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

+ BAIL APPLN. 2264/2022

SANTOSH KUMAR JHA

..... Petitioner

Through: Mr. Atul Kumar, Advocate alongwith
Ms. Sweety Singh, Mr. Rajiv Ranjan, Mr. Rahul
Panjey, Mr. Kumar Pranav, Mr. Mukesh Pushpam
& Mr. Amitabh Ranjan, Advocates

Versus

GOVT OF NCT OF DELHI THROUGH THE STANDING
COUNSEL

..... Respondent

Through: Mr. Harpreet S. Popli, APP for State

CORAM:

**HON'BLE MR. JUSTICE PURUSHAINDR KUMAR
KAURAV**

ORDER

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29.07.2022

CRL.M.As. 14554-14556/2022 (Exemptions)

1. Allowed, subject to all just exceptions.
2. The applications stand disposed of.

BAIL APPLN. 2264/2022

1. This is the first anticipatory bail application under Section 438 of Cr.P.C. on behalf of the applicant in connection with FIR 346/2022 for the offences punishable under Sections 145/147/148/149/186/353/308/505 of IPC & Sections 3/4 of Prevention of Damage to Public Property Act, 1984 registered at Police Station Gandhi Nagar, Delhi.

2. Learned counsel appearing on behalf of the applicant submits that the applicant is innocent and he has been falsely implicated in the present case. He submits that the applicant has not committed any crime. According to him, on 01.07.2022 a gruesome murder of a poor lady Radha Devi took place at Raghupura II, Gandhi Nagar, New Delhi. The place of the incident was barely 1 Kilometre from Gandhi Nagar, Police Station. However, despite of the seriousness of the crime, the police did not take appropriate steps to register an FIR. Non-registration of FIR has created immense panic in the locality and after lot of persuasion by the local residents on 04.07.2022 an FIR was registered for the offence punishable under Section 302 of IPC bearing FIR No. 341/2022. No accused were arrested and, therefore, the local residents decided to organised peaceful protest on 07.07.2022 for fair and impartial investigation and to arrest the concerned accused to ensure that the justice is done to the victim. In the aforesaid peaceful march many people of the locality volunteered to participate, and the crowd became uncontrolled which resulted using disproportionate force by the police to disperse the peaceful protesters in which minor skirmishes happened leading to minor bruise injuries to the 10 police personnel.

3. Learned counsel for the applicant submits that since the applicant is known figure of the locality and he was one of the protestors, therefore, he has been wrongly framed in the present case. He also submits that the applicant was guiding the protestors not to use any violence or cross their limits and if the entire videographs, photos etc., are considered, the same would clearly demonstrate that there is no overt act by the petitioner. It is submitted that the applicant has not caused any injury to any of the police

personnel. He further submits that the applicant is ready to cooperate with the investigation and there is no criminal antecedents against him.

4. Learned APP for the State, on the other hand, has vehemently opposed the instant bail application.

5. The Status Report has been placed on record. As per the Status Report, with respect to FIR No. 341/2022, the accused therein was arrested on 06.07.2022 and he was sent to the judicial custody. The present applicant is the President of *Purvanchal Nav Nirman Sanghathan*. When the present applicant intended to organise protest and on receiving such an intimation through social media, the police department declined for the permission owing to Covid-19 pandemic and considering the fact that the law and order situation in the area was not very conducive. The applicant was duly conveyed the decision of the department telephonically. As per the Status Report, there was a gathering of about 300-350 people without any permission at the instance of the applicant. Realising the situation, the applicant was again directed to call off the march but despite that, he continue to proceed towards *Mahila Colony T point*. It is also stated that the applicant despite of the fact that the protest was getting violent continue to instigate and provoke the crowd against the police of police station Gandhi Nagar, Delhi. He alongwith the members of unruly crowd forcefully broke the barricade line. A part of mob around 100-150 people started picking up the stones from the roadside and gathered in front of police station, started pelting stones at the main entry of the police station. The agitating mob damaged the two police gypsies including an ERV (Emergency Response Vehicle). In the entire incident total 10 police officials were injured (including lacerated head injury and orthopaedic injury). Total 16 persons

were arrested on the spot. In all during investigation as of now, 19 male persons have been taken into custody and two ladies were bound down. According to prosecution, the material collected so far clearly indicated that riot had taken place under the instigation of the present applicant, one *Sonu* (Vice President of the Purvanchal Nav Nirman Sangthan Association) and *Saurabh* (Treasurer of the Purvanchal Nav Nirman Sangthan Association). All these office bearers took meeting on the preceding day of the incident i.e. 06.07.2022. According to Status Report, there are other accused persons to be arrested. The role of the family members of the applicant is being examined. Their complicity in the offence cannot be ruled out. The sons of the applicant, namely, *Sonu & Saurabh* are involved in criminal case of assault vide FIR No. 492/2021 dated 24.10.2021 under Sections 323/341/506/34 IPC. The applicant is evading his arrest, and therefore, non-bailable warrants has been issued against him. He also states that the applicant being influential person in the locality has a capacity not only adversely influence the investigation, but he can also win over independent witnesses. He further submits that mandate of Section 41 & 41A of Cr.P.C. would be followed. Under the aforesaid circumstances, it is prayed by learned APP for the State, that the applicant should not be granted anticipatory bail. He also placed reliance on the decision of the Hon'ble Supreme Court in the cases of *MSP v. The State of Madhya Pradesh and Another*, CRL.A. 740/2022 dated 05.05.2022 & *Neeru Yadav v. State Of U.P. & Anr*¹.

6. I have heard learned counsel for the parties and perused the record.

¹ (2014) 16 SCC 508

7. Law on the applicability of grant of anticipatory bail under Section 438 of Cr.P.C. is well settled. The Hon'ble Supreme Court in the case of *Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors*², while relying on the Constitution Bench judgment in the case of *Gurbaksh Singh Sibbia and Others v. State of Punjab*³ has laid down various factors to be considered. Besides other factors, the nature and gravity of the accusation and the exact role of the accused must be properly comprehended. An impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people is one of the factors. A balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused. The Court should also keep in mind reasonable apprehension of tampering of the witness or apprehension of threat to the complainant.

8. The Hon'ble Supreme Court in the case of *Arnab Manoranjan Goswami v. The State Of Maharashtra*⁴ has also emphasized that Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. Equality is the duty of courts across the spectrum- the district judiciary, the High Courts and the Supreme Court – to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum – the need to ensure the proper enforcement of criminal law on the one hand and the need,

² (2021) 1 SCC 694

³ (1980) 2 SCC 565

on the other, of ensuring that the law does not become a ruse for targeted harassment.

9. Any attempt to create an impression that one can over reach the law and still he can enjoy the liberty would not be comprehended in the constitutional scheme. When an individual behaves in disharmonious manner, society disapproves and the legal consequences are bound to follow.

10. In the instant case, the act of the applicant is not singular. Firstly, he in disobedience of the directions issued by the police department proceeded to organised march. Secondly, despite first warning given to him by the police to stop at a particular point, he continued to proceed with the mob. Thirdly, when mob had become unruly, he continued to instigate the same. On account of applicant's irresponsible conduct, police personnel have sustained serious injuries. 19 persons have already been arrested. The investigation is at its initial stage and no charge sheet has been filed till date. The recoveries from the applicant are yet to be made. The role of other conspirators is yet to be examined. The custodial interrogation of the present applicant is insisted by the Investigating Officer.

11. Under the aforesaid facts and circumstances of the case, this Court does not find it appropriate at this stage to enlarge the applicant on anticipatory bail. Hence, the instant bail application is dismissed.

PURUSHAINDR KUMAR KAURAV, J

JULY 29, 2022

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⁴ (2021) 2 SCC 427