

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 17th December, 2015

+ BAIL APPLN. 2275/2015

TILAK RAJ @ MOLU

..... Applicant

Through: Mr. Manish Bhardwaj, Advocate

versus

STATE (THROUGH NCT OF DELHI)

.... Respondent

Through: Ms. Radhika Kolluru, APP for State

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 (Cr.PC) praying for grant of regular bail in FIR No. 1088/2015, under Sections 356/34 IPC registered at Police Station- Sarai Rohilla, Delhi.

2. The applicant has been in judicial custody since 19th September, 2015.

3. The charge-sheet in the subject FIR has been filed yesterday i.e. 16th December, 2015.

4. According to the prosecution, the applicant- Tilak Raj, who is an

employee of the complainant in the subject FIR is alleged to have tipped off the co-accused namely Ajay, Mithun, Sunny, Prince and Rakesh that the complainants were carrying a black bag containing cash amounting to Rs. 20 lakhs and 2000\$ as well as a mobile and some documents.

5. The prosecution alleges that the co-accused intercepted the complainants on a bike and snatched the said bag containing case as afore-stated from them at about 9.10 P.M. on the 12th September, 2015.

6. Upon investigation, subject to the registration of the present FIR, the co-accused Sunny is stated to have been arrested at the instance of a secret informer and Rs. 80,500/- are alleged to have been recovered from him.

7. Another co-accused namely Rajesh, who is stated to be also an employee of the complainants at their shop, was arrested and a sum of Rs. 7,20,000/- was allegedly recovered from him.

8. The case of the prosecution is that the co-accused Rajesh, in his disclosure statement, implicated the applicant herein as a co-conspirator in the commission of the said offence.

9. It is an admitted position that no cash or any other incriminating material has been recovered from the present applicant at this stage.

10. In a landmark decision of the Supreme Court in *Sanjay Chandra vs.*

Central Bureau of Investigation reported as **2012 (1) SCC 40**, the Hon'ble Supreme Court crystallized the law in respect of grant of regular bail as under:-

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the

fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

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46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.

47. In the view we have taken, it may not be necessary to refer and discuss other issues canvassed by the learned counsel for the parties and the case laws relied on in support of their respective contentions. We clarify that we have not expressed any opinion regarding the other legal issues canvassed by the learned counsel for the parties

48. In the result, we order that the appellants be released on bail on their executing a bond with two solvent sureties, each in a sum of Rs. 5 lakhs to the

satisfaction of the Special Judge, CBI, New Delhi on the following conditions:

(a) the applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him to disclose such facts to the Court or to any other authority.

(b) the applicants shall remain present before the court on the dates fixed for hearing of the case. If they want to remain absent, then they shall take prior permission of the court and in case of unavoidable circumstances for remaining absent, they shall immediately give intimation to the appropriate court and also to the Superintendent, CBI and request that they may be permitted to be present through the counsel.

(c) They will not dispute their identity as the accused in the case.

(d) They shall surrender their passport, if any (if not already surrendered), and in case, they are not a holder of the same, they shall swear to an affidavit. If they have already surrendered before the learned Special Judge, CBI, that fact should also be supported by an affidavit.

(e) We reserve liberty to CBI to make an appropriate application for modification/recalling the order passed by us, if for any reason, the appellants violate any of the conditions imposed by this Court.”

11. Following the decision of the Hon'ble Supreme Court in *Sanjay Chandra (supra)*, this Court in *Rajat Sharma vs. State of NCT of Delhi* reported as **2015 (3) JCC 1493**, observed as follows:-

7. A plain reading of the above decision makes it crystal clear that the object of bail is to secure the appearance of the accused person at his trial. It is further observed that the object of bail is neither punitive nor preventative and that deprivation of liberty must be considered a punishment unless it is required to ensure that the accused person will stand his trial when called upon. The Supreme Court further observed that when a person is punished by denial of bail in respect of any matter upon which he has not been convicted it would be contrary to the concept of personal liberty enshrined in the Constitution except in cases where there is reason to believe that he will tamper with the witnesses. To encapsulate, the Hon'ble Supreme Court has held that pre-conviction detention should not be resorted to except in cases of necessity to secure attendance at the trial or upon material that the accused will tamper with the witnesses if left at liberty.

12. In the present case, it is an admitted position that although the applicant has been charged with a serious offence, the allegations against him have been made on the basis of a disclosure statement of a co-accused namely Rajesh from whom part of the money snatched was recovered.

13. It is further an admitted position that nothing has been recovered from the applicant herein. The applicant has been in judicial custody since 19th September, 2015 and a charge-sheet qua the present applicant has already

been filed, as afore-stated.

14. Furthermore, there is no hint or allegation that the accused is a flight risk. The applicant has clean antecedents and is not involved in any previous involvements; and nor is there any material to suggest that he shall not be available to stand trial or that he will influence or intimidate the witnesses or tamper with the evidence, if enlarged on bail.

15. In view of the foregoing, the present bail application is allowed.

16. The applicant shall be released on bail on his furnishing a personal bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with two sureties of the like amount to the satisfaction of the Trial Court subject to the further conditions that:-

- (i) He shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any other authority;
- (ii) the applicants shall remain present before the Trial Court on the dates fixed for hearing of the case.
- (iii) He shall not try and influence witnesses or tamper with the evidence.

17. With the above said directions, the present bail application is allowed and disposed of accordingly.

18. A copy of this order be given *dasti* under the signature of Court Master to counsel for the parties.

DECEMBER 17, 2015

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SIDDHARTH MRIDUL, J

