

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 05.08.2015

BAIL APPLN. 1458/2015

RAHUL PRASAD SINGH

..... Petitioner

Through: Mr J.M. Akbar, Advocate.

versus

THE STATE

..... Respondent

Through: Mr Rajat Katyal, APP.

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

CRL.M.A. 10459/2015 (Delay in re-filing)

The delay in re-filing is condoned.

CRL.M.A. 10460/2015 (Exemption)

Exemption is granted subject to all just exceptions.

The application is disposed of accordingly.

BAIL APPLN. 1458/2015

1. The present is an application under Section 439 CrPC, 1973 for grant of regular bail in FIR No.218/2012 under Section 302/392/394/411/120B/34 IPC registered at Police Station- Timar Pur.
2. The accused has been in judicial custody since 03.10.2012 and only 17 witnesses out of the total of 41 witnesses have been examined during the trial. It is also noticed that two public witnesses are yet to be examined.
3. Counsel appearing on behalf of the applicant states that he has been implicated in the present case on the basis of an alleged disclosure statement and that there is no direct or indirect evidence against the applicant. It is also urged on behalf of counsel for the applicant that the IO in the subject case has not produced any cogent material to show that he enquired about the commission of the subject offence from the neighbours of the deceased victim. It is also urged on behalf of counsel for the applicant that the fingerprints lifted from the scene of crime do not match those of the applicant as per the CFSL report. Counsel submits that the statements of the complainant in the DD entry and the FIR are at variance. Lastly, it is urged by counsel for the applicant that the case of the prosecution is based on

circumstantial evidence and not a single ingredient required in the case of circumstantial evidence is available against the applicant.

4. On the contrary Mr Katyal, learned APP appearing on behalf of the State has invited my attention to the charge-sheet filed in the subject FIR which according to him discloses the sequence of events leading up to the commission of the subject offence to urge that the applicant is a resident of B-115, Delhi Administration Flat, which is located right across the flat of the deceased victim. Mr Katyal, learned APP, further states that the call detail record of the mobile telephone being used by the applicant, verified as belonging to his mother, prior and at the time of commission of the offence clearly demonstrates that the applicant and the co-accused were present at the location where the alleged offence was committed, before and at the relevant time. Further it demonstrates that there were numerous calls and SMSs received and sent between the applicant and his co-accused immediately prior to the commission of the offence. It is lastly urged that a gold chain belonging to the deceased victim and identified by the complainant during his examination was recovered from the possession of the applicant on the very next day.

5. The mandate of Section 27 of the Evidence Act, 1872 is that when a fact is deposed to have been discovered in consequence of information received from a person accused of any offence when in the custody of a police officer, so much of that information as relates distinctly to the fact thereby discovered may be proved in trial.

6. In the present case it is as a consequence of the disclosure statement made by the applicant before the police that the co-accused were arrested and the conspiracy to commit the offence alleged was uncovered. Further, it is as a consequence of the disclosure statement that upon the arrest of the co-accused other valuable items belonging to the deceased victim were recovered at their instance. It is noticed that although the fingerprints lifted from the location where the alleged offences were committed did not match the fingerprints of the applicant, however, that was only on account of the fact that the said fingerprints were “faint, partial or smudged and do not disclose sufficient number of ridge details hence they are unfit for comparison” as opined by the CFSL.

7. In *State of U.P. Through CBI v. Amarmani Tripathi*, (2005) 8 SCC 21, the Supreme Court observed as under:-

“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] .)”

8. At this stage, learned counsel appearing on behalf of the applicant has submitted that the conspiracy allegedly committed by the applicant is only for dacoity and robbery and not for murdering the deceased victim.

9. Keeping in view the gravity of the offence, the severity of the punishment in the event of conviction and considering the fact that the call detail records of the applicant and the co-accused unambiguously indicate their presence at the spot of the incident on the relevant date, I am of the opinion that no ground to admit the applicant on bail is made out. The application is dismissed. However, it is made clear that nothing stated in this order shall be considered as an expression of opinion on the merits of this case.

SIDDHARTH MRIDUL, J

AUGUST 05, 2015/mk