

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: November 27, 2015

BAIL APPLN. 922/2015

ARJUN @ PUSSI

..... Petitioner/Applicant

Through: Mr. S.C.Sagar, Mr. Pradeep Sehrawat,
Mr.Bhisham Singh, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Ms. Radhika Kolluru, APP.

SIDDHARTH MRIDUL, J (ORAL)

1. The present is an application under Section 439 Cr.P.C. 1973 praying for grant of Regular Bail to the applicant in F.I.R. No.355/13 under Sections 302/307/201/203/120-B/34 IPC r/w Section 27/54/59 Arms Act registered at Police Station Saket, New Delhi.
2. It would be relevant to point out that the applicant has been in judicial custody since 6th July, 2014 and the trial is currently underway.

3. Ms.Radhika Kolluru, learned APP appearing on behalf of the police states that thirty-one out of forty-seven prosecution witnesses have already been examined and the trial is proceeding expeditiously. The above assertion made on behalf of the APP is not refuted on behalf of the complainant.

4. In the present case, it is observed that the subject F.I.R. was registered in the aftermath of the commission of the murder of one Kapil, allegedly as a consequence of an internecine gang-war.

5. A perusal of the Status Report filed on behalf of the police reveals that the applicant in the present case is also involved in the following cases:-

1. FIR No.247/12 dated 10.06.2012 U/S. 336 IPC & 25/27 Arms Act PS Mehrauli, New Delhi and the investigation of the same is still pending.
2. F.I.R. No.355/2013 U/S. 302/307/34 IPC and 25/27 Arms Act PS Saket, in the said F.I.R he was declared proclaimed offender vide order dt. 23.1.2014 passed by Id.ACMM Shri Tarun Yogesh.
3. FIR No.466/2013 U/S. 380 IPC PS Govindpuri and in the said FIR also he was declared proclaimed offender vide order dt.01.04.2014 passed by Ld.MM Ms.Annu Aggarwal.

6. Counsel appearing on behalf of the applicant states that, insofar as, F.I.R. No.247/2012 is concerned the informant eye-witness could not identify him during the TIP and no charge-sheet has been filed against him. However, insofar as, F.I.R. No. 355/2013 is concerned it is an admitted position that he was declared a proclaimed offender.

7. Counsel for the applicant also does not refute that an F.I.R. No.466/2013 under Section 380 IPC has been registered against him at police station Govind Puri, New Delhi.

8. On behalf of the applicant it is asserted that he has been arrested on the disclosure statement of co-accused Kamal and that there is no evidence aliunde against him. Counsel for the applicant would then urge that as per the Call Detail Record relied upon by the prosecution, the applicant did not attend to the calls of the co-accused Kamal.

9. In other words, it has been urged that the applicant has been falsely implicated and consequently ought to be enlarged on bail.

10. On behalf of the prosecution it has been urged that on 5th September, 2013 when the complainant-Balraj Singh and the deceased were returning to his house after attending the hearing in a case registered against them, two

motor-cycle borne boys came and one of them started firing on his associate – Kapil, who was riding pillion.

11. It is an admitted position that Kapil died as a consequence of gunshot injuries.

12. During the course of investigation the co-accused, Kamal was arrested and a sophisticated pistol with two live cartridges was recovered from his possession. The weapon so seized has allegedly been used in committing the offence of murder. Kamal in his disclosure statement has implicated the applicant herein as his associate who was providing information on the movements of the deceased, Kapil, from the time when he exited the Saket Court, on the fateful day.

13. In the present case, it is observed that the applicant could not be located by the police during the course of investigation and proceedings under Section 82 and 83 Cr.P.C. were initiated against him. The applicant was also declared a Proclaimed Offender by the Court of Competent Jurisdiction. Further, the motor-cycle used for the commission of the crime admittedly belongs to the applicant.

14. In the present case, it is observed that admittedly the trial has been proceeding expeditiously. It is further, noticed that three of the eye-witnesses have already turned hostile. The applicant attempts to derive mileage from this circumstance.

15. In the decision relied upon by the applicant in *Jayendra Saraswathi Swamigal vs. State of Tamil Nadu reported as AIR 2005 SC 716* the Hon'ble Supreme Court considered the law and examined the considerations which normally weigh with the Court in granting bail in non-bailable offences. The considerations expounded by the Hon'ble Supreme Court are as follows:-

“15.The considerations which normally weigh with the Court in granting bail in non-bailable offences have been explained by this Court in *State v. Capt. Jagjit Singh AIR 1962 SC 253* and *Gurcharan Singh v. State (Delhi Admn.) AIR 1978 SC 179* and basically they are the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case.....”

16. The Supreme Court in terms of its earlier decision in *State vs. Captain*

Jagjit Singh reported as *AIR 1962 SC 253*, has observed as under:-

“5.Among other considerations, which a court has to take into account in deciding whether bail should be granted in a non-bailable offence, is the nature of the offence; and if the offence is of a kind in which bail should not be granted considering its seriousness, the court should refuse bail even though it has very wide powers under Section 498 of the Code of Criminal Procedure.”

17. In *State of U.P. Through CBI v. Amarmani Tripathi*, reported as (2005) 8 SCC 21 the Hon'ble Supreme Court in paragraph 18 observed as follows:-

“18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) *character, behaviour, means, position and standing of the accused*; (vi) likelihood of the offence being repeated; (vii) *reasonable apprehension of the witnesses being tampered with*; and (viii) *danger, of course, of justice being thwarted by grant of bail*[see *Prahlad Singh Bhati v. NCT, Delhi* [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] and *Gurcharan Singh v. State (Delhi Admn.)* [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179]]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere

presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in *Kalyan Chandra Sarkar v. Rajesh Ranjan* [(2004) 7 SCC 528 : 2004 SCC (Cri) 1977] : (SCC pp. 535-36, para 11)

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
- (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
- (c) Prima facie satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay v. Sudarshan Singh* [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] and *Puran v. Rambilas* [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] .)”

18. In *Prahlad Singh Bhati vs. NCT, Delhi* reported as (2001) 4 SCC 280 the Hon'ble Supreme Court was pleased to observe that if the accused is of such character that his mere presence at large would intimidate the witnesses, then bail should be refused.

19. In the present case, it is observed that the applicant is alleged to be the member of a gang and has previous involvements. The applicant has steadfastly refused to join investigation and was evidently declared a proclaimed offender.

20. Therefore, keeping in view the nature and gravity of the charge; severity of the punishment in the event of conviction; danger of the accused absconding or fleeing, if released on bail; character, behaviour, and antecedents of the accused; likelihood of the offence being repeated and the reasonable apprehension that the presence of the accused would have the consequence to intimidate the witnesses who are yet to be examined in the trial, in my considered view, it would not be in the collective interest of the community to enlarge him on bail at this stage.

21. Bail Application No. 922/2015 is accordingly dismissed.

SIDDHARTH MRIDUL, J

NOVEMBER 27, 2015

bp