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

+ **BAIL APPLN. 927/2017**

ARUN KUMAR Petitioner

Through: Mr.Simpy Arman Sharma, Advocate

versus

STATE OF NCT OF DELHI Respondent

Through: Mr.Mukesh Kumar, APP for State with
SI Praveen from Police Station- Narela.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

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ORDER
30.10.2017

1. By this second application filed under Section 439 of Cr.P.C., the petitioner seeks regular bail in FIR No. 775/14 under Section 302/307/365/34 Indian Penal Code, 1860 read with 25/25(54)/27/29 Arms Act, 1959, registered at Police Station, Narela, Delhi.
2. The case in hand was registered on the complaint of the respondent Ramesh Chand Garg. He stated that on 17.06.2014 at about 6:10 am, he went to his shop and was getting his goods unloaded. That about 7:40 am Maruti Eeco Car No. DL-8CR-8722 of white colour stopped near his shop and two boys came out of the car and forced him to sit in the car at gun point. He further stated that when he refused to submit, one among the boys fired two gunshots but the complainant escaped. He also stated that when he was trying to escape, a third boy namely Praveen S/o Mahabir, who was sitting inside the car came out and caught him and all the three boys tried

pushing him inside the car. He further stated that while he was resisting, Vijay, one of the accused, threatened to kill him, and fired shot with his gun but the bullet passed near complainant's head and hit Praveen S/o Mahabir, who was holding him. He further stated that due to this gunshot injury the boy fell down on the ground and all other fled away in the car.

3. Mr. Simpy Arman Sharma counsel for the Petitioner has contended that the complainant has nowhere mentioned the name of present petitioner in the FIR as well as in his statement recorded by learned trial court; that during evidence the complainant has refused to identify the petitioner and deposed that he had not seen him prior to the date of incident; that no recoveries were made from the petitioner, which proves that he has been falsely implicated in the present case; that the petitioner was not present at the spot of incident, when the incident occurred; that the petitioner has already served almost one-half term of the punishment punishable under Section 365 of the IPC and thus entitled to be released on bail.
4. Mr. Mukesh Kumar, Additional Public Prosecutor opposed the regular bail application and submits that although the petitioner was not present at the spot but he played an active role in commission of crime; that besides the theory of last seen together, there were other circumstantial evidences against the accused person; that it was petitioner who had abetted remaining accused persons to abduct complainant for extortion; it is also contended that the bail application of the petitioner should be rejected, keeping in view the gravity of offence.

5. I have heard the submissions made on behalf of both the sides and also gone through the contents of the petition and the record of this case.
6. From the perusal of the records, it is revealed that the petitioner was not present at the scene of crime. Also, the complainant has nowhere mentioned the name of the petitioner in the FIR as well as the statement. No allegations has been raised by the complainant against the present petitioner and has refused to identify him. The TIP proceedings are rather dubious as the complainant was first shown the photograph and later was asked to identify him. Moreover, co-accused Vijay who fired and the co-accused Praveen who held the complainant are released on bail.
7. The complainant, during his cross examination, deposed that:

“During investigation of the present case, I had gone to Tihar Jail on one occasion, where the police official accompanied me had show one photograph and had asked me to identify the person whose name was visible in the said photograph, from amongst the persons/boys who shall be show to me inside the jail premises. Accordingly, I had identified the boy during judicial TIP held before Ld. Magistrate, on the basis of said photograph.

I cannot identify the offenders who had committed the aforesaid offences in my presence even if shown to me today, as the attack upon me was so sudden that I was not able to see the faces of the offenders properly and further due to said sudden attack, I had lost my mental balance at that point of time and I was not able to see the face of any of the offenders properly. I also cannot identify the said Maruti Eeco vehicle even if shown to me as I was not able to note down the registration number

of said vehicle as there was mud over both the number plates of the said vehicle.

It is wrong to suggest that I had stated to IO that accused Arun, present in the Court today, is the same person who had put his tractor at my shop on rent for loading the goods of my shop or that I knew the accused Arun prior to the incident of present case also or that it was informed to me that accused Arun had conspired with the remaining offenders in my abduction and to demand ransom after my abduction.

At this stage, the attention of the witness has been drawn towards accused Arun, present in Court today and even after seeing towards said accused, witness has submitted that he was not knowing the accused and he had never seen him prior to today and that he had neither identified the said accused at the PS on 05.07.2014 nor made any supplementary statement with regard to accused Arun before the police.”

8. Considering the facts and circumstances of the present case and the fact that the petitioner is charged under Section 365 IPC and 120B IPC only and not under Section 302/307 and considering the fact that he is in custody since 26.06.2014, this court is inclined to grant bail to the petitioner.
9. Accordingly, petitioner is granted bail subject to the following conditions:-
 - a) That the petitioner shall furnish a personal bond in the sum of Rs. 25,000/- with one surety of the like amount subject to the satisfaction of the Trial Court concerned;
 - b) That the petitioner shall not leave the country without prior permission of the trial court.

10. Before parting with the above order it is made clear that the observations made in the order shall have no impact on the merit of the case.
11. The bail application stands disposed of.
12. Copy of the order be given Dasti under the signatures of the Court Master.
13. Copy of the order be also sent to Superintendent Jail, Tihar Jail.

SANGITA DHINGRA SEHGAL, J.

October 30, 2017
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