

## Sidharth Kashyap vs The State Nct Of Delhi on 5 August, 2024

\$~8

\*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

BAIL APPLN. 2496/2024, CRL.M.A. 20870/

SIDHARTH KASHYAP

Through: Mr. Sacchin Puri, Sr.

Mr. Saurabh

Mr. Akash Yadav, M

Bhutani, Mr. Siddh

Ms. Vanya Chatu

Mr. Arjun Gupta, A

versus

THE STATE NCT OF DELHI

Through: Mr. Naresh Kumar Cha

with Mr. Shriyaan

Mr. Mohit, Ms. Sanya

Mr. Sushant

Mr. Abhishek Ana

Ms. Sunitaa Kumari,

with SI Bhart Lal, P

Nagar.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% 05.08.2024

1. The present application is filed seeking pre-arrest bail in FIR No. 254/2024 dated 06.06.2024, registered at police station Uttam Nagar, for offences under Sections 308/34 of the Indian Penal Code, 1860 ('IPC').

2. The present FIR was lodged on a complaint by the victim, namely, Anil Kumar. It is stated that the victim was married to a lady named Pooja, however, they had gotten divorced. It is alleged that the victim had made plans to go somewhere with Pooja on 03.06.2024. It is alleged that when the victim reached the decided spot, he called Pooja, who told him that accused This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/08/2024 at 09:16:15 Sandeep had caught her and taken her to the flat of a person, namely, Pawan. It is alleged that when the victim reached the said flat, he saw Pooja there with accused Sandeep and the applicant. It is alleged that the complainant did not recognise the applicant and asked as to who he was, after which the accused Sandeep introduced the applicant by his name as a friend.

3. It is the case of the prosecution that the accused Sandeep and the victim got into an argument whereafter the applicant restrained the victim's hands while the accused Sandeep hit the victim on his head with a baseball bat.
4. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case.
5. He submits that the applicant has been named in the FIR merely because accused Sandeep took his name in front of the victim when the scuffle took place between the accused Sandeep and the victim.
6. He submits that the applicant had no involvement in the quarrel between the victim and accused Sandeep. He submits that the applicant was unknown to the victim which shows that there was no prior animosity or enmity between them.
7. He further submits that there is no evidence to corroborate the allegations in relation to the applicant's involvement in commission of the alleged offence.
8. Per contra, the learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant.
9. He submits that the injury suffered by the complainant is heinous in nature and specific role has been attributed to the applicant.
10. He however fairly concedes that the chargesheet has been This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/08/2024 at 09:16:15 filed in the present case.

11. I have heard the learned counsel for the parties.
12. While determining the parameters in granting pre-arrest bail, the Hon'ble Apex Court in Siddharam Satlingappa Mhetre v. State of Maharashtra : (2011) 1 SCC 694 held as under:

"112. ....

- (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 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 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 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 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/08/2024 at 09:16:15 entitled to an order of bail."

13. It is the case of the prosecution that the applicant restrained the victim's hands while accused Sandeep hit him on the head with a bat.

14. It is not disputed that the injury with the bat was not inflicted by the applicant.

15. The allegations at this stage are based on the statement of the complainant/victim. It is trite law that the evidence of an injured witness has great evidentiary value and the same cannot be discarded light unless compelling reasons exist. However, at this stage, in the absence of any corroborative evidence, this Court cannot lose sight of the fact that the scuffle was borne out of an argument between accused Sandeep and the victim. The veracity of the evidence of the victim will be seen during the course of the trial.

16. In the present case, the maximum punishment attracted for the offence as alleged against the applicant is seven years.

17. This court by order dated 19.07.2024 has granted interim protection to the applicant. The applicant has since joined the investigation and the same is already complete.

18. The chargesheet in the present case was admittedly filed against the applicant without the State finding any necessity to take him into custody.

19. It is pertinent to note that the Hon'ble Apex Court has laid down guidelines pertaining to cases wherein chargesheet has been filed without arrest of the accused. In *Satender Kumar Antil v. Central Bureau of Investigation* : (2021) 10 SCC 773, Hon'ble Apex Court has observed that if an accused has not been arrested during investigation and has cooperated in the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/08/2024 at 09:16:15 investigation, then certain guidelines must be adhered to while considering the grant of bail. The guidelines have been reproduced as under:

"3. We are inclined to accept the guidelines and make them a part of the order of the Court for the benefit of the courts below. The guidelines are as under:

"Categories/Types of Offences (A) Offences punishable with imprisonment of 7 years or less not falling in Categories B and D. (B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

(C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA [Section 43-D(5)], Companies Act [Section 212(6)], etc. (D) Economic offences not covered by Special Acts.

Requisite Conditions (1) Not arrested during investigation. (2) Cooperated throughout in the investigation including appearing before investigating officer whenever called.

(No need to forward such an accused along with the charge- sheet *Siddharth v. State of U.P.* [*Siddharth v. State of U.P.*, (2022) 1 SCC 676] ) Category A After filing of charge-sheet/complaint taking of cognizance

(a) Ordinary summons at the 1st instance/including permitting appearance through lawyer.

(b) If such an accused does not appear despite service of summons, thenailable warrant for physical appearance may be issued.

(c) NBW on failure to appear despite issuance of bailable warrant.

(d) NBW may be cancelled or converted into a bailable warrant/summons without insisting physical appearance of the accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.

(e) Bail applications of such accused on appearance may be decided without the accused being taken in physical custody or by granting interim bail till the bail application is decided.

Category B/D On appearance of the accused in court pursuant to process issued bail application to be decided on merits.

Category C Same as Categories B and D with the additional condition of compliance of the provisions of bail under NDPS (Section This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/08/2024 at 09:16:15

37), Section 45 of the PMLA, Section 212(6) of the Companies Act, Section 43-D(5) of the UAPA, POCSO, etc."

20. The Hon'ble Apex Court in Mohd. Asfak Alam v. State of Jharkhand : (2023) 8 SCC 632 has held as under:

"15. What appears from the record is that the appellant cooperated with the investigation both before 8-8-2022, when no protection was granted to him and after 8-8-2022, when he enjoyed protection till the filing of the charge-sheet and the cognizance thereof on 1-10-2022. Thus, once the charge- sheet was filed and there was no impediment, at least on the part of the accused, the court having regard to the nature of the offences, the allegations and the maximum sentence of the offences they were likely to carry, ought to have granted the bail as a matter of course. However, the court did not do so but mechanically rejected and, virtually, to rub salt in the wound directed the appellant to surrender and seek regular bail before the trial court. Therefore, in the opinion of this Court, the High Court fell into error in adopting such a casual approach.

16. The impugned order of rejecting the bail and directing the appellant, to surrender and later seek bail, therefore, cannot stand, and is hereby set aside. Before parting, the Court would direct all the courts seized of proceedings to strictly follow the law laid down in Arnesh Kumar [Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449 : (2014) 8 SCR 128] and reiterate the directions contained thereunder, as well as other directions."

21. It is not in doubt that an order for grant of pre-arrest bail cannot be passed in a routine manner so as to allow the accused to use the same as a shield. At the same time, it cannot be denied that great amount of humiliation and disgrace is attached with the arrest. In cases where the accused has joined investigation, he is cooperating with the Investigating Agency and is not likely to abscond, the custodial interrogation should be avoided.

22. The applicant is stated to be young boy of 20 years of age. It is stated that he has no antecedents. This is probably the first time that he has indulged into such alleged activities. Subjecting the applicant to incarceration, especially when the chargesheet This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/08/2024 at 09:16:16 has already been filed and investigation is complete, would serve no purpose and is bound to cause inexorable harm to the mental well-being of an impressionable young individual.

23. Ergo, in the light of the aforementioned discussion and the mandate of the Hon'ble Apex Court in Satender Kumar Antil v. Central Bureau of Investigation (supra), in the opinion of this Court, no purpose would be served by allowing the custodial interrogation of the applicant.

24. In view of the above, the applicant is admitted on bail, on furnishing a personal bail bond for a sum of 20,000/- with one surety of the like amount, to the satisfaction of the concerned SHO, subject to the following conditions:

- a. The applicant shall join and cooperate with further investigation as and when directed by the Investigating Officer;
- b. The applicant shall not tamper with the evidence in any manner;
- c. The applicant shall not leave the country without taking permission from the learned Trial Court; d. The applicant shall provide his mobile number to the Investigating Officer and keep his mobile phone switched on at all times.

25. In the event of there being any FIR/DD entry/ complaint lodged against the present applicant, it would be open for the State, to seek redressal by way of cancellation of bail.

26. It is clarified that the observations made in the present order are for the purpose of deciding the present pre-arrest bail application, and should not influence the outcome of the Trial and should not be taken, as an expression of opinion, on the merits of the case.

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/08/2024 at 09:16:16

27. The present application is allowed in the aforementioned terms. Pending application also stands disposed of.

AMIT MAHAJAN, J AUGUST 5, 2024 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/08/2024 at 09:16:16