

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

Judgment delivered on : December 11, 2015

+ **BAIL APPLN. 1596/2015 & CrI.M.A. Nos.7527/2015 & 7810/2015**

HARI SINGH

..... Petitioner

Through: Mr.Deepak Prakash, Advocate with
Ms.Neelambari, Advocate.

versus

THE STATE OF NCT OF DELHI

..... Respondent

Through: Ms. Manjeet Arya, Additional Public
Prosecutor for the State with Sub-
Inspector Ved Prakash, Police Station
Maurya Enclave, Delhi.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. The petitioner is aggrieved by the order dated 04.08.2015, passed by learned Additional Sessions Judge-II, North-West, Rohini, Delhi, whereby the learned Additional Sessions Judge has declined his bail application.

2. By this petitioner, the petitioner seeks regular bail under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 in a case registered under FIR No.232/2015 under Section 395/397/34 of Indian Penal Code, Police Station Maurya Enclave,

New Delhi.

3. The prosecution case is based upon the statement of one Rajpal, who was working as a Security Guard at Liquor Shop at Pitampura, Delhi. It is alleged that on 13.3.2015, at about 2.30 am three boys came there and one of them put a knife on his neck and threatened him to kill if he raised alarm. It is further stated by the complainant that one of them pressed his mount and the other boy caught hold of his hands and forcibly took him inside the liquor shop, where he found that 5 more boys were present. When police siren rang, all the eight boys fled away and while fleeing from the spot, a mobile phone of one of those boys fell down, which resulted in apprehending three persons including the petitioner herein. During investigation, names of other accused persons were disclosed but they could not be arrested even after issuance of NBW and were preceded under Section 82/83 of Cr. P.C., but somehow succeeded in obtaining interim protection from this Court subject to their joining the investigation.

4. It is further the case of the prosecution that during investigation, the petitioner was granted interim bail for two weeks and also filed a petition for quashing of the FIR on the ground of

settlement arrived at between the parties, but the same was later on withdrawn. As per prosecution case, through the petitioner has no other previous criminal involvement but there is a recovery of 50 cases/cartons of looted liquor from the petitioner.

5. While arguing the case of the petitioner, Mr. Deepak Prakash, Advocate contended that there is neither any mention of his name in the FIR nor any role is attributed or described in the statement of the complainant. It is further contended that even in the Test Identification Parade, the petitioner was not identified. The petitioner is stated to be in custody since 15.03.2015 and the charge sheet in the case has also been filed.

6. Counsel for the petitioner strongly urged that even if the prosecution case is admitted in toto, the only offence which can be alleged against the petitioner is under Section 411 of IPC and the prosecution has falsely registered the case under Section 395/397 of IPC.

7. Counsel for the petitioner also urged that the other co-accused have either been granted bail or obtained interim protection in this case and also claims that the petitioner be also granted bail on the

ground of parity as well. It is further stated that the charge sheet in the case has been filed and the petitioner is no more required for any custodial interrogation. It is further submitted that the petitioner is a married man and running various businesses and till date no offence has been committed by him and there is no chance to flee from justice, therefore the petitioner/applicant ought to be granted bail in the aforesaid case.

8. To oppose the contentions raised by learned counsel for the petitioner, Ms. Manjeet Arya, learned Additional Public Prosecutor for the State submitted that the conduct of the application, as observed by the learned Trial Court, that he did not appear before the court on 21.7.2015 and 23.07.2015, even without moving application for seeking exemption from personal appearance. Consequently, the trial court had issued NBWs against the petitioner and on 23.7.2015 neither petitioner nor his surety had appeared before the court, despite service of notice. Therefore, there is apprehension of the petitioner jumping the bail, if granted.

9. The submissions and counter submissions made by Counsel for the petitioner as well as by learned Additional Public Prosecutor for

the State have been heard and perused the material placed on record.

10. =take instructions from HMJ

11. (=if granted)

12. After considering the contents of the present petition as well as the status report filed on record, this Court observes that the petitioner is in custody since 16.3.2015 and the other accused persons have either been granted bail or have been granted interim protection against their arrest. Charge sheet in this case has been filed and the same is now fixed for framing of charge. This court also observes that there is recovery of 50 cases/cartons of looted liquor from the petitioner.

13. This court also observes that though the petitioner is charged with the offence punishable under Section 395/397 of the IPC, however, during TIP in jail on 18.03.2015, the complainant did not identify the petitioner, despite the fact that the complainant had stated in his statement that he can identify the persons who committed the offence. It is also admitted case of the State that the co-accused in the present case are either granted bail or obtained interim protection in this case.

14. From the aforesaid facts and circumstances of the case, this Court take note of the facts; that the co-accused – Deepak Chaudhary of the present case has already granted bail; the fact that during TIP, the petitioner is not identified by the complainant of the FIR in question; the fact that the petitioner is in custody since 15.03.2015; Charge sheet in the present case has already been filed, therefore the petitioner is no more required for further investigation and the trial is likely to take time.

15. Considering the aforesaid facts and circumstances, this court is inclined to grant bail to the petitioner – Hari Singh in the present case subject to his furnishing personal bond in the sum of Rs.20,000/- with two sureties of the like amount, to the satisfaction of the Trial Court.

16. Needless to say that anything observed in this order shall not have any bearing on merits of the case during trial.

17. With aforesaid direction, the present bail application as well as pending applications, filed by the petitioner stand disposed of.

18. Dasti.

(P.S.TEJI)
JUDGE

DECEMBER 11, 2015
pkb