” & declared the deceased as ‘brought dead’. The police reached and inspected the crime spot.
3. Thereafter, statement of eye-witness Sukhbir was recorded wherein he stated that on 22.05.2023, there was a *Shivling Sthapna* in Shiv Mandir near *Meetha Kuan* and *bhandara* was being organised there. Sukhbir along with Bijender Yadav (the deceased), Virender@Billu and other public persons of the village, was present at the spot. At about 02:50 pm, Sanju Yadav, Sandeep Panwar, Jay Singh and Suraj came there. Sanju shot Bijender Yadav in his head and pumped bullets in his body. Sandeep Panwar and Jay Singh also fired on Bijender Yadav, hence, the present case was registered.
4. On 26.05.2023, accused Sanju, Sandeep Panwar and Jay Singh were arrested. During the course of investigation, it transpired that Bharat Yadav (the petitioner herein) had previous enmity with the deceased Bijender Yadav as the petitioner thought that on 12.04.2023 one person namely Suresh, fired at his cousin brother at the instance of the deceased. Therefore, the petitioner hatched a conspiracy with his brothers to eliminate the deceased. For the said purpose, fire arms were arranged from his friend namely Amit@Kale, who along with the petitioner helped the assailants to escape from Delhi.
5. Mr. Pramod Kumar Dubey, learned senior counsel appearing on behalf of the petitioner submits that the petitioner has been falsely



implicated in the present case. He submits that the petitioner has not been named in the FIR. Even the four eye-witnesses namely, Sukhbir (complainant), Radheshyam, Gajraj Yadav and Virender Yadav, whose statements were recorded under Section 161 CrPC have not alleged that the petitioner was seen at or around the alleged place of incident nor have they stated anything in respect of the alleged rivalry between the petitioner and the deceased.

6. He submits that co-accused namely, Sanju and Sandeep were arrested on 25.05.2023 in *kalandra* under Section 41(1)(ba) CrPC recorded vide DD no. 194A, on the basis of secret information in respect of the commission of offence pertaining to the present FIR. In their disclosure statement the said co-accused gave their account of the alleged incident, but did not name the petitioner in any manner. Subsequently, a second disclosure statement of the co-accused Jay Singh, Sanju and Sandeep was recorded in which they made a departure from their earlier statement and disclosed that the petitioner was involved in the planning of deceased's murder. He submits that on the basis of second disclosure statement of the said co-accused, Section 120-B IPC was invoked by the prosecution.

7. He submits that total 04 eye witnesses of the alleged incident namely Sukhbir (the complainant), Radheyshyam, Gajraj Yadav and Virender Yadav were examined, and all are residents of the same area, yet they have not made any statement with regard to the alleged rivalry between the petitioner and the deceased.

8. He submits that it is a settled position of law that the disclosure statement of co-accused cannot be relied upon. According to Mr. Dubey



there is no substantive evidence to show the involvement of the petitioner in the alleged murder. He submits that there is no evidence to indicate the time or the beginning and end of the conspiracy except the disclosure statement of the co-accused, which cannot be legally relied upon.

9. He submits that even in the disclosure statements of the co-accused, no specific role in the conspiracy has been ascribed to the petitioner, in as much as, there is no allegation that the petitioner has aided, facilitated or arranged arms for the alleged crime.

10. Mr. Dubey contends that the motive attributed to the petitioner is that the petitioner had previous enmity with the deceased as petitioner's cousin namely, Suraj Yadav was fired upon by one Suresh on 12.04.2023 and the petitioner thought that the shot was fired at the instance of the deceased, for which FIR No. 360/2023 u/s 307 IPC was registered at PS Jahangirpuri. He submits the story of the prosecution is self contradictory. On one hand it is alleged that the conspiracy was hatched by the petitioner and other co-accused after the incident of 12.04.2023, whereas on the other hand it is alleged that arms for executing the plan were arranged by one Amit @ Kale about 7-8 months prior to the date of incident that took place on 22.05.2023.

11. In regard to the incriminating circumstance as to the petitioner being seen in the CCTV footage at Hotel HS Regency in Amritsar, Punjab on the next day of the incident, Mr. Dubey submits that the said circumstance is subsequent to the incident and on the basis of the same the petitioner cannot be treated as conspirator to murder of the deceased when there is no material to establish any role of the petitioner in the conspiracy or otherwise.

12. It is next submitted by Mr. Dubey that custodial interrogation of the



petitioner is not required since no recovery has to be effected from the petitioner, as all the recoveries have already been made from the co-accused persons and nothing remains to be recovered.

13. Lastly, he contends that the prosecution deliberately delayed the filing of status report in the present case which resulted in initiation of proceedings under Section 82 CrPC against the petitioner herein.

14. He, therefore, urges that the petitioner may be granted the concession of anticipatory bail.

15. *Per contra*, learned APP appearing on behalf of the State, supported by the learned senior counsel for the complainant, has argued on the lines of the Status Report.

16. The learned senior counsel for the complainant submits that the very fact that the petitioner is seen in the CCTV footage along with the co-accused at Amritsar on the next date itself shows petitioner's complicity and he being the part of the entire conspiracy. He invites the attention of the court to Section 8 of the Indian Evidence Act, 1872 to submit that the act of the petitioner immediately after the incident is a relevant fact and there is no substance in the contention that the petitioner had only assisted or helped the co-accused after the conspiracy to commit the offence had terminated.

17. He submits that proceedings under Section 82 CrPC were initiated against the petitioner, as he had been avoiding the process and subsequently, he was declared a proclaimed offender. He submits that in view of this development, the present petition seeking anticipatory bail is not maintainable.

18. I have heard the learned senior counsel for the petitioner, the learned



APP for the State and the learned senior counsel for the complainant.

19. In the status report filed by the State, it is stated as under:

- i. The accused/Petitioner had previous enmity with the deceased Bijender Yadav as he was under the impression that on 12.04.2023 one person namely Suresh who is a member of the alleged gang of the deceased fired on the cousin brother of the petitioner at the instance of the deceased which led to developing rivalry between the petitioner and the deceased. The petitioner also had an ambition to become a political power whereas deceased Bijender Yadav was his rival.
- ii. During their police custody, the co-accused namely, Jay Singh Yadav, Sandeep Panwar and Sanju Yadav, disclosed the fact that the applicant was involved in the conspiracy of the murder of Bijender Yadav.
- iii. The petitioner actively participated in harbouring the assailants of the present case. He had helped the assailants to escape from Delhi in two vehicles and had also made arrangements of their stay at Hotel HS Residency, Amritsar, Punjab. Photographs have been attached with the status report showing the presence of the petitioner along with the co-accused at Amritsar on the next of the incident. Mere fact that the petitioner was seen with the co-accused persons on the next date of incident, itself establishes that the petitioner was one of the co-conspirator of the alleged incident.
- iv. Amit@Kale who is a close friend of the applicant was the one who procured illegal arms from his known person Kali and supplied



the same to the brothers of the petitioner.

v. The phone of the deceased was taken into possession wherein some conversation of the deceased with public persons were recorded & in the said recordings, the deceased expressed the apprehension of attack upon him by the petitioner and his brothers.

vi. On 25.07.2023, a firing incident took place outside the house of the deceased & the wife of the deceased had also expressed her apprehension that the said act was done by the brother of the petitioner i.e., Suraj Yadav at the instance of the petitioner in order to cause harm to the family of the deceased.

vii. This is the third bail application filed by the petitioner/accused and sincere efforts have been made to arrest the petitioner and their other associates but despite continuous efforts, they could not be arrested as they are evading their arrest.

viii. On 26.07.2023, the learned Metropolitan Magistrate, Rohini Court, Delhi had issued NBW against the absconding persons but despite sincere efforts they could not be apprehended. Accordingly, proceedings under Section 82 CrPC were initiated against the accused persons including the present petitioner on 22.08.2023 and they were declared as proclaimed offenders on 22.11.2023.

ix. An apprehension has been expressed that the accused persons and the family of the deceased are resident of the same locality. If the accused is enlarged on bail, he can cause harm to the life of the family members of the deceased and the incident of firing dated 25.07.2023 at the house of the deceased is an example of the same.



x. It is stated that the custodial interrogation of the accused is essentially required to verify the facts and to arrest the other co-accused persons who helped them.

20. It is trite law that while considering an application for 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.¹

21. In the present case the allegations against the petitioner are serious. The status report mentions that the petitioner is a part of the conspiracy to commit the murder of the deceased Bijender Singh. This has been disclosed by the co-accused namely, Jay Singh Yadav, Sandeep Panwar and Sanju Yadav, *albeit* in their second disclosure statements, but at this stage the said disclosure statements cannot be negated all together in view of another incriminating circumstance that on the very next date of the incident the petitioner is visible in the CCTV footage along with the co-accused at Hotel HS Residency, Amritsar, Punjab. It is stated in the status report that the petitioner actively helped the assailants to escape from Delhi in two vehicles and had also made arrangements of their stay at Hotel HS Residency, Amritsar, Punjab.

22. In the *State of Haryana vs Samarth Kumar*,² the Hon'ble Supreme negated the contention of the accused that at the stage of anticipatory bail he is entitled to the benefit of the decision in *Toofan Singh v. State of Tamil*

¹*Lavesh vs. State (NCT of Delhi): (2012) 8 SCC 730*

²*2022 SCC OnLine 2087*



Nadu,³ wherein it has been laid down that the disclosure statement of co-accused under Section 67 of the NDPS Act is inadmissible, by observing as under:

“8. In cases of this nature, the respondents may be able to take advantage of the decision in Tofan Singh vs. State of Tamil Nadu (supra), perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.”

23. In the status report it has also been mentioned that yet another incident of firing had taken place on 25.07.2023 outside the house of deceased Bijender Singh, which led to registration of another FIR No.548/2023 under Section 336 IPC. The wife of the deceased has expressed doubt that the said firing was done by Suraj Yadav at the instance of the petitioner, to cause harm to the family of the deceased. It is further stated in the status report that the family of the deceased lives in the same locality and in case the petitioner is extended the concession of anticipatory bail, he may cause harm to the life of the family members of deceased.

24. That apart, the petitioner has been declared proclaimed offender on 22.11.2023. The contention of the learned Senior Counsel for the complainant is that once the petitioner has been declared the proclaimed offender the present petition seeking pre-arrest bail will not be maintainable. On the other hand, the submissions made by the learned Senior Counsel for the petitioner is that when the petitioner was declared proclaimed offender he was already before this Court, in as much as, he had already filed an application seeking anticipatory bail application on 07.11.2023. To be noted that the process under Section 82 CrPC was issued against the petitioner on

³ (2021) 4 SCC 1



22.08.2023 i.e. prior to the first anticipatory bail application filed by the petitioner on 26.08.2023.

25. Be that as it may, the investigation *qua* the petitioner is still at the nascent stage and the allegations are serious which warrants custodial interrogation of the petitioner to unravel the entire conspiracy and to find and arrest other persons who helped the accused in the commission of crime. Further, there is an apprehension expressed that in case the petitioner is granted concession of anticipatory bail, he may harm the family members of the deceased.

26. In view of the aforesaid circumstances, no ground for anticipatory bail is made out. The petition is accordingly, dismissed.

27. The petition along with pending application being CRL.M.A. 30740/2023 stands disposed of.

28. Order *dasti* under the signatures of the Court Master.

29. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J.

JANUARY 19, 2024
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