

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

Judgment delivered on : December 02, 2015

+ **BAIL APPLN. 1751/2015**

OM PAL

..... Petitioner

Through: Ms.Neelam Singh, Advocate.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Ms.Manjeet Arya, Additional Public
Prosecutor for the State.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. Aggrieved by the order dated 01.07.2015, passed by the learned Additional Sessions Judge, Rohini, Delhi, vide which the bail application filed by the present petitioner has been rejected, the petitioner has preferred the present bail application under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 for seeking bail in a case registered under FIR No.267/2012 under Section 328/392/411/120-B/34 of Indian Penal Code, Police Station Mahendra Park, New Delhi.

2. The FIR of the present case was registered on the complaint of

Shri Hemant Kumar, an employee of Logi Cash Solution Pvt. Ltd., and the allegation levelled against the petitioner in the FIR is that the petitioner was a driver of vehicle No. DL-1RY-5-60 Maruti ECCO, and on 28.09.2012, he was accompanying the complainant – Hemant Kumar, Brijesh and Yogesh for loading the cash in different ATMs. As per complaint, out of Rs.81 lac, firstly Rs.7 lac were loaded in ATM of OBC at Kishanganj, thereafter, Rs.3 lac in ATM of OBC at Kamla Nagar and after loading Rs.10 lac in ATM of Central Bank of India at Ghantaghar, when the complainant came out of the ATM, he saw that the driver Ompal (petitioner herein) was not near the vehicle and upon asking from Brijesh, he was told that he will be coming back in five minutes. After sometime Ompal came and took some sweets from the small box of sweets in his hand and gave one piece to Brijesh, one piece to Yogesh and one piece to the complainant. It is alleged that after taking sweets, the complainant and Yogesh felt dryness, palpitation headache, and intoxication. It is alleged that the petitioner made Yogesh, Brijesh and complainant sit in a vehicle and thereafter the complainant was not aware what happened. It is only in the hospital, that the complainant came to know that out of Rs.81 lac,

only 30 lac were deposited in ATM. It is alleged that the petitioner gave intoxicated sweets and got the complainant and others unconscious and committed theft of Rs.51 lac from iron box which was lying in the vehicle. Thereafter, the petitioner fled away.

3. The petitioner had also moved an application before learned Additional Sessions Judge, Rohini, which was rejected vide order dated 1st July 2015.

4. Ms. Neelam Singh, Advocate appears on behalf of the petitioner and submits that the petitioner is falsely implicated in the case. To support his contention he referred to the FSL report, wherein scientific analysis showed that on chemical microscopic and TLC examination, Metallic poisons, ethyl and methyl alcohol, cyanide, phosphide, alkaloids, barbiturates, tranquilizers and pesticides could not be detected in exhibits "A1, 1B, 2,3B, 4,5A, 5B & 6". It is also contended that out of Rs.51 lacs, Rs.47 lacs have been recovered, therefore, the petitioner is no more required for any further investigation, especially when the charge sheet has already been filed in the case. It is further contended that there is no evidence against the petitioner to link him with the commission of the alleged offence and

nothing incriminating has been recovered either from the petitioner or at his instance, however the alleged recovery is a planted one. It is also contended that the co-accused Smt. Geeta has already been granted bail, therefore the petitioner also deserves the concession of bail on parity. It is also submitted that the petitioner is in judicial custody since the date of his arrest, i.e., 11.07.2013. At last, it is contended that the petitioner is permanent resident of Delhi and having a family therefore, there is no chance of his absconding or fleeing from justice. It is also contended that the petitioner is having clean antecedents and is not involved in any other criminal case, therefore the petitioner ought to be granted bail in the aforesaid case.

5. Ms. Manjeet Arya, learned Additional Public Prosecutor appears on behalf of the State and vehemently oppose the bail to the petitioner. A status report is also filed on behalf of the State, wherein it is stated that the petitioner – Om Pal was arrested on 12.7.2013 and as per his disclosure statement, due to financial crises, he alongwith his wife Geeta hatched a conspiracy and made a plan to give effect to the incident in question. It is also stated that during the course of investigation, it came to the notice that the petitioner has been already

involved in 10 criminal cases; charge sheet has already been submitted in court and charges have been framed against the accused on 21.10.2013 and the case is pending trial before the court of learned Additional Sessions Judge, Rohini Delhi; 26 prosecution witnesses have been examined and 14 prosecution witnesses are yet to be examined and the case is now fixed for further prosecution evidence on 15th January 2016.

6. I have heard the contentions raised by learned counsel for the petitioner and the status report filed on behalf of the State and also gone through the material placed on record.

7. After considering the contents of the present petition as well as the submissions made by counsel for the petitioner and learned Additional Public Prosecutor for the State, and going through the material placed on record, this Court finds that the present accused is a habitual offender and has been previously involved in as many as 10 other cases of robbery, theft and snatching in Delhi and NCR area; and 14 more prosecution witnesses are to be examined and the next date fixed for evidence on 15.01.2016. This court also observes that there is a disclosure on behalf of the petitioner himself that he had

hatched conspiracy with his wife Geeta to commit the crime. There is also recovery of the huge amount at the instance of the present petitioner. So far as the parity claimed on the ground of bail granted to the co-accused/wife of the petitioner, after perusing the impugned order, this court observes that the bail was granted to the wife of the petitioner purely on humanitarian ground as two children of the co-accused were with the NGO and she was granted benefit, being a woman.

8. Even the present petitioner is a notorious criminal and has previously been involved in similar cases. It is also clear from the facts on record that the charge sheet of the case has already been filed and the petitioner has been charged with the offence punishable under Section 392 of IPC and since 14 more prosecution witnesses are to be examined therefore, the tampering of the evidence cannot be ruled out.

9. In view of the aforesaid facts and circumstances of the present case, this Court is of the opinion that the petitioner – Ompal does not deserve the concession of bail in this case, at this stage. Accordingly, the present application filed by the petitioner – Ompal is dismissed at

this stage.

10. It is made clear that any observation made in the aforesaid order shall not affect the merits of the case.

11. With aforesaid observations, the present petition stands disposed of.

(P.S.TEJI)
JUDGE

DECEMBER 02, 2015
pkb