

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on : 29th February 2016

+ BAIL APPLN. 2086/2015
DURGESH

..... Petitioner

Through: Mr.Vishal Singh, Mr.Pankaj Singh,
and Mr.Piyush Vatsa, Advocates.

versus

STATE OF DELHI NCT

..... Respondent

Through: Ms.Manjeet Arya, learned Additional
Public Prosecutor for the State with
Sub-Inspector Rakesh Kumar &
Durgesh, Police Station Saket, Delhi.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

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P.S. TEJI, J.

1. By this petition filed under Section 439 of Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr. P.C.), the petitioner seeks bail in a case registered as FIR No. 59/2014 under Sections 394/307/34 of Indian Penal Code, at Police Station Saket, Delhi.

2. The present FIR was registered on the statement of Ms. Pooja Goel, who informed that on 01.02.2014 at about 4.20 p.m., when she was sleeping in her room at first floor, she heard her mother in law screaming. When she rushed to lower floor, she saw that her mother in law was lying on the floor in a pool of blood and the son of her maid Maya, namely, Dabloo carrying a bag in his hand, who ran away after seeing her. She further informed that while taking her mother in law to the hospital, her mother in law told her that Dabloo had entered the house with his 2-3 friends and robbed away the ornaments and cash.

Thereafter, she went inside the house and found the cupboards of both rooms opened and the articles were lying scattered. There was also a lot of blood spread over the floor in the bedroom of her mother in law.

3. During the investigation, the statement of injured Pushpa Goel was also recorded under Section 161 of Cr. P.C., wherein she informed that Dabloo alongwith two other persons entered her house and injured her with knife and committed robbery. The police also recorded the confessional statement of co-accused Ajay Maurya, Suresh @ Dabloo and Vijay Kumar Mishra, wherein they named the present applicant/petitioner as an accomplice. The chargesheet/final report was filed on 05.05.2014 under Section 394/395/307/120-B/34 of IPC. On disclosure of the co-accused, the present petitioner was produced before the learned ACMM, Saket on 22.11.2014 and since then he is in custody. The petitioner had also refused to join the TIP. Confessional Statement of the petitioner was recorded by the police on 22.11.2014 and after completion of investigation qua the petitioner, supplementary charge sheet was filed on 29.01.2015, under Section 394, 395, 307, 120B, 34 of IPC, wherein the petitioner was arrayed as an accused with other co-accused persons.

4. Mr. Vishal Singh, counsel for the petitioner contended that the petitioner was not named in the FIR in question and even in the statement of injured Pushpa Goel, the name of the petitioner is not mentioned. As far as disclosure statement of the co-accused of the case are concerned, counsel for the petitioner contended that there is an old enmity between the co-accused and the petitioner. It is

contended that not only in the present case, but the petitioner has been named by the same co-accused persons in other cases registered in Rai Bareilly. It is further contended that the petitioner has been granted bail in other cases registered at Rai Bareilly. It is further contended that the accused was not made an accused in the charge sheet filed on 05.05.2014. It is further urged that the petitioner was produced in the Court of learned ACMM Saket on 22.11.2014, when he was arrested in the present case and since then he is in jail. Regarding refusal to join the TIP, it is contended that the police had already taken his photographs and the petitioner had strong apprehension that the police might have already shown the same to the witnesses. In response to the supplementary charge sheet filed by the prosecution on 29.01.2015, it is contended that the same is filed solely on the basis of confessional statement recorded under Section 161 of Cr. P.C., of the other co-accused persons and in this regard it is urged that the statements recorded under Section 161 Cr. P.C. are wholly inadmissible and accepting them as evidence is utterly erroneous and implication of the applicant on the statement of co-accused and filing the charge sheet on that basis, is a gross violation of law.

5. Counsel for the petitioner raised further contention that the confession of a co-accused is not a substantive evidence against the other co-accused persons. In this regard, the judgment of Supreme Court in the case of ***Hari Charan Kurmi vs. State of Bihar, AIR 1964 SC 1184*** was referred to in which it was held that the confession of a co-accused person cannot be treated as substantive evidence and can

be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence.

6. Lastly, counsel for the petitioner has contended that the petitioner is a young boy of a tender age of 22 years and is in custody since 22.11.2014 and the supplementary charge sheet has already been filed and the petitioner is not required for any further investigation in the present case.

7. Ms. Manjeet Arya, Additional Public Prosecutor appearing on behalf of the State contended that the petitioner was arrested when his name was disclosed by the co-accused in the present case. The State has also filed its status report indicating that the injured Pushpa Goel had identified the petitioner as one of the accused who attacked her and robbed her house on the date of incident. It is submitted that the petitioner in his confessional statement admitted the fact that he had participated in a number of cases of murder, contract killing, etc in association with other co-accused persons and he himself had looted a chain and hide it in the jungle of Dhaula Kuan, which he could get recovered. In the MLC of the injured, the doctor opined the injury being dangerous, therefore it is urged on behalf of the State that the petitioner is charged with the offence punishable under Section 394/395 IPC and while looking at the gravity of the offence, the petitioner be not released on bail.

8. I have heard the submissions of counsel appearing on behalf of both the sides and gone through the material placed on record.

9. After careful scrutiny of the case, this Court observes that the petitioner is in custody since 22.11.2014 and has been charged with the offence punishable under Section 394, 395 and 307 of IPC. It is further observed that the name of the petitioner is disclosed by the co-accused. No doubt, there should be corroboration of evidence and the person cannot be held guilty merely on the disclosure of the co-accused. This Court records that there is medical evidence (MLC) of the injured, in which the doctor had opined the injuries being dangerous one. It is further observed that the petitioner had refused to join the TIP but the injured – Pushpa Goel had identified the petitioner as one of the persons who attacked her and robbed her house. In the prosecution case, the main clue for the investigation was the accused Suresh @ Dabloo, who in his confessional statement disclosed the way in which the robbery was conducted and narrated the whole conspiracy hatched between the accused persons to commit the robbery in the house of the injured. He specifically stated that he had taken out a knife from his bag and gave it to the Durgesh (petitioner herein), who tried to slit the throat of the injured.

10. This Court further observes that the petitioner is facing trial in four other similar cases in Rai Bareilly. So far as contention of the petitioner that he has been falsely named by the co-accused of the case due to enmity between them, even in the other cases in Rai Bareilly, is the matter which can be adjudicated by leading cogent evidence and by the petitioner during trial.

11. The main question before this Court is that whether there is any

evidence or material before this Court which could prima facie show the possibility of petitioner being not involved in the offence committed under Section 307 of IPC. In this regard, this Court perused the material placed on record and also perused the confessional statement of the petitioner herein, in which he had also admitted commission of crime alongwith the other co-accused and he further admitted that he had looted a chain and hidden it in the jungle of Dhaula Kuan, which he can get recovered. From the status report filed by the State, it is informed that the petitioner is involved in similar crimes in Rai Bareilly and he has also refused to participate in TIP proceedings. However, the injured Pushpa Goel had identified the petitioner as one of the persons who attacked her.

12. In view of the aforesaid facts and circumstances, and considering the involvement of the petitioner in the present crime and the fact that he is facing trial in similar cases in Rai Bareilly, in the considered opinion of this Court, the petitioner does not deserve bail in the present case at this stage. Accordingly, the bail application filed by the petitioner is dismissed.

13. However, It goes without saying that any observations made hereinabove, shall not have any bearing on the merits of the case.

14. The present bail application is disposed of.

P.S.TEJI, J

FEBRUARY 29, 2016

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