

**IN THE COURT OF SH. ARUL VARMA, ADDL. SESSIONS JUDGE/  
SPECIAL JUDGE, ELECTRICITY, COURT NO. 2, CENTRAL, THC**

BAIL APPLICATION NO. 360/22  
FIR NO. 956/21  
U/S 395/397/412/34 IPC & 27 Arms Act  
P.S. Kotwali  
State vs Mohd. Afzal

17.02.2022

Vide order no. 249/8548-8578/Bail Power/Gaz./2022 dated 14.02.2022 issued by Ld. Principal District & Sessions Judge (HQs), Delhi, the undersigned has been authorized to dispose of bail / urgent criminal applications.

**Present application u/s 438 Cr.P.C. has been moved by Ld. Counsel for the applicant/accused Mohd. Afzal for grant of anticipatory bail.**

Present: Sh. Balbir Singh, Ld. Addl. PP for the State through VC.  
Sh. Aditya Aggarwal, Ld. Counsel for applicant through VC.  
IO/SI Pushendra is present through VC.  
Reply of the IO received.

**ORDER ON ANTICIPATORY BAIL APPLICATION**

1. Vide this order, this Court shall adjudicate upon the anticipatory bail application filed on behalf of the accused. Arguments heard *in extenso*, the gist whereof is discussed hereunder.
2. Ld. Counsel for applicant / accused has submitted that accused has been wrongly implicated in the present case. It has been submitted that there are discrepancies in the initial and later versions of the complainant qua number of assailants and weapon used. It has been submitted that the complainant has made substantial improvements in

his supplementary statement. It has further been submitted that charge sheet has already been filed. Ld. Counsel has also submitted that there has been a delay in informing the police about the occurrence of the incident. Ld. Counsel has also submitted that process u/s 82 Cr.P.C. against the accused has been issued erroneously in as much as the accused was not in a position to appear before the Court as he was in custody in case FIR No. 582/17, P.S. Seelampur.

3. *Per contra*, Ld Addl. PP for the State, assisted by IO/SI Pushpendra vehemently opposed the present anticipatory bail application. It has been submitted that accused was absconding and thus 82 Cr.P.C. proceedings were initiated against him. It has further been submitted that a heinous offence has been committed and custodial interrogation is required. Lastly, it was submitted that TIP has to be conducted and recoveries have to be affected from the accused.

4. Before advertng to the rival contentions of the parties, the facts of the present case, as alleged by the prosecution, are hereby succinctly recapitulated: It was alleged by the complainant that on 13.10.2021 he was coming from Gandhi Nagar by scooty and carrying cash collected on the direction of his employer. When he reached at Geeta Colony flyover at around 2.15 PM, four boys came riding on three motorcycle. One of them pushed the complainant and tried to stop his scooty, however, complainant did not stop. Thereafter, accused persons blocked the complainant's way and started threatening him. One of the accused pushed the complainant and he fell on the road. Accused persons fled

from the spot with the scooty of the complainant. The payment as received by the complainant was in trunk of the scooty. Thus the present FIR came to be registered.

5. A perusal of record does reveal, as pointed out by Ld. Counsel for the accused, that there have been substantial improvements in the version of the complainant. Initially at the time of lodging the FIR, the complainant submitted that four assailants accosted him, but later on he averred that there were seven assailants. Further, at the time of giving the initial complaint, the complainant make no mention of using the weapon i.e. knife and tamancha/pistol by the assailants. Further, there was no mention of any black bag by the complainant nor was the amount robbed mentioned. It is also surprising that despite the complainant informing the owner at about 2.43 PM on 12.10.2021, the complainant chose to approach the police after passage of several hours i.e. at 10 PM on 12.10.2021. Prima facie this improvement gives inference of an afterthought.

6. Be that as it may, charge sheet has already been filed in the present matter. During the course of arguments, IO could not explain the linkage between commission of the crime and the accused herein. It would also be pertinent to make a reference to the issuance of process u/s 82 Cr.P.C. Ld. Counsel for accused had invited the Court's attention to his paper book, a perusal thereof reveals that the accused herein was taken into the custody in case FIR No. 582/17, P.S. Seelampur vide order dated 22.12.2021, ostensibly for non-appearance before the Court

on time. The said order was set aside vide order dated 24.01.2022 passed by the Hon'ble High Court of Delhi, and as per Ld. Counsel for accused, the accused was finally released on 28.01.2022. It was also pointed that NBWs qua the accused in the present matter were issued on 04.12.2021 returnable by 10.01.2022. Now, on 10.01.2022 the accused was in J/C albeit in another matter. Apparently, the process u/s 82 Cr.P.C. was issued qua the accused when the accused was running in J/C in another matter. Thus, this Court is inclined to concur with the submissions of Ld. Counsel for the accused that prima facie there was an erroneous issuance of process u/s 82 Cr.P.C., and thus the mere issuance of process u/s 82 Cr.P.C. would not come in way of exercising of jurisdiction of grant of anticipatory bail by this Court.

7. In view of the aforementioned facts and circumstances, this Court is inclined to grant anticipatory bail to the applicant/accused Mohd. Afzal on the following conditions:

- a) In the event of arrest, applicant shall be released on anticipatory bail on furnishing a personal bond in the sum of Rs. 20,000/- with one surety of the like amount to the satisfaction of the SHO/IO.
- b) The applicant is directed not to leave the country without prior permission of the Court.
- c) The applicant shall join investigation as and when called for.
- d) The applicant is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times. Also whenever asked by the IO, the accused shall drop a google pin from his

mobile phone to the IO so as to inform the IO about the current location of the accused.

e) The applicant shall give his address to the IO and if he changes the address he shall intimate the same to the IO.

8. Needless to say, the abovementioned observations are predicated solely on the facts as alleged, and brought forth at this juncture, and are not findings on merits, and would also have no bearing on the merits of the case. With these conditions, and observations, the anticipatory bail application stands disposed off.

9. Copy of the order be uploaded on the website of the District Court.

10. TCR be sent back alongwith copy of this order.

**(Arul Varma)**  
**ASJ/Special Judge, Electricity**  
**Court No. 02, Central**  
**Tis Hazari/Delhi/17.02.2022**