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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 19th February, 2016

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BAIL APPLICATION NO. 887/2015

SANJEEV MAHESHWARI @ JEEVA

..... Petitioner

Represented by: Mr. K.S.Singh, Advocate.

Versus

CBI (THROUGH STANDING COUNSEL)

..... Respondent

Represented by: Ms. Sonia Mathur, Standing Counsel
for CBI with
Mr. Abhishek Chauhan, Advocate.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. By way of the present petition, filed under Section 439 Cr.P.C. petitioner seeks directions thereby releasing him on bail in case FIR No. RC/8(S)/06/CBI/SCB-II/New Delhi registered at CBI/SCB/New Delhi for the offences punishable under Sections 147/148/149/302/307/404/120B IPC pending before the Trial Court in Sessions Case No. 02/2013.

2. Ld. Counsel appearing on behalf of the petitioner submitted that petitioner has never been associated with Mukhtar Ansari and his brother namely Afzal Ansari in any manner or in any other case. There is no motive for the petitioner to commit murder of Krishnanand Rai, the then MLA from

Ghazipur, UP and his companions. There is no mention about the petitioner in the first chargesheet and supplementary chargesheet dated 21.02.2006 and 20.03.2006 respectively. It was the only in the third supplementary chargesheet dated 31.08.2006 which was hurriedly filed by CBI when the investigation was handed over to it on 23.05.2006 and the aforesaid RC was registered on 22.07.2006.

3. Ld. Counsel further submitted that the statements of the witnesses were fabricated at the belated stage, i.e., after about 9 months of the alleged incident. On the basis of his alleged disclosure statement, the petitioner was falsely roped in this case during his custody in another false case fabricated by Delhi Police in collusion with STF U.P. Police under Arms Act in which the petitioner has been acquitted.

4. On the aforesaid issued, Id. Counsel for the petitioner has relied upon a case of ***Aghnoo Nagesia v. State of Bihar (1966) 1 SCR 134*** whereby it is observed as under:

“ Section 24 excludes confessions caused by certain inducements, threats and promises. Section 25 provides: "No confession made to a police officer, shall be proved as against a person accused of an offence." The terms of s. 25 are imperative. A confession made to a police officer under any circumstances is not admissible in evidence against the accused. It covers a confession made when he was free and not in police custody, as also a confession made before any investigation has begun. The expression "accused of any offence" covers a person accused of an offence at the trial whether or not he was accused of the offence when he made the confession. Section 26 prohibits proof against any person of a confession made by him in the custody of a police officer, unless it is made in the immediate presence of

a Magistrate. The partial ban imposed by s. 26 relates to a confession made to a person other than a police officer. Section 26 does not qualify the absolute ban imposed by s. 25 on a confession made to a police officer. Section 27 is in the form of a proviso, and partially lifts the ban imposed by ss. 24, 25 and 26. It provides that when any fact is proved to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Section 162 of the Code of Criminal Procedure forbids the use of any statement made by any person to a police officer in the course of an investigation for any purpose at any enquiry or trial in respect of the offence under investigation, save as mentioned in the proviso and in cases falling under sub-s (2), and it specifically provides that nothing in it shall be deemed to affect the provisions of s. 27 of the Evidence Act. The words of s. 162 are wide enough to include a confession made to a police officer in the course of an investigation. A statement or confession made in the course of an investigation may be recorded by a Magistrate under s. 164 of the Code of Criminal Procedure subject to the safeguards imposed by the section. Thus, except as provided by s. 27 of the Evidence Act, a confession by an accused to a police officer is absolutely protected under s. 25 of the Evidence Act, and if it is made in the course of an investigation, it is also protected by s. 162 of the Code of Criminal Procedure, and a confession to any other person made by him while in the custody of a police officer is protected by s. 26, unless it is made in the immediate presence of a Magistrate. These provisions seem to proceed upon the view that confessions made by an accused to a police officer or made by him while he is in the custody of a police officer are not to be trusted, and should not be used in evidence against him. They are based upon grounds of public policy, and the fullest effect should be given to them.”

5. Ld. Counsel further submitted that the whole process of TIP of the petitioner was adopted by CBI by allegedly showing his photographs to alleged eye witnesses whose belated statements were recorded after 9-11 months from the incident. It is strange that when the petitioner was present in the court of CJM, Ghazipur, UP on 07.06.2006 and on 20.06.2006, his TIP was avoided by Investigating Agency intentionally and deliberately despite the application filed by the petitioner. Further none of the alleged eye witnesses ever disclosed about the approximate age, physique, complexion etc. of the petitioner in their statements recorded under Section 161 Cr.P.C. Moreover, the deposition of the alleged eye witnesses including the alleged TIP of the petitioner, falsified the case of CBI and his alleged involvement in the crime.

6. PW19 Anjani Kumar Rai, though narrated the incident, but categorically denied having recognized the petitioner as one of the assailants by stating that *“CBI people had shown me certain photographs and I told them that none of the photographs was that of any person involved in the incident.”*

7. Further stated that *“only the overleaf of the photographs was shown to me and not the photographs and I signed the photographs on the asking of the CBI officials.....It is correct that I have seen Sanjeev Maheshwari first time in Court today and also came to know about his name today only.”*

8. PW21 Prem Chand Rai deposed to the effect that he had signed on the reverse of the photograph marked as PW21/D. His signatures were obtained

on reverse side of photograph.....He had not seen the petitioner on 25.10.2015 in the Ghazipur Court Complex.

9. PW22 Manoj Kumar Rai deposed to the effect that he had not recognized the photograph of the petitioner as the person driving the TATA Sumo vehicle which was used in the crime.

10. PW26 Ram Kirat Singh deposed that he had not heard the name of any person namely Sanjeev Maheshwari @ Jeeva and declined to identify the photograph marked as PW21/D. He deposed that his signatures were not obtained at the reverse side of the photographs shown by the CBI and denied having seen the petitioner as one of the assailants.

11. Ld. Counsel further submitted that complainant Ram Narayan Rai and his cousin Brijesh Rai were neither present at the scene of occurrence and nor they were travelling either in vehicle no. UP-65AA3210 or in vehicle no. UP65AA4210. Thus, the complainant as well as his cousin Brijesh Rai was not the alleged eye witnesses. Moreover, PW1 Kamla Singh deposed that at the time of incident on 29.11.2005 Ram Narayan Rai and Brijesh Rai were at Banaras and they returned at 8 – 9 PM from Banaras on 29.11.2005.

12. PW2 Vinod Singh deposed that he reached the spot immediately after the incident, but Ram Narayan Rai and Brijesh Rai were not there. PW19 Anjani Kumar Rai deposed that Ram Narayan Rai and Brijesh Rai were not amongst the passengers of both the vehicles mentioned above as both were at Banaras on 29.11.2005 and returned only after 9 PM. PW21 Prem Chand Rai deposed that he met Ram Narayn Rai and Brijesh Rai at their residence at Banaras on 29.11.2005 at the time of incident.

13. Ld. Counsel further submitted that PW2 Manoj Kumar Rai deposed that Ram Narayn Rai and Brijesh Rai were not travelling in any of the vehicle. PW23 Ramesh Chand Rai deposed that complainant Ram Narayan Rai and Brijesh Rai were present at Banaras when he met them there at about 1.30-1.45 PM. Moreover, PW26 Ram Kirath Singh deposed that Brijesh Rai and Ram Narayan Rai were not travelling in the vehicles on 29.11.2005 along with other witnesses.

14. Ld. Counsel further submitted that in statement under Section 164 Cr.P.C. it was recorded on 18.09.2006 that PW20 Nand Lal Rai deposed as per the noting given by PW23 Ramesh Chand Rai and PW21 Prem Chand Rai made a statement before the Magistrate on being asked by the police.

15. While concluding his argument, ld. Counsel for the petitioner submitted that out of total 75 prosecution witnesses, 26 have been examined and most of the witnesses have not supported the prosecution case against the petitioner. Thus, the period of incarceration does not matter in the case of regular bail. Moreover, there is no recovery from the petitioner and he had been languishing in jail since 07.06.2006. Till date he has not been convicted in any other case and had no connection with the accused persons. Therefore, he may be admitted on bail.

16. On the other hand, ld. Standing Counsel appearing on behalf of the CBI submitted that in the alleged incident seven persons were killed as under:

1. Krishnanand Rai (MLA)
2. Akhilesh Kumar

3. Munna Yadav
4. Shyam Shankar Rai
5. Ramesh Rai
6. Sheshnath Singh
7. Nirbhay Narayan Upadhyay

17. There are 13 accused persons including the petitioner. Out of which accused nos. 4, 10 and 11 have been declared as Proclaimed Offender.

18. Ld. Standing Counsel further submitted that in the aforesaid incident FIR was registered on 29.11.2005 at Ghazipur, UP and after investigation, chargesheet was filed against five accused persons. But the name of the petitioner was not there. On 25.02.2006, cognizance was taken by Ghazipur Court and on 20.03.2006 supplementary chargesheet was filed by the local police whereby Mukhtar Ansari (Accused no. 6) was arrayed as an accused.

19. Vide order dated 23.05.2006, Allahabad High Court directed to transfer the case to CBI for further investigation. Accordingly, after investigation third supplementary chargesheet was filed on 31.08.2006 before Judicial Magistrate, Luckow, wherein the petitioner was arrayed as accused no. 7. Thereafter, fourth supplementary chargesheet was filed on 12.12.2006 wherein two more accused namely Rakesh Pandey and Ramu Mallah were arrayed as accused nos. 8 and 9 respectively. On 19.03.2007, CBI filed fifth supplementary chargesheet, wherein Vishwas Nepali, Zaffar, Afroz and Mansoor Ansari were arrayed as accused nos. 10 to 13 respectively.

20. Ld. Standing Counsel further submitted that vide order dated 22.04.2013, the Supreme Court transferred the present case to Delhi from Sessions Court, Ghazipur, UP. However, from 2008 to 22.04.2013 trial was stayed by the Supreme Court. Thereafter, in the year 2014, sixth supplementary chargesheet was filed. Further two bail applications filed by the petitioner were dismissed by Sessions Judge, Ghazipur and third bail application was dismissed as not pressed by the Allahabad High Court on 26.12.2013 and his fourth bail application was dismissed by Special Judge, Tis Hazari Court, Delhi on 15.10.2014.

21. She further submitted that on 29.11.2005 Shri Krishnand Rai, the then MLA, Ghazipur, UP along with others was going from Village Siyadi to Village Kanuwan in two Toyota Qualis. At around 2.45 PM near village Basniya, these two vehicles were ambushed by 6-8 assailants who were armed with weapons. The assailants shouted "*maro sale ko Mukhtar Bhai or Afzal Bhai ko bahut paresan karta hai*" and started firing indiscriminately at two vehicles which resulted into the death of all seven passengers of the first vehicle including Krishnanand Rai. The occupants of 2nd vehicle escaped in the attack and identified Munna Bajrangi (A-3), Atta ur Rehman (A-4), Azaz Ul Haq (A-1) and Firdaus (A-5). While fleeing from the spot, the assailants took away licensed pistol of the deceased, his gold chain, carbine of Govt. gunner and licensed rifle of Ram Kirath Singh.

22. As per the investigation, on 14.05.2006, Delhi Police arrested the petitioner and it was revealed that he was one of the assailants, who had killed Krishnanand Rai, the then MLA. On receiving this information, UP Police obtained production warrants and petitioner was produced before

CJM, Ghazipur on 07.06.2006 and was sent to judicial custody. On being produced in the Court of CJM, Ghazipur, the witnesses identified him as one of the assailants and associate of accused Mukhtar Ansari and Afzal Ansari, who was being instructed by these accused on 25.10.2005 to kill Krishnanand Rai, the then MLA. All the eye witnesses identified him as the person who was driving the Tata Sumo vehicle used by the assailants in the aforesaid murder. They also identified him as the person who fired from his pistol from a very close range at Krishnanand Rai. Thus, the role of the petitioner in the said incident is serious and grave.

23. The supplementary statement of Ram Narayan Rai was recorded on 18.08.2006, in which he named petitioner as one of the co-accused involved in the shooting.

24. Ld. Standing Counsel further submitted that the petitioner is one of the shooters and also had a high political background. Thus, if he is released on bail there are every apprehension of the witnesses being intimidated or influenced by the petitioner. More so, the role of the accused no.2 Afzal Ansari, who was granted bail by the Allahabad High Court on 07.01.2009 is different from the petitioner as the allegations against him are that he was part of the conspiracy only whereas the allegations against the petitioner is that he was the driver of the vehicle Tata Sumo used in the crime and was present at the spot and shoot indiscriminately at Krishnanand Rai and his companions. Therefore, he cannot seek the parity in this case. Moreover, he cannot claim the parity with accused Ramu Mullah, who was admitted on bail on 18.07.2008 by

Allahabad High Court for the reason that he was not identified in any TIP proceedings.

25. I have heard Id. Counsel for the parties.

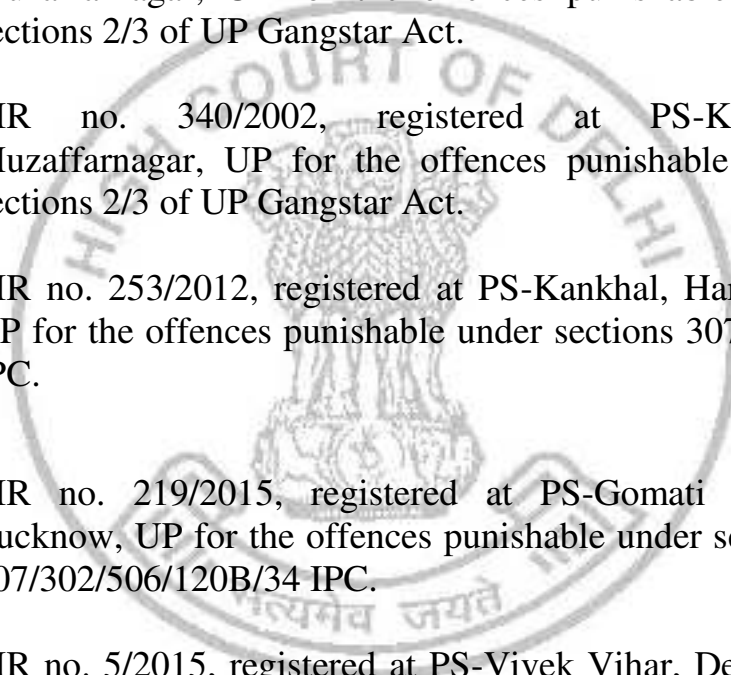
26. While granting the bail, the Court has see whether a person can commit the same offence, after getting a bail or whether, he can influence the witnesses or tamper with the evidences or may flee from the judicial process.

27. The role of the petitioner in the incident in question is serious in nature as the accused killed seven persons including an MLA from Ghazipur District, UP which shows that the accused person had courage to take precious lives of these 7 persons. It is important to note that due to the influence in the State vide order dated 22.04.2013, the Supreme Court transferred the present case from Sessions Judge, Ghazipur, UP, to Delhi Court.

28. As informed by the counsel for the parties, there are 75 witnesses in the present case and only 26 have been examined. Accused persons including the petitioner are languishing in jail. Two are proclaimed offender and one accused passed away.

29. There are 8 other cases registered against the petitioner, which are as under:

- (i) FIR no. 2285/2011, registered at PS-Kotwali, Barabanki, UP for the offences punishable under sections 384/34 IPC

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- (ii) FIR no. 1307/2010, registered at PS-Kotwali Nagar, Muzaffarnagar, UP for the offences punishable under sections 420/467/468/471/120B IPC.
 - (iii) FIR no. 1469/2010, registered at PS-Kotwali Nagar, Muzaffarnagar, UP for the offences punishable under sections 2/3 of UP Gangstar Act.
 - (iv) FIR no. 386/1995, registered at PS-Civil Lines, Muzaffarnagar, UP for the offences punishable under sections 2/3 of UP Gangstar Act.
 - (v) FIR no. 340/2002, registered at PS-Khatoni, Muzaffarnagar, UP for the offences punishable under sections 2/3 of UP Gangstar Act.
 - (vi) FIR no. 253/2012, registered at PS-Kankhal, Haridwar, UP for the offences punishable under sections 307/120B IPC.
 - (vii) FIR no. 219/2015, registered at PS-Gomati Nagar, Lucknow, UP for the offences punishable under sections 307/302/506/120B/34 IPC.
 - (viii) FIR no. 5/2015, registered at PS-Vivek Vihar, Delhi for the offences punishable under sections 387/120B IPC.

30. As per the rejoinder dated 22.09.2015 to the status report filed by the respondent in the case mentioned at serial no. 1 above, the petitioner has already been acquitted, whereas the cases mentioned at serial no. 2 to 7 are still pending, wherein the petitioner is on bail and in the case mentioned at serial no.8, the petitioner is discharged vide order dated 11.08.2015.

31. From the cases mentioned above, it is established that petitioner is a habitual offender and even earlier involved in the cases punishable under Sections 302 and 307 IPC which are heinous in nature.

32. In view of the above, I am of the considered opinion that if the petitioner is released on bail, he may commit similar offence. Moreover, it cannot be ruled out that he may influence the remaining witnesses and tamper with the evidence.

33. Therefore, keeping in view the role assigned to the petitioner in the instant case and his involvement in serious offences, I am not inclined to admit him on bail.

34. Accordingly, the petition is dismissed.

FEBRUARY 19, 2016

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**SURESH KAIT
(KAIT)**