

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NOS. 1494-1495 OF 2017
[Arising out of SLP (Crl.) Nos. 4159-4160 of 2017]

DR. RAJ SAINI

...APPELLANT

VERSUS

STATE OF HARYANA AND ANR. ETC.

...RESPONDENTS

O R D E R

1. Leave granted.
2. On 12.02.2016, Dr. Raj Saini, the appellant herein lodged an FIR, inter alia, alleging that she was in possession of half portion of a nursing home along with her son and that a civil litigation was going on in relation to the said property and that her husband, Dr. Parkash Saini and his family members intended to dispossess them forcibly and illegally. On 11.02.2016, at about 1.45 p.m, Dr. Parkash Saini along with his sister, Sheela Devi and certain other persons came at the property in her possession and asked her to vacate it, failing which they will kill her. Dr. Parkash Saini and his henchmen attacked them with iron rods, dandas, knives, pistols etc. and that on the

call of the Dr. Parkash Saini, they broke open the door of a room with an intention to dispossess them forcibly and illegally. When they protested, they were assaulted. The matter was reported to the police and on hearing siren of the police vehicle, all the accused ran away. On the basis of the statement, an FIR was registered. The investigating officer took possession of the medical records from the hospital and also recorded the statement of the eye witnesses. Some incriminating articles were recovered from the spot.

3. On 16.02.2016, Dr. Parkash Saini was arrested for commission of offence(s) punishable under Sections 147, 149, 323, 324 and 506 IPC and he was produced before the magistrate. The police prepared a report under Section 173 Cr.P.C. and charge-sheeted Dr. Parkash Saini for commission of above offence(s) and he was released on regular bail. Later on, the matter was further investigated on the basis of CCTV footage recording, some more culprits were identified and the police introduced the offences under Sections 455 and 427 IPC and some other accused, including Rahul Kumar were arrested. Proceedings to arrest Dr. Parkash Saini for the added offences, under Sections 455 and 427 IPC, were also initiated.

4. Apprehending arrest, Dr. Parkash Saini and his sister Sheela Devi sought anticipatory bail. Similarly, Rahul Kumar also sought anticipatory bail. According to them, the subsequent investigations are malicious and initiated merely with a motive to add the heinous crime, in collusion with the complainant. The applicant further alleged that as the charge-sheet has already been filed, their interrogation was not required. The bail application was contested by the prosecution, *inter alia*, alleging

that on account of subsequent investigation, the offences under Sections 455 and 427 IPC, were added as the earlier investigation was not carried out in a proper manner and the accused involved in the case were not apprehended. After considering the rival contentions of the parties, the Sessions Court dismissed the application of Dr. Parkash Saini and Rahul Kumar.

5. Dr. Parkash Saini and Rahul Kumar filed applications under Section 438 of the Cr.P.C. before the High Court of Punjab & Haryana at Chandigarh. The High Court vide order dated 27.4.2017 has granted them anticipatory bail. The appellant has called in question the legality and correctness of said order in these appeals.

6. We have heard learned counsel for the parties. Appearing for the appellant, Shri R. Basant, learned senior counsel, contends that Dr. Parkash Saini trespassed into the property of the appellant along with his henchmen in order to take forcible possession of the part of the property which the appellant is in possession of and asked her to vacate the same, failing which they will kill her. Dr. Parkash Saini along with his henchmen attacked the appellant with iron rods, danda, knives and pistols, etc. On the call of Dr. Parkash Saini they broke open the door of their property with an intention to dispossess them forcibly and illegally and when they protested, they were assaulted. It is only after hearing a siren of the police vehicle all the accused ran away. The entire incident was captured in the mobile and CCTVs installed by the appellant in the premises which clearly shows the attack being committed. A defective investigation was carried out by the then Investigating Officer in collusion with the accused Dr. Parkash Saini without examining the CCTV footage and a defective report under

Section 173(2) of the Cr.P.C. was prepared by him by merely adding minor Sections in his report. The appellant gave representations to the higher police officials and after considering the same, the SP passed an order for further investigation. The IO was also changed. After further investigation, Sections 455 and 427 IPC were added in the FIR for which the accused applied for anticipatory bail which was rightly rejected by the learned Sessions Judge. The High Court without considering the materials on record granted anticipatory bail.

7. On the other hand, learned advocate appearing for the respondents has sought to justify the impugned order.

8. We have carefully considered the submissions of the learned counsel made at the Bar. The learned Sessions Judge has assigned cogent reasons for dismissal of the application of the private respondents seeking anticipatory bail. The CCTV footage of the incident was displayed in the open court in the presence of both the parties before the Sessions Judge. The session Judge has noticed the presence of Dr. Parkash Saini in the entire occurrence. Without considering the CCTV footage the earlier report was filed by the IO. In fact, Dr. Parkash Saini was leading the other accused. It is clear that he was directly involved in breaking open the door of the room and removing the articles lying there with the help of his co-accused. Though the name of Rahul Kumar was not mentioned in the FIR, later on the basis of CCTV footage he has been identified and his name has also come on record. The private respondents are the main accused in the case. It is also evident that they have damaged the property of the appellant with an intention to dispossess her and take forcible possession. The High

Court without considering any of these aspects has granted anticipatory bail. The High Court has not considered the nature and gravity of the accusation and the role of the accused in the commission of the offence(s). We are of the view that the High Court was not justified in granting anticipatory bail.

9. In the result, the appeals succeed and are accordingly allowed. The impugned judgment and order of the High Court dated 27.04.2017 in CRM-M No.10890 of 2017 (O&M) and CRM-M No.13220 of 2017 (O&M) are hereby set aside.

10. It is made clear that any observations made in this order will not influence the learned Judge while holding trial and deciding the case.

.....J.
(J. CHELAMESWAR)

.....J.
(S. ABDUL NAZEER)

**New Delhi;
August 18, 2017.**

ITEM NO.48

COURT NO.3

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s).
4159-4160/2017

(Arising out of impugned final judgment and order dated 27-04-2017 in CRMM No. 10890/2017 27-04-2017 in CRMM No. 13220/2017 passed by the High Court Of Punjab & Haryana At Chandigarh)

DR RAJ SAINI

Petitioner(s)

VERSUS

THE STATE OF HARYANA & ANR. ETC.

Respondent(s)

(With appln(s) for exemption from filing O.T., exemption from filing c/c of the impugned judgment)

Date : 18-08-2017 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J. CHELAMESWAR
HON'BLE MR. JUSTICE S. ABDUL NAZEER

For Petitioner(s) Mr. R. Basant, Sr. Adv.
Mr. Aditya Singh, AOR
Mr. Rajiv Dalal, Adv.

For Respondent(s) Mr. Yashwant Yadav, Adv.
Mr. Anubhav, Adv.
Mr. Vijay Pal, Adv.
Mr. Vipin Kumar, Adv.
Mr. Alok Bandhu, Adv.
Mr. Nitin Kumar Thakur, AOR

Mr. Manish Kr. Choudhary, Adv.
Mr. Harshul Singh, Adv.
Ms. Kritika Khurana, Adv.
Mr. Ashutosh Kumar, Adv.
Ms. Namita Choudhary, AOR

Mr. Gautam Sharma, Adv.
Mr. Vikas Kumar, Adv.
Ms. Monika Gusain, AOR
Ms. Shruti Dutta, Adv.

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UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals succeeds and are accordingly allowed in
terms of the signed order.

Pending applications, if any, stand disposed of.

(DEEPAK MANSUKHANI)
AR-cum-PS

(SUMAN JAIN)
Court Master

(Signed order is placed on the file)