

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

Judgment delivered on : November 06, 2015

+ **BAIL APPLN. 2353/2015**

KARAN

..... Petitioner

Through: Mr.Sameer Chandra, Mr.Sandeep
Tyagi and Mr.Zuber Raza, Advocates.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Ms.Manjeet Arya, Additional Public
Prosecutor for the State with Sub-
Inspector Santosh Kumar, Police
Station Mehrauli, Delhi.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. The petitioner has filed the present bail application under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 for seeking regular bail in a case registered under FIR No.894/2015 under Section 394/395/397/289/34 of Indian Penal Code, Police Station Mehrauli, Delhi.

2. The petitioner had also moved the bail application before the

learned Additional Sessions Judge -3 (South), Saket Courts, New Delhi, which was dismissed vide order dated 07.09.2015, which is impugned in the present petition. The learned Additional Sessions Judge -3 (South), Saket Courts, New Delhi, keeping in view the seriousness of the offence punishable under Section 395 of Indian Penal Code, rejected the bail application of the petitioner.

3. Mr. Sameer Chandra, Advocate appears on behalf of the petitioner and submits that the petitioner has been falsely implicated in the case. It is also contended that the petitioner is in judicial custody for the last about seven months and charges are yet to be framed in this case. Counsel for the petitioner further argued that despite complainant's statement of complainant regarding not lodging any complaint against the petitioner, the police has lodge the FIR at the instance of some persons.

4. For better appreciation of the contents of FIR, the same is reproduced hereunder:-

“The SHO, PO Mehrauli ND, Sir, Today around 10.30 PM as I was exiting an ATM (Canara) in Suman Chowk Chattarpur Extn., I happened to come across a group of young boys presumably

substance abusers, taking pleasure by slitting their forearms with surgical blades. In utter curiosity, I filmed the shocking sight with my cell phone. Unfortunately to my bad luck, I became a victim of racial abuse and physical attack. I was even bitten by a dog I suspect belonged to the perpetrators. Having said this statement mentioned above, I have come to terms with my own self and have decided not to lodge any complaint but instead forgive them in Jesus Name. I reaffirm my forgiveness.”

5. It is further contended on behalf of the petitioner that the FIR in question neither disclose the name of the petitioner nor does disclose any specific role of the petitioner. Counsel has further argued that nothing incrimination has been recovered either from the possession or at the instance of the petitioner. It is further urged that initially the FIR was lodged under Section 394 of IPC but later on Section 395 and 397 of IPC were added just to implicate the petitioner and other persons.

6. It is contended on behalf of the petitioner that he has clean antecedents and has roots in the society and there is no apprehension of his absconding or likelihood that he may tamper with evidence. It is urged that the entire family is dependent upon the earnings of petitioner and the petitioner is in custody since 21.05.2015

7. As per petitioner, there are 15 prosecution witnesses to be examined in the case and the prosecution may take long time. Counsel for the petitioner contended that merely because the case has been registered under Section 395 of IPC, the bail plea cannot be rejected solely on the ground of serious nature of offence is involved.

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 order passed by the learned Additional Sessions Judge is a well reasoned order and does not call for any interference by this Hon'ble Court. The learned Additional Sessions Judge, while rejecting the bail to the accused has rightly observed that the offence punishable under Section 395 of IPC is a serious offence and punishable with life imprisonment.

9. The State has filed its status report and according to the status report, one complaint of Alemzungba AO, a Nagaland citizen and temporarily resident of Chhattarpur, New Delhi, on 30.3.2015, when he went to ATM for withdrawing money, a group of young boys came with surgical blade and beaten him and snatched his money. On a patrolling PCR, complainant told about the incident. PCR informed

the local police and brought the complainant to Fortis Hospital, Vasant Kunj for medical examination. At the same time, another person – Rakesh, resident of Chattarpur was reported to be beaten by knife and surgical blade and snatched his 1500 rupees and another Patrolling PCR brought him to AIIMS Trauma Centre, who in his statement under Section 164 Cr. P.C. stated that seven persons came at Suman Colony, Chattarpur, New Delhi and beaten him with knife and surgical blade.

10. The State has submitted that the next date fixed in the case is 10.11.2015 and three other accused Vimal, Amit and Manoj are yet to be arrested. The status report further indicates that the charge sheet in the case has been filed but the charge is not framed yet. It is brought to notice of this court that the accused - Karan had refused to participate in TIP Proceedings in Tihar Jail.

11. I have heard the submissions made by learned counsel for the petitioner/applicant and the learned Additional Public Prosecutor for the State. Perusal of the FIR reveals that there is no allegation against the petitioner under Section 395 and even of Section 394 of IPC, rather it shows that the complainant had forgiven the culprits in the

name of Jesus. Statement of Mukesh Mishra, under Section 161 of Cr.P.C. is also perused, according to which the weapon of offence was not found in the hand of the petitioner-Karan but was with Amit and Manoj. The role attributed to the petitioner/applicant was of catching hold and giving beatings to the Mukesh Mishra. The State has also not framed the charges against the accused and the petitioner is in custody for the last seven months.

12. After considering the contents of the present petition as well as the submissions made by learned Additional Public Prosecutor for the State and on perusal of the impugned order, and considering the fact that the petitioner is a young boy of 22 years, having no other case registered against him at the time of his arrest, and a sole bread earner of his family, and the fact that the role attributed to the petitioner is of catching hold and giving beatings only and even the weapon of offence was not recovered from him, therefore, this court is inclined to grant bail to the petitioner – Karan subject to his furnishing personal bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the Trial Court. The petitioner is directed not to influence the prosecution witnesses and shall not leave

the country without prior permission of the Court concerned.

13. With aforesaid directions, the present application is disposed of. However, it goes without saying that any observation made in the aforesaid order shall not affect the merits of the case.

14. A copy of this order be given dasti under signatures of court master to counsel for the petitioner.

(P.S.TEJI)
JUDGE

NOVEMBER 06, 2015
pkb