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

**Date of decision: 19.10.2015**

**BAIL APPLN. 2259/2015 & CRL.M.A. 15523/2015**

**RAKESH TIWARI**

..... Applicant

Through: Mr Saket Kumar, Advocate.

versus

**GOVT. OF NCT OF DELHI**

..... Respondent

Through: Mr Rajat Katyal, APP with  
SI Arun Kumar, PS- Punjabi Bagh.

**CORAM:**

**HON'BLE MR JUSTICE SIDDHARTH MRIDUL**

**SIDDHARTH MRIDUL, J (ORAL)**

1. The present is an application under Section 439 of the Code of Criminal Procedure, 1973 praying for regular bail in FIR No.943/2014 under Section 394/397/34 IPC registered at Police Station- Karawal Nagar, Delhi.

2. The applicant has been in judicial custody since 30.01.2015. The trial is ongoing and the examination of the victim/complainant has already taken place.

3. Counsel appearing on behalf of the applicant states that he has been falsely implicated by the victim in the present FIR owing to personal enmity and that the victim does not remember the day on which he had pointed out the place where the incident occurred to the police.

4. The case of the prosecution is that on 18.10.2014 a PCR call was received at the police station- Karawal Nagar, Delhi. SI Manoj Kumar, who went to GTB Hospital, where the injured had already been removed, collected the latter's MLC No.C-4354/14. Statement of the victim Sachin was recorded wherein he alleged that the applicant along with three unknown persons had robbed the gold chain, gold bracelet and a purse containing eight thousand rupees from his person at knife point. It was further alleged that the applicant had stabbed the victim on his right ear and right side of the neck during the time the robbery was committed. It is an admitted position that the doctor, who authored the MLC, opined that the nature of the injury was grievous.

5. The victim Sachin has deposed before the trial court. The victim has clearly identified the applicant as the perpetrator of the crime. Prima facie the cross-examination of the victim does not dent the credibility or veracity of his deposition.

6. It is an admitted position that there are seven other FIRs registered against the applicant. It is urged on behalf of the prosecution that all the previous involvements of the applicant are in heinous cases and that, therefore, there is a distinct possibility that he may intimidate witnesses.

7. 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] .)”

8. In the present case it is observed that the allegations against the applicant are serious in nature and that one other material witness Harender, who is in judicial custody, is yet to be examined before the trial court.

9. In my view, at this juncture, it would not be appropriate to accept the present bail application. The application is accordingly dismissed.

**OCTOBER 19, 2015**

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**SIDDHARTH MRIDUL, J**