

Sourav Kumar vs.the State

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Court : Delhi

Decided On : Dec-04-2017

Appellant : Sourav Kumar

Respondent : The State

Judgement :

§~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + BAIL APPLN. 2325/2017
Order reserved on:

24. HNovember, 2017 Order pronounced on:

4. h December, 2017 SOURAV KUMAR .Petitioner Through: Mr. Kishan Singh Chauhan and Mr.A.K. Mishra, Advocates. versus THE STATE ..Respondent Through: Mr. Anita Abraham, APP for State with ASI Rudresh, P.S- Jaitpur. CORAM: HONBLE MS. JUSTICE SANGITA DHINGRA SEHGAL1 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.400/2017, under Section 323/341/365/3 of the Indian Penal Code, 1860 (hereinafter referred as IPC), registered by P.S. Jaitpur, New-Delhi.

2. Briefly stated the facts of the case are that the complaint was lodged by one Tinkoo aged 17 years alleging that on 01.08.2017 at about 6.30 pm, when he was returning on his scooty bearing registration No.DL-3SDE-5240 from his Uncles

shop, he was stopped by two boys near the Lalu Kothi. They demanded money and took Rs. 200 from him. They also demanded mobile from him but he refused to give them his mobile phone. On this, they slapped BAIL APPLN. 2325/2017 Page 1 of 5 him and made him sit in the middle of the same scooty and one of them kept the knife on his back and took him at the back of the Baraat Ghar ground near Tent School where Sourav, Jeetu and Bhola Jaat were already present. Sourav was holding a punch in his hand and hit the complainant with the punch whereas Bhola Jaat was holding knife and hit the Complainant on his head. Jeetu and other boys hit him with blows and fits. People gathered at the spot after hearing his screams after which they ran away. The case was registered against the petitioner under Section 365/323/3 IPC. Hence, the present petition.

3. Mr. A. K. Mishra , the learned counsel for the petitioner contended that the present FIR filed against the petitioner is false and fabricated; that the complainant was pressurising and threatening the petitioner to introduce him to the girl named Sapna and on refusal to do so, he lodged the false complaint against the petitioner; that the complainant has been calling on mobile of the petitioner and even threatened him through messages, before the present case was lodged; that the doctors opined the injury as simple which cannot be said to be inflicted by a Punch or Knife; the petitioner is pursuing his B.A3d year from DAV Centenary College; that except the offence under Section 365 IPC, the other offences are bailable in nature; that the FIR was registered on the next day of the incident; that no custodial interrogation is required as nothing has been recovered at his instance. BAIL APPLN. 2325/2017 Page 2 of 5 4. On the converse, the learned APP for the State 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 petitioner herein is involved in a serious crime in association with the other co-accused(s). It was alleged by the complainant that

he was stopped by the two unidentified persons, who threatened him and snatched his money. From the perusal of the record, it transpires that the petitioner was involved in the commission of crime. A specific role has been assigned to the petitioner in the FIR whereby it was mentioned that the petitioner was having a punch in his hand and he has inflicted punch blow on the body of the complainant. The MLC report supports the case of the complainant wherein the doctor opined that the complainant has laceration of 5.1cm on his scalp. The MLC report supports the case of the complainant wherein the doctor opined that the complainant has laceration of 5.1cm on his scalp. Record further reveals that investigation is at earlier stage and recoveries are to be effected from the petitioner.

7. 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 SCC152 after analyzing the entire law has observed as under:-

"BAIL APPLN. 2325/2017 Page 3 of 5 (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 apprehension of 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 reasonable the witness or should tampering of consider BAIL APPLN. 2325/2017 Page 4 of 5 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 in entitled to an order of bail. 8. 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.

9. Observations made in the order shall have no impact on the merits of the case. SANGITA DHINGRA SEHGAL, J DECEMBER4, 2017 gr// BAIL APPLN. 2325/2017 Page 5 of 5

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