

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

% *Judgment delivered on : 28.12.2022*

+ **BAIL APPLN. 315/2022**

IMRAN @ SONU Applicant

versus

THE STATE Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Rashid Hashmi, Adv.

For the Respondent : Mr. Laksh Khanna, APP

SI Chander Bhan, PS Chandni Mahal

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed under Section 439, Code of Criminal Procedure, 1973 (Cr.P.C.) seeking regular bail in FIR No. 130/2019 dated 15.08.2019, under Sections 307/109/34 Indian Penal Code, registered at Police Station Chandini Mahal.

2. The brief facts as alleged are that the applicant and the complainant are relatives living in the same house bearing no. 2126, Gali Ahata, Meel Bakhri, Turkman Gate, Delhi and the complainant is Sister-in-Law of the applicant. On the intervening night of 14.08.2019/15.08.2019 at around 3:00 a.m., a scuffle took place between the mother of the applicant and the complainant. In the meantime, the applicant also came there and asked the complainant to vacate the house. The complainant refused to do so and was then attacked by the applicant with a knife. Subsequent to the aforementioned incident, the complainant rushed to the jhuggi of her husband where he resides

with his second wife and it is alleged that the applicant also followed her on her way and again attacked her with the knife, near the jhuggi of her husband. The complainant was taken to the hospital and was discharged the very next day.

3. The mother of the applicant, namely, Nazma, was also arrested as an accused in the present FIR and was granted bail by the learned Trial Court.

4. Learned counsel for the applicant states that the applicant has been falsely implicated in the present FIR on account of a property dispute. He states that the applicant is in judicial custody since 23.08.2019, and the trial is pending for more than two and a half years.

5. Learned APP for the State opposes the bail application and has filed a Status Report. He submits that the complainant was taken to the Lok Nayak Hospital and MLC No.113256004 was conducted, wherein the doctor after examination, had mentioned about the two incised wounds of approx. 10 cm * 2 cm below right lower jaw and another wound of size 6 cm * 2 cm on chin, which show that the injuries are grievous in nature.

6. He further states that the complainant along with her son resides in the same property as the applicant and his mother while her husband resides at a different place with his second wife due to which the dispute with regard to the property has arisen.

7. He submits that such kind of persons are a threat to the society and, therefore, should not be released on bail.

8. Prior to filing the present application, the applicant had approached the learned Trial Court seeking regular bail. The learned Trial Court, considering the nature of the offence, and the

manner in which it was committed, had declined to grant bail to the applicant.

REASONING

9. The Hon'ble Apex Court has, time and again, laid down the principles in relation to exercise of discretionary power for grant of bail, particularly, when the bails are refused by the Courts below.

10. It is settled that the Court has to keep in mind the nature of the charge, the nature of the evidence, the severity of punishment to which the accused may be liable if convicted, while considering the application for bail.

11. It is also rational to keep into account the antecedents of the man applying for bail that might suggest that he is likely to commit serious offences while on bail. The Hon'ble Apex Court in the case of *Ash Mohammad v. Shiv Raj Singh, (2012) 9 SCC 446* observed as under:

“17. We are absolutely conscious that liberty of a person should not be lightly dealt with, for deprivation of liberty of a person has immense impact on the mind of a person. Incarceration creates a concavity in the personality of an individual. Sometimes it causes a sense of vacuum. Needless to emphasise, the sacrosanctity of liberty is paramount in a civilised society. However, in a democratic body polity which is wedded to the rule of law an individual is expected to grow within the social restrictions sanctioned by law. The individual liberty is restricted by larger social interest and its deprivation must have due sanction of law. In an orderly society an individual is expected to live with dignity having respect for law and also giving due respect to others' rights. It is a well-accepted principle that the concept of liberty is not in the realm of absolutism but is a restricted one. The cry of the collective for justice, its desire for peace and harmony and its necessity for security cannot be allowed to be trivialised. The life of an individual living in a society governed by the rule of law has to be regulated and such regulations which are the source in law subserve the social balance and function as a significant instrument for protection of human rights and security of the collective. It is because fundamentally laws are made for their obedience so that every member of the society lives peacefully in a society

to achieve his individual as well as social interest. That is why Edmond Burke while discussing about liberty opined, "it is regulated freedom".

18. *It is also to be kept in mind that individual liberty cannot be accentuated to such an extent or elevated to such a high pedestal which would bring in anarchy or disorder in the society. The prospect of greater justice requires that law and order should prevail in a civilised milieu. True it is, there can be no arithmetical formula for fixing the parameters in precise exactitude but the adjudication should express not only application of mind but also exercise of jurisdiction on accepted and established norms. Law and order in a society protect the established precepts and see to it that contagious crimes do not become epidemic. In an organised society the concept of liberty basically requires citizens to be responsible and not to disturb the tranquillity and safety which every well-meaning person desires. Not for nothing J. Oerter stated:*

"Personal liberty is the right to act without interference within the limits of the law."

19. *Thus analysed, it is clear that though liberty is a greatly cherished value in the life of an individual, it is a controlled and restricted one and no element in the society can act in a manner by consequence of which the life or liberty of others is jeopardised, for the rational collective does not countenance an anti-social or anti-collective act."*

12. The grant of bail in exercise of discretionary power of the Court has to be necessarily exercised in a judicious manner and not as a matter of course.

13. The charge sheet has already been filed in the present case.

14. The applicant is found to have attacked the complainant with a knife which hurt her on the chin. The knife was recovered at the instance of applicant. The applicant didn't stop after the first attack and alleged to have chased the complainant and attacked her again with the knife on her throat. The wounds as indicated in the MLC show that the injuries were not minor.

15. The applicant had been initially found to be hiding and was apprehended subsequently on 22.08.2019.

16. A perusal of Status Report clearly indicates that there are multiple FIRs which were registered against the applicant. FIR No. 0051/2012 and 0038/2013 were registered under Section 323/341/34 of IPC. FIR No. 0033/2014 and 0136/2018 were registered under Section 307 of IPC. Two FIRs, that is, FIR No. 0182/2017 and 0097/2018 were registered under Section 25/54/59 of the Arms Act. FIR No. 0006/2015 was registered under Section 377/506 of IPC. Subsequently, the present FIR was registered under Section 307/109/34 of IPC.

17. Thus, the antecedent of the applicant clearly shows that he is a habitual offender. The records do not suggest that he is not likely to commit serious offences while on bail.

18. Another fact which also cannot be lost sight of is that the complainant resides in the same building and the applicant is admittedly disputing for the property.

19. At this stage, it cannot be said that the allegations have been levied for the purpose of falsely implicating the applicant.

20. Therefore, looking at the antecedents of the applicant and the fact that the complainant, while staying in the same building as the applicant, is also litigating in relation to the common properties, the likelihood of committing further offence while on bail cannot be ruled out.

21. The punishment which can be awarded for offence under Section 307, IPC, is up to 10 years. The gravity of the offence, at this stage, can be assessed from the fact that the complainant was chased after the first attack and again attacked on vital parts of the body.

22. Thus, even though the applicant has been in incarceration since 23.08.2019, the same cannot be pleaded as the sole ground for grant of bail [*Ref : Kalyan Chandra Sarkar v. Rajesh*

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Ranjan, (2004) 7 SCC 528]. Considering the nature of accusation, the severity of punishment in case of conviction, and the antecedents of the applicant, this Court does not deem it appropriate to grant bail to the applicant.

23. The application is, therefore, dismissed.

24. It is, however, made clear that any observations made in the present order are only for the purpose of deciding the bail application and should not influence the outcome of the trial.

DECEMBER 28, 2022

“SS/KDK”

AMIT MAHAJAN, J

सत्यमेव जयते