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

+ BAIL APPLN.2280/2015

RAJBAHADUR @ RAJU Petitioner
Through: Mr.Vipin Kumar, Advocate

versus

STATE (GOVT. OF NCT OF DELHI) Respondent
Through: Mr. Hirein Sharma, Additional Public
Prosecutor for the State alongwith SI
Ramesh Chand from Police Station
Kamla Market, Delhi.

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER
13.05.2016

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This is a second application under Section 439 Cr.P.C moved by the petitioner seeking grant of bail after filing the chargesheet on behalf of petitioner in case FIR No.130/14 under Section 419/420/365/392/395/412/120-B/34IPC registered with Police Station Kamla Market, Delhi.

FIR in the instant case was registered on the statement of Sh.Rishi Chand Yadav who was working in a cargo carrier company for one Sh.Rajender Kumar Singh resident of Allahabad. He used to travel between Delhi to Allahabad several times in a month for supply and distribution of parcels containing electronic items. The payment for items were being sent from Allahabad through bank account and sometimes through the same parcel containing the electronic items.

On 12.04.2014 a parcel containing some defective electronic items which were to be returned to the shopkeepers in Delhi from where these items were purchased and cash around Rs.50 lacs was booked from Allahabad railway station in Prayagraj Express for Delhi. On 13.04.2014 train reached at New Delhi Railway Station at about 07.10 am. Parcel was released by complainant and loaded on a Rickshaw being pulled by one person namely Mehto. On the way, at Paharganj flyover one person wearing police uniform waiting near a black car, stopped the complainant and enquired about the parcel introducing himself as crime branch official. In the meanwhile, another person came out of the car and picked the parcel from rickshaw and put the same in the dicky of the black car and forced the complainant to sit in the car. In the meantime, another Wagon-R car arrived from behind and stopped. One person in police uniform came out from the car and caught hold the rickshaw puller and tried to forcibly drag him into the car but could not succeed. Thereafter both the cars fled away from there. In the car his mobile phone was confiscated saying that they were from crime branch and were taking him to Crime Branch, Delhi. On the way, they were talking to some other persons and receiving direction from him regularly. After that he was taken to Surajkund where he was dropped and the parcel was taken away. Complainant was threatened not to disclose the matter to anyone. Due to fear complainant went to Allahabad and did not lodge the complaint. On 22.04.2014 he came at police station Kamla Market and gave statement, on the basis of which the present case was registered.

Learned counsel for the petitioner submits that the petitioner

has been falsely implicated in this case merely because he is the friend of co-accused Constable Surender who was arrested by the police. All the co-accused had refused to attend TIP proceedings but since the petitioner was not involved in this case, as such, he joined the TIP proceedings. The rickshaw puller Heera Mehto failed to identify him in TIP proceedings, however, complainant correctly identified him but in his deposition before the Court, he has stated that he had gone to Tihar Jail on the asking of Investigating Officer of the case where he identified the petitioner as his photograph was already shown to him by the Investigating Officer of the case and he had further asked him to identify accused Rajbahadur before the Magistrate. Moreover, he could not be identified by him during the trial of the case. By placing reliance on **Lokesh Kumar vs. State** Bail Appln. No. 710/2010, it is submitted that since the identity of the petitioner is not established, as such, he is entitled to be released on bail. It is further submitted that he was a driver in PCR van. Although as per prosecution case he was arrested on 01.05.2014 from his house but as per record while he was on duty he was arrested on 30.04.2014. There is substantial delay in lodging the FIR. Co-accused Vasudev Prasad has also filed an application seeking release on bail. He was released on interim bail on three occasions and he did not misuse the same and surrendered in time. As such, he be released on bail.

Application is opposed by learned Public Prosecutor for the State on the ground that the allegations against the petitioner are serious in nature. During the course of investigation, five accused persons namely Surender Kumar Verma, Sanjay, Vasudev Prasad,

petitioner herein and Yadvender were arrested. Total Rs.16 lacs cash and household articles worth Rs.1.5 lacs and vehicles i.e., Corrola Car bearing registration No.HR 51 R 9900 and Wagon-R bearing registration No. DL 8C NB 8928 which were used in the commission of crime were recovered out of which, a sum of Rs.1.45 lacs was recovered at the instance of the present petitioner. During the course of TIP proceedings, he was correctly identified by the complainant. Investigation further revealed that accused Manish, Sanjay and Guddu used to visit Vasudev who has connection with accused Sanjay alias Bhola from Allahabad and having the detailed information about this kind of transaction from Sanjay alias Bhola about the parcel coming from Allahabad through Prayagraj Express. The accused persons executed their plan. During the course of investigation, it was revealed that the looted parcel contained Rs.43 lacs which was distributed by giving Rs.7 lacs each to six accused and Rs.1 lac was kept by accused Manish for Sanjay alias Bhola who had given information about the parcel from Allahabad. The car which was used for dacoity was brought by Sanjay and Rajbahadur. As per mobile call details, accused was present on the spot and a clear route was made out from New Delhi Railway Station to Faridabad through Surajkund, as stated by the complainant in his statement. As per the calls, accused had made several calls from the mobile phone of Surender and Yadvender alias Guddu. Bail application of co-accused Vasudev Prasad has already been dismissed by this Court on 21.05.2015, as such, the accused is not entitled to be released on bail.

A perusal of record reveals that initially an application under

Section 437 Cr.P.C was moved by the petitioner for grant of bail which was allowed by the duty MM vide order dated 18.06.2014. The State challenged the order by filing an application under Section 439 Cr.P.C before the Additional Sessions Judge and after considering the entire material on record, the application was allowed and the impugned order dated 18.06.2014 granting bail to the petitioner was set aside. The order was challenged by the petitioner by filing a petition before this Court and the same was dismissed vide order dated 21.07.2014. An application under Section 439 Cr.P.C was moved before learned Additional Sessions Judge which was dismissed on 09.09.2015. The present application has now been filed by the petitioner seeking bail primarily on the ground that he was not identified by the complainant during his deposition in the Court and his identification during Test Identification Proceedings has been duly explained by the complainant by stating that his photograph was shown by the Investigating Officer and at his instance, he had identified him in Tihar Jail. However, that itself is not the sufficient ground for releasing the petitioner on bail because other circumstances alleged against him by the prosecution are recovery of Rs.1.5 lacs at his instance. The call details collected by the prosecution also shows his complicity in the crime. Besides the petitioner, one of the co-accused is police official. The reliance placed by learned counsel for the petitioner on **Lokesh Kumar** (supra) does not help him as in that case all the material witnesses were examined. Moreover, all the other co-accused were also on bail. Taking note of these factors the petitioner was released on bail. In the instant case,

prosecution evidence is still going on. It is stated that one of the prosecution witness has been recalled. Moreover, none of the co-accused has been released on bail. Under the circumstances, keeping in view the fact that the petitioner is a police officer who is entrusted with the task of maintaining law and order but, as alleged, himself indulged in criminal activity, therefore, the allegations qua him becomes more grave and serious. That being so, at this juncture, it will not be appropriate to release the accused on bail. Application is accordingly dismissed.

SUNITA GUPTA, J

MAY 13, 2016

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