

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

Reserved on: 21st May, 2013
% *Date of Decision: 23rd May, 2013*

+ BAIL APPLN. 734/2013

MOHD. IMAM @ IMAMUDDIN Petitioner

Through: Mr. Joginder Tuli, Advocate.

versus

STATE (NCT OF DELHI) Respondent

Through: Ms. Jasbir Kaur, APP along with SI
Ratnesh Kumar Singh, P.S. Nand
Nagri.

CORAM:

MR. JUSTICE R.V. EASWAR

JUDGMENT

R.V. EASWAR, J.:

1. This is an application for regular bail under section 439 of the Cr.P.C. in case FIR No.81/2009 under sections 186/ 353/ 394/ 397/ 307/ 411/ 34 of the IPC registered at P.S. Nand Nagri.

2. According to the FIR, on the intervening night of 12.03.2009 and 13.03.2009, Head Constable Onkar Singh of police station Nand Nagri was stated to have been patrolling the area on night duty. While passing through the DDA Market, four or five persons are said to have assaulted him on his face and head with a baseball bat and brick, robbed his service revolver and 5 live cartridges and his other belongings and left him at the spot in a serious condition. On receipt of PCR call, ASI Rambir reached the spot and found a

pool of blood and some of the belongings of the injured Head Constable Onkar strewn at the spot. The injured was removed to the hospital where he was treated vide MLC No.1100/2009. He was referred to AIIMS where he remained admitted for about a month and half.

3. It would appear that on 19.03.2009 Sonu Gupta @ Raju and Santosh @ Pappu Yadav were arrested by the police officers of P.S. Crime Branch in case FIR No.39/2009 under section 411 of the IPC read with section 25 of the Arms Act. The service revolver of Onkar was recovered from Sonu Gupta @ Raju. The I-Card of Onkar, two NBWs, etc. were also recovered at the instance of Santosh.

4. After completion of the investigation, chargesheet was filed against Sonu Gupta and Santosh and proceedings under section 82 Cr.P.C. (proclamation) were initiated against the present applicant. On 10.08.2009, the applicant surrendered before the Court in case FIR No.84/2009 and was remanded to one day police custody by the IO. He was interrogated in the police station and was formally arrested in the present case (FIR No.81/2009) on 11.08.2009. The baseball bat alleged to have been used in the commission of the crime was recovered from behind the T.V. from house of the applicant. This is stated to be after four months of the incident. The Sessions Court dismissed the bail application of the accused by order dated 20.04.2013. It

was observed that the associates of the accused had given beating to Onkar, Head Constable with dandas, baseball bat and bricks, thus they committed an offence against a public servant on duty and also took away his service revolver and five live cartridges. Moreover, the investigating officer was yet to be examined. Therefore, the Sessions Court was not inclined to grant bail to the accused. The bail application was dismissed.

5. The learned counsel for the bail applicant submitted that the accused has spent three years and ten months in judicial custody, that the alleged recovery of the baseball bat from his house was after four months from the date of the incident, that he has to support his family consisting of his wife and two children and that having regard to all these circumstances, the applicant may be admitted to regular bail.

6. The learned Additional Public Prosecutor has submitted the status report and besides relying on the facts mentioned therein, she maintained that the applicant is a history sheeter and his antecedents are not good, that he has nine cases pending against him as per list filed along with the status report, that the IO in this case is yet to be examined, that having regard to the antecedents of the applicant there is every possibility of his fleeing from justice and in such circumstances bail should not be granted.

7. In his brief rejoinder, the learned counsel for the applicant submitted that the applicant was released on bail in seven out of the nine cases pending against him and was acquitted in the other two cases even as per the list filed by the learned Additional Public Prosecutor. He pointed out that there is, in these circumstances, no possibility of the applicant fleeing from justice or of tampering with the evidence or of threatening the investigating officer. He lastly submitted that the applicant is ready to produce sureties as may be directed by this Court in case bail is granted.

8. On a careful consideration of the matter, I am inclined to grant bail to the applicant. Firstly, the applicant's name is not mentioned in the FIR. He was apprehended on the basis of the statements made by Sonu Gupta and Santosh who are stated to be his associates. Secondly, the baseball bat was recovered from the house of the applicant after a period of four months from the date of the incident, even though his alleged associates were apprehended by the police in another case on 19.03.2009. Thirdly, the objection of the learned Additional Public Prosecutor that the accused has nine cases pending against him and thus his antecedents are not good, does not hold much water considering the fact that in two of the cases he has already been acquitted (in 2003 and 2006) and in the other cases he has been granted bail. Fourthly, he has already spent three years and ten months in judicial custody, which is a

considerable period. Lastly, the fact that the IO is yet to be examined cannot be an impediment to the grant of bail to the applicant.

9. Having regard to all the circumstances outlined above, I grant bail to the applicant. He shall execute a personal bond in the sum of ₹20,000/- and a surety for the like amount to the satisfaction of the trial court.

The application is disposed of as above.

(R.V. EASWAR)
JUDGE

MAY 23, 2013
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