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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 2388/2019

ASHOK KUMAR

..... Petitioner

Through: Mr. Vinay Jaidka, Mr. Ravi
Kant & Ms. Shweta Sharma,
Advocates

versus

STATE

..... Respondent

Through: Mr. Amit Chaddha, APP with
ASI Vaseek Ahmed, PS:SIU-
I/Crime Branch, Delhi

CORAM:

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

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13.11.2019

1. Status report filed.
2. Nominal Roll of the petitioner has been received.
3. This is an application filed by the petitioner for grant of bail under Section 439, read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.PC).
4. Learned counsel for the petitioner submitted that the petitioner is an innocent person, who has been falsely implicated in the present case. Even the statements recorded under Section 161 of the Cr.PC also do not implicate the petitioner in any manner.
5. On the other hand, the case of the prosecution is that, on 11.2.2019, a secret information was received that one Aash Mohammad @ Aashu is involved in several firing incidents and

attempt to murder cases would come to Hotel Harman Palace to meet his associates. On receiving the said information, a team of ISC, Crime Branch reached the spot and one person, namely, Rahul Batra @ Vicky was apprehended and on his instance, a raid was conducted from where six persons, including the present petitioner, were apprehended. From the possessions of the accused persons, 4 pistols, 1 revolver and 30 live cartridges were recovered, who, on interrogation, revealed that they had assembled to plan for robbing/looting one Shubham Bansal. From the possession of accused persons, two motor cycles, one Swift Dzire car, two number plates, four monkey caps and ropes were also recovered. The petitioner agreed to take part in the planned dacoity and was actively involved in the preparation for the same. From the possession of the petitioner, 1 pistol and 4 live cartridges were recovered. From the *dikki* of the car brought by the petitioner, two fake number plates, monkey caps and ropes were also recovered, which were used in commission of the offence. The petitioner is clearly seen in the CCTV footage arriving at the Hotel on 3.2.2019. The CDR analysis has revealed that the petitioner had gone to Pitampura along with Vicky for conducting the *recee* of the premises, where dacoity was to be committed.

6. The learned Trial Court, in its detailed and well-reasoned order dated 15.7.2019, dismissed the bail application of the appellant, holding as under:

“That the present case was registered and

investigation was taken up and during investigation at the instance of accused persons, two motorcycles, one swift car, two more number plates, four monkey caps and rope were recovered. Accused-applicant has agreed to take part in the dacoity and was actively involved in the preparation for dacoity. He had stayed in Hotel Harman Palace for the preparation and also brought the swift Dzire car for his employer Surender Kumar which was to be used for committing dacoity. Accused Ashok Kumar had brought the Swift.

On a tip off applicant-accused is arrested in the company of dreaded criminal as out of the six accused arrested on 11.02.2019 from Hotel Harman Palace Room No.306, four have several cases registered against them. One empty pistol and magazine with live cartridges is recovered from the possession of the applicant-accused. The applicant-accused is alleged to have actively participated in the conspiracy to commit robbery by arranging for the get away vehicle swift dezire car No.RJ 13 CB 7568 belonging to his employer brought on a false pretext and from this vehicle two fake number plates, one monkey cap, ropes, to be used in the commission of the dacoity are also recovered. Presence of the applicant accused in the hotel in the company of the co-accused with criminal antecedents is alleged to be further affirmed from the DVR of the CCTV footage. The prosecution has expressed grave apprehension that the applicant-accused if enlarged on bail will threaten witnesses and hamper investigation a through the chargesheet has been filed, FSL report is pending and further investigation is still in progress. In such facts and circumstances, it is not a fit case to grant bail. Application is accordingly dismissed.”

7. The Status Report demonstrates that the State has opposed the bail application of the petitioner on the following grounds:-

- i) The petitioner has actively participated in the preparation of a heinous crime.
- ii) The petitioner was arrested from the spot, where the entire conspiracy and preparation for dacoity was hatched.
- iii) The petitioner is clearly seen in the CCTV footage which has been analyzed/retrieved by the FSL.
- iv) That one pistol and four live cartridges have been recovered from his possession.
- v) The car which was to be used for the commission of the offence, i.e., dacoity was brought/arranged by the petitioner.
- vi) That there were total 6 accused persons who were apprehended inside the room No.301, Hotel Harman Palace, Paharganj and out of them four have several cases against them. Total 4 pistols, one revolver and 30 live cartridges were recovered from the arrested accused persons.
- vii) That a chargesheet has already been filed in the court. The charge in the matter is yet to be framed and is listed for 18.11.2019 before the learned Trial Court.
- viii) That the applicant may threaten and influence the witnesses and may flee away from trial as he hails from Rajasthan, if released on bail.

8. The *prima facie* facts which now emerge from the above discussions are that the petitioner was arrested from the spot where the entire conspiracy was allegedly hatched and the preparation for the dacoity was made. The petitioner is stated to

have been clearly seen in the CCTV footage which has been analyzed and retrieved and one pistol and four live cartridges allegedly stated to have been recovered from the possession of the petitioner. The petitioner is found to be in the hotel in the company of the co-accused with criminal antecedents. The petitioner also allegedly actively participated in the conspiracy to commit robbery by arranging get away vehicle belonging to his employer brought on false pretext and the recovery of two fake number plates, one monkey cap, ropes to be used in the commission of the dacoity. Arguments on the point of charge have still not been heard and there is an apprehension that the petitioner may threaten and influence the witnesses and flee away from the trial, if released on bail. Hence, taking into consideration the aforesaid factors, the order of the Trial Court, objections raised by the State, gravity of the offence, the role of the accused and severity of the punishment, the bail application is dismissed. It is clarified that whatever is stated or expressed hereinabove shall not tantamount to any expression or opinion on the merits of the case.

CHANDER SHEKHAR, J

NOVEMBER 13, 2019

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