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

% Judgment delivered on: 14.03.2019
+ BAIL APPLN. 658/2019

ATIBAL SINGH Petitioner

versus

STATE OF NCT OF DELHI Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. S.K. Rai, Advocate.
For the Respondent : Mr. Hirein Sharma, APP for the State.

CORAM:
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

Crl.M.A.5592/2019 (exemption)

Exemption is allowed subject to all just exceptions.

BAIL APPLN. 658/2019

1. Petitioner seeks anticipatory bail in FIR No.310/2018 under Section 302 IPC, Police Station Sarita Vihar.
2. Subject FIR was registered consequent to information received that a person was found in an injured condition under a flyover. When the concerned duty officer reached the flyover, he came to know that the person had been moved to Apollo Hospital. During investigation,

it was found that the person had succumbed to his injuries because of a gunshot.

3. The case of the prosecution is based on an alleged confessional/disclosure statement of one Bhikam.

4. Learned counsel for the petitioner submits that the disclosure/confessional statement of a co-accused is a weak piece of evidence and apart from his disclosure statement, there is no other material to connect the petitioner with the subject offence. He further submits that part of the disclosure statement is *ex-facie* incorrect inasmuch as in the disclosure statement, Bhikam has contended that he had purchased a Pulsar Motorcycle out of the looted amount whereas the registration of the Motorcycle shows that the same was purchased about two months prior to the incident. Learned counsel for the petitioner submits that since part of the statement has been found to be false, the entire statement is liable to be disregarded.

5. Learned counsel for the petitioner further submits that the petitioner has been falsely implicated and that there was a demand made by the Investigating Officer, when the son of the petitioner was arrested, and as the demand was not fulfilled, petitioner has been falsely implicated and chargesheet has been filed.

6. Learned counsel for the petitioner relies on the judgment of the Supreme court in *Jayendra Saraswati Swamigal vs. State of Tamil*

Nadu: 2005 (1) JCC 118 to contend that confessional statement is a very weak piece of evidence and can only be relied upon to lend credence to corroborative material.

7. In the disclosure statement given by the co-accused Bhikam, he has alleged that he had received a call from one of his known persons that his father-in-law (petitioner herein) had some work whereby quick money could be made, however, he needed someone who had a country made pistol. Bhikam is alleged to have stated that he had a country made pistol and was willing to make quick money.

8. It is alleged that Bhikam came to Delhi to meet his friend who introduced him to his father-in-law (the petitioner herein). The petitioner is alleged to have then informed them that there was a person (deceased herein) who was in the job of collecting money from various vendors and he could be threatened at gun point to handover the money. Bhikam in his disclosure statement further stated that he went back to his village to get his country made pistol and seven rounds and thereafter he came to Delhi and along with the son of the petitioner and trailed the deceased for 3-4 days.

9. On the date of the incident, it is alleged that the co-accused trailed the deceased. While trailing, it is alleged that they could not find a secluded spot and thereafter, they called the petitioner, who informed them of the lonely spot and stated that they should shoot him there and snatch the bag. In his confessional statement, he had alleged

that at the spot they shot the deceased from behind. Thereafter they moved ahead from the spot and subsequently returned. When people who had gathered at the spot, they also joined in and to mislead the public helped in removing the motorcycle of the deceased and the bag of money from the spot.

10. No doubt, confessional statement of a co-accused is a weak piece of evidence, however, one has to be conscious of the fact that the petitioner is seeking anticipatory bail in an offence under Section 302 IPC. The co-accused has alleged that petitioner is the mastermind and had planned the whole offence. As per the co-accused, the entire offence has happened on the planning and instructions of the petitioner.

11. At this stage, when the investigation qua the role of the petitioner is at a very nascent stage, it would not be in the interest of justice to enlarge the petitioner on anticipatory bail. Further, keeping in view the facts and circumstances of the case, the request of learned APP for the State for custodial interrogation of the petitioner does not seem to be unjustified.

12. The judgment in the case *Jayendra Saraswati Swamigal* (supra) is not applicable in the facts of the case as in the said case the Supreme Court was dealing with a case of regular bail and not a case of anticipatory bail and further in the said case, despite substantial period elapsing, no incriminating material was found against the

accused except the confessional statement.

13. In the present case, no time has elapsed, since the allegations of the role of the petitioner have surfaced and the same need to be investigated by the investigating officer. In my view, enlarging the petitioner on anticipatory bail would hamper investigation. Accordingly, I am of the view that petitioner is not entitled to be enlarged on anticipatory bail.

14. The alleged plea that part of the confessional statement has been found to be false as the motorcycle, alleged to have been purchased from the stolen money, was registered in the name of the co-accused two months prior to the incident, to my mind, would not render the entire confessional statement, if corroborated by other material, inadmissible. Investigation into the allegations has yet to take place. The alleged confessional/disclosure statement cannot be disregarded at the stage of investigation.

15. Further, the allegation that the Investigation Officer had demanded money and since it was not paid, the petitioner has been falsely implicated, to my mind, is a mere allegation to prejudice the Court and there is no material to substantiate the same and accordingly, cannot be given credence to.

16. It is also observed that the petitioner had earlier approached this Court on 07.01.2019 and after some arguments when the Court was

not inclined to grant bail, learned counsel for the petitioner had sought leave to withdraw the petition.

17. I find no merit in the petition. Petition is accordingly dismissed.

18. It is clarified that this Court has only made *prima facie* observations on the materials brought by the prosecution and has not commented on the merits of the case.

19. Order *Dasti* under the signatures of the Court Master.

MARCH 14, 2019
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SANJEEV SACHDEVA, J

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