

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

+ **Bail Application No.1395/2008**

% **Date of Decision: 12.08.2008**

Babbu Singh Petitioner

Through Mr.Abhay Kumar, Advocate

Versus

State (NCT of Delhi) Respondent

Through Mr.R.N. Vats, APP for the State.

SI Seema Singh, P.S Naraina

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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This is a petition under Section 439 of the Criminal Procedure Code for grant of bail in FIR No.208/2004 under Section 394,397,302/34 of IPC, Police Station Naraina, New Delhi. The petitioner has contended that he is innocent and a peace loving citizen and all the allegations made against him are prima facie false, fabricated and doctored. This is the first bail application before the High Court. The chargesheet was filed against the petitioner under Section 302/34 and 397 of IPC.

The petitioner contended that he had filed a bail application before the Additional Sessions Judge which was, however, dismissed on 14th December, 2005.

The petitioner has sought bail on the ground that no prima facie case is made out against him and a co-accused, Sachin Jaiswal was discharged from all the charges by order dated 10th February, 2005 and another accused Chandrika Prasad @ Budhai Yadav was granted bail by order dated 6th May, 2008 in Bail Application No.407/2008. It is contended that out of 22 chargesheet witnesses, the prosecution has examined 16 witnesses to prove its case and the testimonies of the witnesses already recorded have very vital and material contradictions and fatal discrepancies. It is contended that the recovery of weapons of crime is unnatural, concocted and unbelievable.

The learned counsel for the petitioner has contended that there has been improvement in the version in as much as PW.5 HC Subhash had not assigned any specific role to the petitioner in his statement under Section 161 of the Criminal Procedure Code and the allegations against the petitioner in the FIR are also not specific.

The case of the prosecution is that constable Subhash who was posted in Naraina was deployed in Z Block, Loha Mandi as a beat constable. He was patrolling near Naraina Vihar Railway Station when he heard the sound of firing and when he reached the place one person was found lying on the railway track and another person after snatching the bag was running towards Y block crossing of the railway

line. He was chased by the said person. Three of the colleagues of the person who had snatched the bag had fled to other side, however, the petitioner was caught with the bag.

The said constable in his statement has categorically deposed that he chased the petitioner for about 1 or 1½ km and HC Surender and Ct.Surender came from the opposite direction and all them overpowered the petitioner and brought him near to the person who was lying near the railway track. The person who was lying at the railway track was taken to the hospital, however, he was declared dead by the doctors. In the cross examination of the said witness by the complainant he deposed about catching the petitioner near the site of the incident with the snatched bag. Another witness Ct.Surender has also deposed that he saw a person coming towards him running followed by Ct.Subash and he apprehended him who was holding a black and red colour bag and after apprehending he disclosed his name as Babu Singh and he identified the petitioner in the Court. He denied the suggestion that the petitioner was not caught by the said witness and Ct.Surender. The witness, Ct.Prakash had also deposed that the petitioner was apprehended by Ct.Subhash and Ct.Surender.

From the perusal of the facts it is apparent that petitioner is the main accused and consequently he is not entitled for bail merely because Chandrika Prasad @ Budhai Yadav has been granted bail and another person has been discharged. The petitioner was apprehended from the spot and the snatched bag was also found in his hand. The

witnesses referred to by the petitioner have deposed categorically about the petitioner being apprehended at the spot. The variations in the statement of the witnesses pointed out by the learned counsel for the petitioner are not such so as to discredit the statements of the said witnesses completely.

The learned counsel for the petitioner has also relied on *Mela Ram v. State*, 2007 (145) DLT 741. Perusal of the facts and the ratio of the case reveals that it is clearly distinguishable and on the basis of the same petitioner is not entitled for any relief.

The offence alleged against the petitioner is serious and heinous and in the circumstances it will not be appropriate to admit the petitioner to bail. The application is, therefore, without any merit and it is dismissed. It is, however, clarified that anything stated in this order is not the expression of opinion on the final merits of the case.

August 12th , 2008.
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ANIL KUMAR, J.