

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

Reserved on : 04.03.2020
% *Pronounced on* : 19.03.2020

+ **BAIL APPLN. 213/2020**

SURENDER @ BITA

..... Petitioner

Through: Mr. Maninder Singh, Mr. Ajay
Kumar Pipaniya, Ms. Smriti Asmita, Ms.
Pallavi Pipaniya, Dr. Anurupita Kaur,
Advocates

versus

STATE

..... Respondent

Through: Ms. Rajni Gupta, APP for the
State with SI Ashish Sharma, PS : Burari.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

1. This is an application filed under Section 438 Cr.P.C. read with Section 482 Cr.P.C. on behalf of the petitioner for grant of anticipatory bail in case FIR No. 371/2019 under Sections 387/120 B IPC registered at Police Station Burari.

2. Briefly stated, the present FIR was registered on the basis of the complaint of Subhash (Complainant), filed by him at Police Station Burari vide DD No. 76 B. It is alleged by the

complainant in his complaint that he had received a call from Mobile No. 8448343324 on his mobile No. 9211114831 at around 3:10 p.m. in which the caller claimed himself to be a member of Tillu Tajpuria Gang and allegedly demanded an extortion money of Rs 20 Lakhs till Tuesday and if he would fail to make the payment, they will kill him.

3. After the registration of the present FIR bearing No. 371/2019 U/s 387 IPC investigation went underway and during investigation CDR and CAF were obtained and it was revealed that the SIM of service provider Airtel has been obtained on the fake ID and was used from Tihar Jail. The CDR of the alleged mobile number was further analyzed and its location was found static at Tihar Jail since 1st of May 2019. During investigation, another complainant came to police station stating that he also received extortion call from Mobile No. 8448343324 on 18.10.2019 and 9899316782. The CDR of alleged mobile No. 8448343324 was analyzed during further course of investigation and it was revealed that the Mobile No. 8860777265 & 8882648132 was in frequent touch with the alleged mobile No. 8448343324.

4. The subscriber of the Mobile No. 8860777265 & 8882648132 has disclosed that he had provided the information of both the complainants to the alleged persons Surender @ Bitta

(present petitioner) & Jitender @ Kale who were lodged in the jail at the time of commission of offence. He also disclosed that he has provided the contact information to the accused persons as they promised him of goods share in the extortion amount. During further course of investigation, one Anil Kumar who was also in touch with the alleged mobile number was also examined who stated that accused Surender @ Bitta (present petitioner) & Jitender @ Kala are his relatives and accused Surender @ Bitta (present petitioner) called him from the alleged mobile number.

5. I have heard the Ld. counsel for the petitioner, Ld. APP for the state and have also perused the status report filed by the state.

6. It is urged by the Ld. counsel for the petitioner that as per the prosecution, the extortion calls were made from Tihar Jail so the mobile phones are to be recovered from Tihar Jail and there is no role of the petitioner in this regard. He further argued that there is no answer to the question that who has provided the cell phone to the petitioner inside the jail and how can the inmates make extortion calls when they are behind the bars. He further argued that the petitioner has been falsely implicated and his name does not figure in the FIR. He has relied upon Yogesh Vs. State of UP, Bail Application No. 9084/2014 to bring home the point that if the accused is found to be entitled to bail, he cannot

be denied bail on the ground of his criminal history. He has further relied upon the judgment of Hon'ble Apex Court titled as *Satlingappa Mehtre V. State of Maharashtra and Ors.*, AIR 2011 SC 312.

7. On the other hand, it is urged by the Ld. APP for the state that the allegations against the petitioner are grave and serious in nature. She further argued that the petitioner is involved in making extortion calls to the complainant from Tihar Jail. Ld. APP further submitted that the petitioner is himself a criminal and is a history sheeter of P.S. Alipur and active member of Tillu gang. She further argued that the custodial interrogation of the petitioner is required for the recovery of mobile/SIM Card used in the offence and for obtaining the voice sample of the petitioner for comparison with the recorded voice of the person who had called the complainant and made a demand for extortion.

8. Having heard the counsel for the petitioner as well as Ld. APP for the State, I find that the allegations against the petitioner are grave and serious in nature in regard to making extortion calls to the complainant from Tihar Jail while he was in custody in other case. It has been argued by the Ld. counsel for the petitioner that there are some un-answered questions as to who has provided the cell phone to the petitioner inside the jail and

how can inmates make extortion calls when they are behind the bars.

9. Now this is for the petitioner to answer during the course of the interrogation and in case other persons are found involved, the law then will take its own course against them. There is no dispute with regard to the propositions of law laid down in the judgment **Satlingappa Mhetre Vs. State of Maharashtra and Ors.**, ("*supra*") relied upon by the Ld. counsel for the petitioner but each case revolves around its own peculiar facts and circumstances. Recovery of the mobile phone and the SIM card are to be effected and the voice samples of the petitioner are also to be taken for comparison. One also cannot lose sight of the fact that as per the investigation the petitioner is a habitual criminal and a history sheeter and member of notorious Tillu gang. As per the IO NBWs have also been obtained against the petitioner. No ground for bail is made out, the application is, therefore dismissed.

10. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of the case.

RAJNISH BHATNAGAR, J

MARCH 19, 2020

Sumant