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

+ BAIL APPLN. 476/2016

SUKHDEV SINGH NAMDHARI

..... Petitioner

Through Mr.R.S. Malik, Mr.Vinay Choudhary,
Mr.Sahil Malik & Mr.Aman Kadyan,
Advocates.

versus

THE STATE (GOVT OF NCT OF DELHI) Respondent
Through Mr.Rajat Katyal, APP for the State.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

ORDER
% **01.04.2016**

The present application has been filed by the petitioner under Section 439 Cr.P.C. for the grant of regular bail in FIR No.497/2012, under Sections 147/148/149/302/307/325/342/365/368/395/397/449/450/452/201/120-B/34 IPC and under Sections 25/27/54/59 Arms Act, Police Station Mehrauli.

Arguments heard.

As per FIR, the allegations levelled against the petitioner are that on 17.11.2012 at 11.50 a.m., a PCR call was received to the effect that some quarrel was taking place at DLF Farm No.42,

Chattarpur. The police officials reached at the spot and found a dead body of a male in the guard room who was later identified as Hardeep Singh. In the meantime, another call was received to the effect that a quarrel was taking place at DLF Gate Chattarpur. Statement of Nand Lal, driver of the deceased was recorded who stated that on the said day at about 11 a.m., he was present at Farm No.42, Chattarpur. Sonu came running from gate no.3 and stated that 30/40 persons were breaking gate no.1 of the farm house and they were trying to enter the farm house. By the time complainant came downstairs, he saw 4/5 cars in which there were several men who came inside the farm house and amongst them he knew Bisht, Anna and Prembir. The said three persons were the PSO of Ponty Chaddha for several years. It was further alleged that Bisht and Anna grabbed the complainant and Bisht handed him to Prembir who fired two gun shots in the air and told the persons present at the farm house to vacate the farm house immediately. The other persons who came in cars also started beating the persons present in the farm house with hockey sticks, sword, danda and dragged them out. Complainant further stated that he was put in an Innova car and was taken to Farm No.34, Chattarpur and made to sit in a room. After long time, one person came and called the persons present outside the room and then they went away leaving the complainant alone. Finding the opportunity, the complainant escaped from there.

On the basis of above statement of Nand Lal, FIR of the present case was registered. During investigation, it was revealed that Farm House No.42, Chattarpur was in physical possession of Hardeep

Singh Chadha. On the basis of the statements and other evidences, accused Bhupender Singh Bisht, Rajpal Singh, Anand Singh Bisht and Uday Raj Singh @ Anna were arrested on 19.11.2012. It was disclosed by accused Bhupender Singh Bisht that Gurdeep Singh @ Ponty Chadha told him on 16.11.2012 that all negotiations with Hardeep Chadha had failed. On 17.11.2012, Ponty's friend, namely, Sukhdev Singh Namdhari and his associate and other persons attended the meeting of Ponty Chadha at Farm House No.21 and it was decided that all the employees of Hardeep Singh are to be evicted from Farm House No.42 forcibly. For the same, they collected deadly weapons. The men of Sukhdev Singh Namdhari were holding rifles and other weapons and they reached Farm House No.42 on 17.11.2012 and they and other persons fired from their weapons. Accused Mathura Singh Mehra also disclosed about the involvement of Sukhvinder Singh Namdhari in the conspiracy. The petitioner was arrested on 23.11.2012. Accused Sachin Tyagi was arrested on 03.12.2012 who disclosed that the petitioner fired gun shots towards Hardeep Singh. Witness Amit Kumar stated that on 17.11.2012 when he along with guard Shish Ram was waiting for the arrival of two children of Hardeep Singh at Farm House No.21, Ponty Chadha, Sukhdev Singh Namdhari and one PSO came there and Ponty Chadha abused them and thereafter they were given kicks and fist blows and their weapons and licenses were snatched. Witnesses Chitrnanjan Singh @ Billu, Sukhvinder Singh and Gurvinder Singh have stated that they were employed by Sukhdev Singh Namdhari who also provided henchmen to Ponty Chadha for his liquor business. Call

details of Ponty Chadha and Sukhdev Singh Namdhari were analysed and it revealed that Ponty Chadha called the petitioner on 17.11.2012 at 07.31 a.m. At about 10 a.m., the petitioner was present at the location of Farm House No.21.

The State has filed the detailed status report mentioning therein the involvement of the petitioner in the commission of crime of the present case. In the present case, 20 accused persons were arrested, charge sheeted and are facing trial. It is mentioned that the petitioner is the main accused who has actively participated in the conspiracy and executed the same. It is further submitted that the petitioner is an influential person and can influence the witnesses who are yet to be examined.

Argument advanced by the counsel for the petitioner is that in the FIR in question, no role of any kind has been attributed to the petitioner. The petitioner has not been named in the said FIR. It is further argued that the disclosure statements of the co-accused persons cannot be used against the petitioner. It is further argued that the witnesses examined so far have not assigned any role to the petitioner in any offence. It is submitted that at the time of incident, the petitioner was sitting in the car with Ponty Chadha and it was deceased Hardeep Singh who fired several gun shots at Ponty Chadha and in self defence, the gun shots were fired. In support of this contention, counsel for the petitioner has referred to a judgment in the case of ***Darshan Singh v. State of Punjab & Anr. I (2010) DLT (Crl.) 410 (SC)***.

Counsel for the petitioner has also referred to a judgment in the

case of ***Kamal Kishore v. The State through Delhi Administration*** 1997 II AD (Delhi) 355 to press the contention that the disclosure statements are not admissible in evidence.

So far as the contention of the petitioner to the effect that none of the witnesses has deposed anything against the petitioner is concerned, this Court is of the considered opinion that it is not the stage to comment on the evidence recorded before the Trial Court. The testimony of witnesses can be examined only after the conclusion of trial and the same cannot be read in piecemeal, as referred by the counsel for the petitioner. Admittedly, empty shells of the cartridges allegedly fired by petitioner were recovered from the spot.

The other contention of the petitioner is that the disclosure statements of co-accused persons cannot be read in evidence. It is no doubt a settled law that the disclosure statement of accused is not at all admissible in evidence where it has not led to discovery of any fact which was not known to the police or where it has not led to the recovery of any article associated with the allegations of a particular case. More the reason, the charge has already been framed against the petitioner and the case is in the process of prosecution evidence. The judgments referred by the counsel for the petitioner does not render any help to him as the factual position is to be established on the recording of the evidence. It would be pertinent to mention that the ratio of the judgments is to follow in the facts and circumstances of a individual case and it cannot be said that the facts and circumstances of the judgments referred are applicable in the present case.

The record reveals that the petitioner was granted interim bail

for 6 days by the learned Trial Judge on 18.09.2014. Thereafter, fresh extension of interim bail was granted for 7 days on 30.09.2014 and then for one month on 23.12.2014. Fresh extension of interim bail was granted till next date vide order dated 27.01.2015. Thereafter, fresh extension of interim bail was granted till 30.03.2015 vide order dated 11.03.2015; then uptill 10.04.2015; then uptill 25.04.2015; then uptill 08.05.2015; then uptill 13.05.2015 and then uptill 19.05.2015. The extension of bail was declined on 21.05.2015 and the petitioner was directed to surrender. Vide order dated 03.06.2015, the learned Trial Judge dismissed the regular bail application of the petitioner. Thereafter, on 01.09.2015 again the interim bail was granted to the petitioner for 3 weeks and on 01.10.2015 fresh extension of interim bail was granted for one month. On 09.11.2015, fresh extension of interim bail was granted uptill 27.11.2015; then uptill 14.12.2015; then uptill 12.01.2016; then uptill 29.01.2016; then uptill 11.02.2016 and then uptill 18.03.2016 and still the petitioner is on interim bail.

It would be pertinent to mention that during the pendency of the application for the grant of regular bail before the Trial Court and decision thereupon, the petitioner remained on interim bail and even after the dismissal of the regular bail application by the Trial Court itself, the petitioner was granted interim bail which continued from date to date and at the time of filing the present bail application, it was already in existence till 17.03.2016. Not only this, even during the pendency of the present application, the interim bail of the petitioner was extended further without having the person out of the jail even after rejection of the regular bail application.

In the present case, the allegations levelled against the petitioner are that he hatched a criminal conspiracy along with his co-accused persons and in pursuance of the same, murder, loot, dacoity and destruction of evidence has been committed apart from using the arms and ammunition. It is specifically alleged against him that he fired gun shots at the deceased and he was part of the criminal conspiracy to take the forcible possession of the farm house belonging to the deceased. The seriousness of the offence does not warrant the releasing of the petitioner on regular bail.

The circumstances mentioned above lead to a situation which makes the petitioner not entitled for regular bail in the present case. Hence, the present application is dismissed.

Before parting, it has been observed that the petitioner was released on interim bail; interim bail was extended from time to time even during the pendency of the regular bail application, at the time of dismissal of regular bail before the Trial Court, after dismissal of the regular bail; before moving bail application before this Court, thereafter during pendency of this regular bail application before this Court and even the petitioner is under the interim bail till the date.

As mentioned above, the act of the grant of bail and extending it from time to time despite the rejection of regular bail itself by the learned Trial Judge and subsequently granting the interim bail despite the matter for the grant of bail being sub judice before this Court needs to be examined on the administrative side for the year 2015 and 2016.

A copy of the order be sent to the Registrar General to place it on the administrative side for consideration before Hon'ble the Chief Justice.

P.S.TEJI, J

APRIL 01, 2016
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