

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on : August 04, 2016

+ BAIL APPLN. 19/2016
SHAKTI PAL

..... Petitioner

Through: Mr. Vineet Chadha, Advocate

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Amit Chadha, Additional Public
Prosecutor for the State

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. By this petition filed under Section 439 of Cr. P.C., the petitioner seeks bail in a case registered as FIR No. 113/2011 under Sections 395/397/412/120-B of Indian Penal Code read with sections 25/27/54/59 of Arms Act, at Police Station North Rohini, Delhi.

2. The present case was registered at the instance of Mr. Sanjeev Malhotra who owns a jewellery shop at C-8/1, Sector 8, Rohini. It is submitted by the complainant that on 15.05.2011, at about 3 p.m. two boys entered into his shop and asked to show some chains to them. Later, they inquired as to whether they accept old gold to which the complainant's brother refused. Both the boys stood and in the meanwhile, one other boy entered the shop holding a helmet in his

hand and thereafter three more boys came into the shop out of which one boy who entered the shop first, took out a knife and rest of the boys took out kattas and snatched a phone from the artisan sitting in the shop and the other boy took out all the jewellery kept in the safe and counter and filled in his bag. He also took the amount from the cash box. The jewellery taken by that boy is stated to be a chain set, bali set, rings, tops, stones, ear chains and diamond rings. It is further alleged that his phone was also snatched and when his brother raised objection, the boy with the knife stabbed his brother with the knife on his foot and also broke the CCTV boxes installed in the shop. Thereafter, the boys fled the scene of occurrence on their motorcycles, parked outside the shop. It is further informed that his brother Jitender could only note the number of motor cycle as 2501 and 9620, after which he went to the hospital for treatment.

3. The FIR was registered, the message regarding motorcycles was flashed and a message to call for the crime team, dog squad, FSL team on the spot was also sent. On inspection of the spot, prima facie a case under Section 395/397 IPC and 27/54/59 of Arms Act was made out. Investigation was started. During investigation, it is revealed that one motorcycle used in the offence collided with a vehicle at Metro Road near Fire Station Office and got damaged. The rider also got injuries and the accused left behind the silver colored Pulsar Motorcycle at the spot and all other four accused ran away on other motorcycle.

4. Rukka regarding the damaged pulsar bike was prepared and the same was taken into custody. Statement of injured Jitender Malhotra was recorded, and during investigation, on 19.05.2011, while going through the criminal dossier, complainant identified the accused – Dilshad, who stabbed his elder brother. On secret information, a raiding team was constituted and Dilshad @ Badde was arrested and some jewellery items as well as knife used in the decoity were recovered from him. He was interrogated and during interrogation, he disclosed the names of co-accused persons – Ranjeet @ Bihari and Rohit @ Mangal, and recovery of some jewellery items were recovered from them. During interrogation, both the accused disclosed the other three co-accused persons, namely Neeraj Pal, Vijay and Shakti (Petitioner herein). They all were arrested and some jewellery items, cash and weapon of offence were recovered from these persons. TIP in respect of all the accused persons was conducted but the petitioner had refused to participate in TIP.

5. Mr. Vineet Chadha, learned counsel for the petitioner contended that the petitioner is in custody since the date of his arrest and even after expiry of more than four and half years, the prosecution has been able to conduct the examination in chief of Jitender Malhotra only and on the basis of delay and laches on the part of the prosecution, the petitioner ought to be released on bail, especially when there is no legal evidence that the petitioner ever threatened the witnesses or interfered with the evidence during investigation. It is further contended that the ingredients of alleged sections in which the

petitioner is framed, are missing. Even the prosecution did not disclose as to whether the petitioner was armed with any deadly weapon or not. It is further contended on behalf of the petitioner that the charge sheet in this case has been filed, and till date evidence of only one witness out of 33 witnesses has been recorded and that the petitioner is in custody since the last five years. Lastly, it is contended on behalf of the petitioner that there is no likelihood of tampering with the evidence and/or intimidating the witnesses and no prejudice is likely to be caused to the trial of the case in case the petitioner is directed to be released on bail during trial of the present case.

6. Mr. Amit Chadha, learned Additional Public Prosecutor for the State vehemently opposed the aforesaid contentions raised by learned counsel for the petitioner. It is submitted that the petitioner was arrested on the disclosure of co-accused Ranjeet and Rohit. Not only this, the petitioner had refused to participate in test identification parade. There is also a recovery of three gold necklaces, and fourteen robbed silver plates from the possession of the petitioner. It is further contended that the allegations against the petitioner are serious in nature and that he is involved in a heinous crime and was actively involved in the dacoity and had used a deadly weapon i.e. katta at the time of offence. Even public witness Shri Jitender Malhotra, during his examination-in-chief had identified the petitioner being involved in the dacoity. In such a situation, if the petitioner is released on bail, there is every possibility that the petitioner may threaten the complainant and hamper the witnesses as the material witnesses are yet to be

examined in this case. Therefore, the petitioner ought not be granted bail in the present case.

7. I have heard the submissions made by learned counsel for the petitioner and the learned Additional Public Prosecutor for the State. I have also gone through the status report filed on behalf of the State, wherein it is specifically mentioned that the petitioner has been identified by Jitender Malhotra, who is a public witness in this case. After hearing the submissions made by counsel appearing for both the sides, this Court observes that the investigation in this case has been completed, charge sheet has been filed and there are many witnesses whose statements are yet to be recorded. The State has also raised apprehension of petitioner hampering the witnesses.

8. Apart from the aforesaid, this Court further observes that there is a recovery of three robbed gold necklaces and fourteen robbed silver plates from the possession of the petitioner and not only this, as per investigation, it is revealed the petitioner was actively involved in the dacoity and at the time of offence he had used deadly weapon i.e., Katta.

9. In ***Prasanta Kumar Sarkar v. Ashis Chatterjee (2010) 14 SCC 496***, the Hon'ble Supreme Court dealt with the basic principles laid down in catena of judgments on the point of granting bail. The Court proceeded to enumerate the factors:

9. ... among other circumstances, the factors [which are] to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

10. Considering the aforesaid facts and circumstances of the present case; the fact that the case is pending trial and material witnesses are yet to be examined in this case; the petitioner is charged with heinous offence punishable under Section 395/397/412/120-B of IPC and Section 25/27/54/59 of Arms Act; and there is recovery of three robbed gold necklaces and fourteen robbed silver plates from the possession of the petitioner and the petitioner had used deadly weapon i.e., Katta, this Court is not inclined to grant bail to the petitioner.

11. Resultantly, in the considered opinion of this court, the facts emerging from the record culminates into dismissal of the present bail application. Accordingly, the present bail application filed by the petitioner is dismissed at this stage.

12. 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.

13. With aforesaid direction, the present bail application, filed by the petitioner stands disposed of.

(P.S.TEJI)
JUDGE

AUGUST 04, 2016
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