

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

+ Bail Application No.1298/2016

Date of Decision: August 03, 2016

SITTU MANDAL @ GOPAL

..... Petitioner

Through: Mr. Akhilesh Kumar, Adv.

versus

STATE

..... Respondents

Through Mr.M.P.Singh, APP.

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

P.S.TEJI, J.

1. The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.359/2015 under Section 365/392/397/506/34 IPC registered at Police Station: Mahendra Park, Delhi.

2. The case in the nutshell is that on the intervening night of 28/29.04.2015, the complainant/Arvind Kumar S/o Sh.Nandeshwar Rai Prabhakar came to the police station Mahendra Park and lodged a complaint vide DD No.7B. In his statement to the IO, the complainant stated that in the intervening night of 28/29.04.2015 while he was coming from Ambala to Delhi in a Haryana Roadways Bus and got

down at Karnal Bypass at around 12.15 AM under the Mukarba Chowk flyover, one EECO van having registration No. DL 8C AD 3043 stopped near him and 5-6 persons were present in the van. One boy got down and caught him by his neck and pushed him inside the van. Thereafter, two boys pulled out knives and put on his stomach from both sides. The accused persons robbed him off his cash Rs.1,200/-, three ATM Cards, Voter I-Card, Driving Licence, two mobile phones and PAN card and also asked him to disclose the password of ATM Cards at the point of knife. The accused persons withdrew cash from ATM of AXIS bank near Village Nangli Poona, Delhi. Accordingly FIR in question was registered under Sections 365/392/397/506/34 IPC at Police Station: Mahendra Park, Delhi. Subsequently, section 395/412 IPC were also added to the case.

3. During the investigation, ownership of the EECO bearing No. DL 8C AD 3043 which was used in the commission of the offence was obtained from the transport authority and was found to be registered in the name of one Mr. Mushtakin S/o Ash Mohd. On interrogation, Mr. Mushtakin told that he had sold the EECO van to Rajveer S/o Hakim Singh. Thereafter, IO accompanied Mushtakin to

the house of Rajveer and found the van parked there. The complainant identified the vehicle. Rajveer stated that on 28.04.2015 his nephew Shyam @Shyamu had taken the vehicle from him and returned the same on the intervening night of 28/29.04.2015 at 2 AM. Shyam was accompanied with his neighbour Sittu (petitioner herein), Yogesh and Shahrukh, whose residence was known to him. Thereafter, Rajveer showed the house of accused persons and the petitioner was found in his house. The complainant identified him as the person who was driving the EECO van in question.

4. During further investigation, the petitioner was arrested and confessed to the commission of offence and told the police that he had received his share as Rs.500/- when he produced and also identified the scene of crime. Thereafter, at the instance of the petitioner, piece of ATM card (Central Bank of India) was recovered from a place near Swaroop Nagar Canal. The petitioner also identified the ATM (Axis Bank) Nangli Poona Village from where the money was withdrawn.

5. The learned counsel for the petitioner in support of his case has taken the grounds that accused has been in custody for more than one year; that charge sheet has been filed in the matter, but still the

testimony of the complainant is not complete. As a result, the petitioner is languishing in jail; that investigation is already complete and there are no chances of evidence being tampered with; that the complainant has identified the petitioner only as a driver who was driving the EECO van in question and he was not the one who forcibly made the complainant enter the van and robbed him on the point of knife; that the applicant has no concern with the commission of offence; that the petitioner, if released on bail, undertakes to appear before the Court on each and every date and shall comply with the conditions if so imposed.

6. Per contra, the learned APP for the State has vehemently opposed the grant of regular bail to the petitioner on the ground that the complainant has identified him as the person who was driving the EECO van in question; that fourteen prosecution witnesses are yet to be examined and if released on bail, in view of the gravity of offence, the petitioner is likely to threaten the witnesses and tamper with the evidence.

7. From the facts and circumstances of the case, this Court observes that the petitioner was one of the robbers; he was identified

by the complainant as the person who was driving the vehicle used in the commission of offence of robbery; that he got recovered a piece of ATM card (Central Bank of India) belonging to the complainant which was used to withdraw the money and the active role played by the petitioner in the robbery. Keeping in view the seriousness of offence, recovery effected by the petitioner and apprehension regarding influencing the prosecution witnesses, this court is not inclined to grant bail to the petitioner at this stage.

8. Before parting with the order, this court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

9. The present bail application is accordingly dismissed.

(P.S.TEJI)
JUDGE

AUGUST 03, 2016
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