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

+ BAIL APPLN. 2227/2022

SHEIKH ISHRAFIL

..... Petitioner

Through: Mr. B.S. Chaudhary and Ms. Sneh
Lata Rana, Advocates.

versus

STATE (NCT) OF DELHI

..... Respondent

Through: Mr. Manoj Pant, APP for the State
with ACP Pradeep Kumar Paliwal,
Crime Branch, Rohini Sector 18.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

17.08.2022

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1. The instant application under Section 438 of the Code of Criminal Procedure, 1973 has been filed on behalf of the petitioner seeking anticipatory bail in FIR bearing No. 440/2022, registered at Police Station Jahangirpuri, for offences punishable under Sections 147/148/149/186/353/332/307/323/427/436/109/120-B/34 of the Indian Penal Code, 1860.

2. Notice. Learned APP accepts notice for the State.

3. The brief facts are that this is second application filed on behalf of the petitioner. It is submitted that the applicant/accused has been falsely implicated in the present case and is fearing arrest by the police officials. It is submitted that an incident had taken place at Jahangir Puri on 16.04.2022 and the police are alleging that the applicant/accused and his family members had somehow been involved in the same. It is stated that the father

of the petitioner had expired on 14.04.2022 and according to Muslim rites and customs, Teeja of his late father was performed on 16.04.2022, which started at around 12 noon to 11 p.m. near Eidgah C-Block, Jahangir Puri, Delhi. The petitioner's entire family, including his five sons, were involved in these rites. 500 persons were invited and at about 6:45 p.m., Roza Iftar was also arranged.

4. On 16.04.2022, at about 6 p.m., a commotion erupted in which two communities pelted stones at each other. On 17.04.2022, at about 3 a.m., the police from Police Station Jahangir Puri came to the house of the petitioner's eldest son and picked him up and subsequently, he was sent to judicial custody, on allegations of being involved in the Jahangir Puri riots.

5. It is submitted on behalf of the accused/applicant that he was not involved or seen around or was in the vicinity of place where riots/stampede took place on 16.04.2022. There is no CCTV footage pertaining to the involvement of accused/applicant in the stampede. The accused/applicant is not in possession of the house from the terrace of which, the alleged suspicious material has been recovered.

6. In support of his arguments, learned counsel for the accused/applicant has placed reliance on the following judgments:

- (i) *Siddharam Satlingappa Mhetre vs. State of Maharashtra (2011) 1 SCC (Crl.) 514.*
- (ii) *Bhadresh Bipinbhai Sneth vs. State of Gujrat & Anr. 2016 (Crl.) 240.*

7. On the other hand, learned APP for the State opposes the bail application stating that the present FIR was registered on the statement of Inspector Rajiv Ranjan who stated that on 16.04.2022, he along with other

staff were deployed for security arrangement in the area of Jahangirpuri as a procession was to be taken out on the eve of Shri Hanuman Jayanti. The procession was proceeding peacefully till it reached Jama Masjid, C-Block, Jahangir Puri at around 6 p.m., when a person named Ansar came there and started arguing with the members of the procession. Several of his associates also came to the spot and joined Ansar and arguments culminated in stone pelting and stampede. Additional force was called to control the situation and senior police officers also reached the spot. The mob went out of control and 52 tear gas shells had to be fired. The rioters were armed with deadly weapons, including fire arms, swords, etc., and they caused injuries to as many as 8 police officers, including SI Meda Lal, who sustained a bullet injury on his left forearm, due to firing by the rioters. Another civilian, who was part of the procession, also sustained injuries. The rioters damaged vehicles and set a Scooty on fire.

8. It was further submitted that during the course of investigations and questioning of people already apprehended, it has been revealed that the petitioner was one of the main conspirators and perpetrators of the entire incident and was evading process of law. It was the petitioner who was actively involved in aggravating the situation and instigating a particular community for pelting stones, bottles, and attacking the Hanuman Jayanti procession with firearms, swords, bricks, bottles and other weapons. He had spread message amongst the local residents and his community to accumulate stones, brick-pieces, glass bottles, swords and other arms, to be used at an appropriate time. The petitioner had hatched deep conspiracy to disturb the communal harmony of the country. It was further submitted that the FSL team found bricks, glass, ceramic pieces, and seized them from the

terrace of H.No.C-51, Jahangir Puri, belonging to the petitioner, apart from other places.

9. It is submitted by the learned counsel for the State that proceedings under section 82 Cr.P.C have been concluded against the applicant/accused and further proceedings under section 83 Cr.P.C. are going to be undertaken on the next date of hearing before the learned Trial Court.

10. I have heard arguments and have perused the record.

11. This Court observes that proceedings against the accused have been concluded under Section 82 CrPC which means that the accused has not been cooperating with the investigation. I place reliance on the judgment of the Apex Court in the case of **Prem Shankar Prasad vs. The State of Bihar & Anr., Criminal Appeal No. 1209 of 2021**, wherein the Hon'ble Supreme Court observed as below:

“...7.3 In the case of State of Madhya Pradesh vs. Pradeep Sharma (Supra), it is observed and held by this court that if anyone is declared as an absconder/proclaimed offender in terms of section 82 of Cr.PC, he is not entitled to relief of anticipatory bail. In paragraph 14 to 16, it is observed and held as under:

“14. In order to answer the above question, it is desirable to refer to Section 438 of the Code which reads as under:

“438. Direction for grant of bail to person apprehending arrest.—(1) Where any person has reason to believe that he may be arrested on accusation of having committed a nonbailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that court may, after taking into consideration, inter alia, the following factors, namely— (i) the nature and gravity of the accusation; (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a court in respect of any cognizable offence; (iii) the possibility of the applicant to flee from justice; and (iv) where the accusation has been made with the object of injuring or humiliating the applicant by

having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail: Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.”

The above provision makes it clear that the power exercisable under Section 438 of the Code is extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty.

12. In the case of ***Siddharam Satlingappa Mhetre vs State Of Maharashtra And Ors (2011) 1 SCC 694***, the Hon'ble Supreme Court dealt with the issue of anticipatory bail, and the balance that needs to be maintained while granting the same to an accused. It was observed as below:

"3. The society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests namely, on the one hand, the requirements of shielding the society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand absolute adherence of the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty."

13. The Apex Court further laid down in the abovementioned case the factors that must be taken into consideration while granting anticipatory bail and held as under:

"...122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

ii. 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;

iii. The possibility of the applicant to flee from justice;

iv. The possibility of the accused's likelihood to repeat similar or the other offences.

v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

vii. 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 accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. 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 the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. 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 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 is entitled to an order of bail..."

14. In the present case, the police has reported that offences had been committed on 16.04.022 near Jama Masjid, C-Block, Jahangir Puri wherein swords, bricks, bottles & fire arms were used. Police are investigating the

role of each person and they have found material evidence pointing to the involvement of the petitioner in the alleged offence. The petitioner admits that he had been present with 500 people at the Eidgah C-Block, Jahangir Puri, though for some other reason, namely, the Teeja rites for his late father. The FSL has found suspicious material such as bricks, glass, ceramic pieces from his terrace and his elder son has already been arrested.

15. The accused/applicant herein has been named by one of the eye witness as one of the perpetrator involved in the riots. Incriminating material which was used in the riots has been recovered from the terrace of the house owned by the accused/applicant only. It is not disputed that the said premises is owned by the accused/applicant herein. It is also not disputed that the accused/applicant has been absconding and has not cooperated in the investigation, rather, proceedings under section 82 and 83 of Cr.P.C. have been initiated against him. Custodial interrogation of the accused/applicant is warranted in the present case.

16. In these facts and circumstances, it is evident that the petitioner has not joined investigation and is purposefully evading arrest. The court cannot allow investigations to be thwarted by such applicants.

17. The applicant seeks indulgence of this Court and states that his personal liberty has been guaranteed by the Indian Constitution under Article 21 and cannot be lightly interfered with.

18. No doubt, the fundamental right of personal liberty has been granted to every citizen of this country. However, the same is subject to duties which are in turn cast upon every citizen. In the present case, the applicant has evaded arrest and proceedings under section 82 Cr.P.C. have been concluded against him. The proceedings under section 83 Cr.P.C. are pending. The

applicant has not co-operated with the investigating agency. Though on one hand, it is argued that the applicant was in charge of ensuring peace in the locality, on the other hand, his conduct of not co-operating with the investigating agency or even joining investigation despite the fact that suspicious material has been found on the terrace of his house during the Jahangir Puri riots points to the contrary.

19. Ensuring peace and harmony in the country and communities is the most sacred duty of not only the law enforcing agencies and the Courts but duty has been cast on every citizen of this country that they should maintain peace and harmony and ensure that their acts do not instigate and promote communal hatred or ill-will.

20. The conduct of the applicant/accused was allegedly an attempt to disturb the communal harmony of the area by trying to create a rift between two communities. The Court has to note that these are grave allegations of acts which taking advantage of fact of eve of festival of one community deeply scars the communal fabric of the society. An individual who is not cooperating with the investigation agencies to ascertain whether he partook in such nefarious activities, in my opinion, is not entitled to anticipatory bail or claim infringement of his fundamental right guaranteed under Article 21 of the Indian Constitution. It is a strange paradox that the applicant claims he is in charge of "Aman Committee", but has not joined investigation of offences which have defeated the very purpose and aim of such committee.

21. Considering the conduct of the applicant and the material on record against him including the statement of the eye witness as well as the fact that his custodial interrogation will be required to unearth the real reason behind

the riots, this Court is not inclined to grant anticipatory bail to the applicant.

22. In view of the above facts and circumstances of the case, I am of the considered view that no ground is made out for exercising discretion of grant of anticipatory bail to the accused/applicant. Therefore, the application moved on behalf of the accused/applicant stands dismissed.

23. The observations made in this order shall not affect the merits of the case during trial.

24. The petition stands disposed of.

SWARANA KANTA SHARMA, J

AUGUST 17, 2022/kss