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

+ BAIL APPLN. 1118/2023

SAWAN Petitioner

Through: Mr. Pawan Kumar, Advocate.

versus

STATE Respondent

Through: Mr. Manoj Pant, APP for the State with SI Saurabh, P.S. Malviya Nagar. Mr. K.K. Manan and Mr. Mohit Mathur, Sr. Advocates with Ms. Udit Bali and Mr. Anil Basoya, Advocates for complainant.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

11.04.2023

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1. The instant application under Section 438 of the Code of Criminal Procedure, 1973 ('Cr.P.C') has been filed on behalf of accused/applicant seeking anticipatory bail in FIR bearing no. 138/2023, registered at Police Station Malviya Nagar, Delhi, for offences punishable under Sections 308/323/341/41 of the Indian Penal Code, 1860 ('IPC').

2. The present FIR discloses that on 08.03.2023, at about 8.00 pm, a verbal altercation had taken place between complainant/injured Fahad Khan and his cousin Mohd. Sadiq Khan, and accused/applicant Sawan and co-accused Salman, over an issue of weight of chicken purchased by the complainant, and the accused persons had threatened the complainant and his cousin. The story of the prosecution is that the applicant had threatened

to not even return the money to the complainant, and the complainant had returned without buying chicken. Thereafter, the complainant had told about the said incident to his brother Faraz and friend Rizwan, and Rizwan had told the complainant that he would pacify the accused/applicant since he knew him. When Faraz and Rizwan had gone to sort out the issue with the applicant, about 3 or 4 persons had started beating Faraz. When the complainant had rushed to save his brother, co-accused Salman had picked up an iron rod from his shop and the applicant had caught hold of the complainant and co-accused had hit him with an iron rod. The complainant had fainted at the spot due to the injury and was taken to AIIMS Trauma Centre where he was treated. On his statement, the present FIR was registered under Sections 323/341/41 of IPC on 09.03.2023. During the course of investigation, discharge summary, X-rays and MLCs were obtained, pursuant to which Section 308 IPC was added to the present FIR on 17.03.2023.

3. Learned counsel for present accused/applicant states that the applicant, aged around 27 years old, runs a chicken shop along with his friend and has no criminal antecedents. It is stated that complainant, on the other hand, is a practicing advocate and is well aware about the nuances of writing complaint and, therefore, police had lodged the complaint on a concocted story of the complainant to falsely implicate the applicant. It is argued that since the complainant wanted to pressurize the applicant to give chicken at lower price than market rate and had used filthy language against the applicant, the applicant had given him chicken @ 200/- per kg in place of market rate of Rs.220/- per kg only to avoid an altercation with him. However, thereafter, the complainant had returned to the shop with 20 to 25

boys and had slapped the applicant and had pulled his hair and only in defence, he and his brother had pushed the complainant, and the complainant had sustained injuries as he had fallen down on the sharp side of the marble slab. It is further stated that complainant had also taken away Rs. 15,000/- from the shop of applicant, for which a complaint was lodged with the SHO, but no action was taken on the said complaint. It is also stated that Section 308 of IPC had been added in the FIR on 17.03.2023, though FIR was initially lodged on 08.03.2023 for offences punishable under Section 323/341/34 of IPC only. It is stated that interim relief was granted to the applicant, however, the same was withdrawn on 27.03.2023 and the anticipatory bail application of the applicant was dismissed by the 1st Link Court of learned Trial Court. It is, therefore, stated that applicant be granted pre-arrest bail.

4. *Per contra*, learned APP for the State argues that the allegations against the present applicant are serious in nature and his custodial interrogation is necessary to apprehend other accused persons and for recovery of weapon of offence.

5. Learned Senior counsels for the complainant state that the complainant was hit with an iron rod on his head i.e. vital part of his body and he had given his statement only after he was declared fit to give statement, subsequent to which Section 308 of IPC was added in the present FIR on the basis of the injury sustained by the complainant. Therefore, it is prayed that considering the gravity of the offence, present bail application be rejected.

6. I have heard arguments on behalf of both sides and have gone through the material on record.

7. As per the case of prosecution, a scuffle had broken out between several persons, including the present accused/applicant and the complainant, and while the applicant had caught hold of the complainant, co-accused Salman had hit him on his head with an iron rod. The contention of learned counsel for applicant that Section 308 of IPC has been added later on and was not part of the FIR initially, is without merit since the statement of complainant was recorded after he was discharged from the hospital and was fit to give statement to the police. Section 308 of IPC has been added only after going through the MLC and considering that injury was on vital part of the body of the complainant. Learned Trial Court, before rejecting the bail application of applicant, had already sought an explanation from the SHO concerned on this issue and the explanation/report of SHO in this regard i.e. as to how section 308 of IPC came to be added to the FIR subsequently, was placed on record.

8. Further, the contention of learned counsel for applicant that since complainant is a lawyer and was, thus, well aware about nuances of writing a complaint and had, therefore, twisted the facts and police had lodged a false complaint against the applicant is concerned, it does not find favour with this Court, since a person's profession of being an advocate cannot be held against him. Merely because a person is a lawyer or a practising advocate by profession, his complaint upon sustaining an injury by someone cannot be disregarded merely on the ground of his being a practising advocate and thus he knew how to draft a complaint. The same would imply that an injured person who has his or her complaint prepared by a lawyer will be at better footing, than a lawyer himself who has suffered injuries on the vital part of the body.

9. If a person has a position of authority or skill and he is able to help others, then in his own case, his own skill, profession or position of authority cannot work to his disadvantage.

10. It is not the complainant's profession, but the factum of him being an injured, which has weighed in the mind of this Court while deciding the present application, since the MLC as well as the photographs which have been filed on record today, reveal that the complainant had suffered *laceration left frontal 2 x 1 x 0.5 cm*. It is to be noted that the injury was inflicted with an iron rod on the left frontal forehead of the complainant and the wound had to be stitched with six stitches above left eye on his forehead.

11. The iron rod used in the commission of offence is yet to be recovered, and the investigation in the present case is at initial stage. The fact that the complainant had been hit on the vital part of his body and had received six stitches point out towards gravity of the offence. In view thereof, at this stage, no ground for grant of anticipatory bail is made out in favour of accused/applicant.

12. Accordingly, the present application stands dismissed.

13. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

APRIL 11, 2023/kss

[Click here to check corrigendum, if any](#)