

(2017) 11 DEL CK 0705

In the Delhi High Court

Case No : Bail Application No. 2049 Of 2017

Mohd. Moti

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

Date of Decision : 06-11-2017

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438, 439
Indian Penal Code, 1860 — Section 34, 307, 452

Citation : (2017) 11 DEL CK 0705

Hon'ble Judges : Sangita Dhingra Sehgal, J

Bench : Single Bench

Advocate : Mobin Akhtar, Anita Abraham

Final Decision : Dismissed

Judgement

Sangita Dhingra Sehgal, J

Crl. M. A. No. 16758/2017 (Exemption)

Exemption allowed, subject to just exceptions.

Application stands disposed of.

Bail Appln. No. 2049/2017

1. The present petition has been filed under Section 438 Cr.PC for seeking anticipatory bail in case FIR No. 498/2017 under Sections 307/452/34 IPC registered at Police Station - Sangam Vihar.

2. The brief and necessary facts to dispose of the present petition is that on 17.09.2017, the complainant/Roshanara along with her son Owais Altmas went to the house of her sister-in-law/Akbari Khatton where her another sister-in-law/Gulshan Aara, Devrani/Majhabin Fatima and Rehan, son of Akbari Khatton were already present; that at about 9:00p.m., accused Raja @ Shamshad along with his friends Salman @ Nepali and Naseem came there and enquired from

Majhabin Fatima about her husband Nihal; that Raja and Salman were armed with knife and Nasim was carrying an iron rod; that when Mahjabin expressed her inability to tell about her husband Nihal, Raja put hold the neck of Mahjabin Fatima; that the complainant, Owais Altmas, Rehan and Gulshan tried to help Mahjabini Fatima, Raja inflicted injuries on the complainant and her son Owais Altmas; that Salman inflicted injuries on Rehan; that Nasim attacked on Gulshan with an iron rode; that in the meantime Mohd. Moti, father of Raja @ Shahsad, Rehmat Hussain, father of Salman came to the spot and both instigated the accused persons to kill the complainant and her companions; that people of the locality gathered at the spot on which all accused persons succeeded to flee from the spot; injured were transferred to Majidia Hospital; that victim Owais Altmas received grave injury whereas complainant and other victims received simple injuries.

3. Learned counsel for the petitioner contended that the petitioner is an innocent person having clean antecedents; that the petitioner has no role to play in the alleged scuffle took place between his son and the complainant and her relatives; that the petitioner was not present at the time of alleged incident and he came to know about the same later on; that the complainant and his relatives belongs to the same village of the petitioner and the instant FIR is the outcome of the personal grudge against each other.

4. Per contra, learned APP for the State vehemently opposed the present bail application and contended that non-bailable warrants have already been issued against the petitioner and he is evading the process of law and was involved I the commission of crime; that the petitioner exhorted the other co-accused persons by saying "Maro Saalo Ko" which made them inflict knife injuries on the complainant and her family members.

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

6. In Central Bureau of Investigation V. Vijay Sai Reddy reported in (2013) 7 SCC 452, wherein the Apex Court has observed that: "While granting bail, the court has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

7. In Singashan Singh Vs. State of Bihar and Ors. reported in 2015 (1) RCR (Criminal) 786, the Apex Court held that :

"This Court has time and again held that neither anticipatory bail nor regular bail can be granted as a matter of rule. Sections 438 and 439 of the Code substantially embody the same principle so far as appreciation of the case as to whether or not a bail is to be granted. The judicial discretion vested in the Court requires to be appropriately exercised with proper application of mind in determining whether a case is a fit case for grant of anticipatory bail or not. The 41st Report of the Law Commission of India recommended the introduction of a provision for grant of anticipatory bail has observed that "power to grant anticipatory bail should be exercised in very exceptional cases". It should only be exercised in exceptional cases when the court is satisfied that the person to be enlarged on anticipatory bail would not misuse his liberty."

8. As per the record, the role attributed to the petitioner, father of accused Raja is that he along with co-accused Rehmat Hussain, father of accused Salman came to the spot and both instigated other accused persons, who were carrying deadly weapons, to kill the complainant and her family members. As per MLC, victim Owais Altmas received grievous injury (Life threatening). The role assigned to the petitioner is similar to the role of co-accused Rehmat Hussain, father of accused Salman, who was arrested on 18.09.2017 and sent to judicial custody on 19.09.2017. The petitioner is absconding and evading the process of law and non-bailable warrants have also been issued against him.

9. Keeping in view of the settled principle of law for grant the anticipatory bail and facts and circumstances of the present case, I am not inclined to grant anticipatory bail to the petitioner at this stage. Accordingly, the present petition is dismissed.

10. Before parting with the above order, it is made clear that observations made in the order shall have no impact on the merit of the case.