

(2018) 01 DEL CK 0178

In the Delhi High Court

Case No : Bail Application No. 1986, 2001 Of 2017, Criminal Miscellaneous
Application No. 16716, 16824 Of 2017

Lokesh Khattar

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

Date of Decision : 04-01-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 34, 149, 308, 323, 506

Citation : (2018) 01 DEL CK 0178

Hon'ble Judges : Sangita Dhingra Sehgal, J

Bench : Single Bench

Advocate : K.K. Manan, Ankush Narang, Manveen Dhanjal, Shivani Kant,
Prateksha, Amit Ahlawat, Irfan Ahmed

Final Decision : Dismissed

Judgement

Sangita Dhingra Sehgal, J

1. By way of the present petition filed under Section 438 of the Criminal Procedure Code, 1973 (hereinafter referred as 'Cr.P.C.'), the petitioner seeks grant of anticipatory bail in respect of FIR No. 186/17, under Section 323/308/506/34 of The Indian Penal Code, 1860 (hereinafter referred as 'IPC'), registered by P.S. Mayapuri, New-Delhi.

2. Briefly stated the facts of the case are that the complaint was lodged by one Sanjay Khattar, who alleged that on 09.07.2017, at around 7:00 pm, when he along with his wife was selling goods on patri opposite shop Deepak electronics/ shop belonging to his brother Deepak Khattar/petitioner, a scooter of one Deepak's customer was parked on part of the patri and on request made to the said customer by the complainant, it was made to be parked at some distance. On this, Sanjay Khattar got agitated and started abusing them and then asked his son namely Praveen Kumar and Lokesh Kumar/petitioner to kill them. After which, scuffle took place between them and Deepak Khattar/petitioner along with

his sons beaten up the complainant . Thereafter, the complaint was lodged against the petitioners under Section 323/308/506/34 of IPC. Hence, the present petition.

3. The learned counsel for the petitioner contended that the present FIR filed against the petitioner is false and fabricated; that the petitioners were victim of circumstances as the complainant tried to hit Deepak Khattar /father of Lokesh with a hammer on his head and on failure to do so, hit him on the foot; that the Deepak Khattar /father of Lokesh/petitioner also sustained injury and got examined himself vide MLC No. 5965 on 09.07.2017; that perusal of the CD shows that the petitioners are no where seen hitting the complainant; that the complainant has been giving threats to the petitioners to implicate them in false cases and even complaint has been filed by Deepak Khattar/petitioner at P.S Mayapuri on 12.07.2017; that the complainant has already been discharged from the hospital and the injuries are simple; that there is a delay of 3 days in filing the present FIR; that the petitioner is not required for any custodial interrogation. Hence, the present petition should be allowed.

4. Per Contra, the learned APP for the State for contends that benefit of anticipatory bail should not be accorded to the petitioner as the offence is of serious nature.

5. I have heard the learned counsel for the parties and perused the material available on record.

6. After giving careful consideration to the entire facts and circumstances of the present case, it is observed that the petitioners herein is involved in a serious crime in association with each other. It was specifically alleged by the complainant during lodging of FIR that when the scuffle took place, Deepak Kumar/petitioner asked his sons namely Lokesh Kumar/petitioner and Praveen Kumar to brutally beat them and kill the complainant and his wife, as he will further manage things. Thereafter, Praveen Kumar got lathi, Lokesh Kumar/petitioner caught him with his hands and Praveen attacked him on his head by lathi. It was alleged that Lokesh Kumar/petitioner also attacked him by giving fist blow on his ribs and attacked his wife as well. It was further alleged that they were even threatened by them when they were taken to the hospital for medical treatment.

7. Perusal of the record further shows that the complainant received some serious injuries and the MLC No. 6008/17 stated the following injuries sustained by him, that is , (1) CLW (4X 0.5) over (Lt) parietal region (2) Bruises over (Lt) shoulder (3) Bruises over (Lt) hypochondria and MLC No. 5443/17 (1) swelling over the dorsum of (Lt) hand with tenderness (2) Reddish liner bruise seen over the anterior aspect (Rt) thigh with swelling and tenderness (3) Reddish liner bruise seen over the anterior aspect (Lt) thigh (4) Tenderness with overlying liner abrasion over the (Lt) shoulder and difficulty in abducting the shoulder (5) Reddish liner bruise over the exterior aspect of (Lt) arm. The said report shows

that the injury received by him are serious and further, it is also observed that even his wife sustained injury on account of such brawl and her MLC No.5443/17, stated nature of injury simple.

8. In the complaint, the complainant has alleged that the petitioners acting in close connivance with each other have inflicted serious injuries on the complainant and his wife. In the facts and circumstances of the present case, determining the parameters in granting anticipatory bail in cases of serious offences, The Supreme Court in Bhadresh Bipinbhai Sheth vs State Of Gujarat & Anr reported in (2016) 1 SCC 152 after analyzing the entire law has observed as under:-

"(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(c) The possibility of the applicant to flee from justice;

(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because overimplication in the cases is a matter of common knowledge and concern;

(h) 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;

(i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

9. Keeping in view the facts mentioned in the present case as well as the decision of the Apex Court above, this court is not inclined to grant anticipatory

bail to petitioner. Accordingly, petition stands dismissed.

10. Observations made in the order shall have no impact on the merits of the case.