

via Video-conferencing

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

+ BAIL APPL. 1124/2020

+ BAIL APPL. 1325/2020

VINOD @ DADA Applicant

Through: Mr. Harsh Hardy, Adv.

versus

STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Mr. Tarang Srivastava, APP for the
State.

Mr. Aabhas Parimal, Advocate for the
Complainant.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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24.07.2020

BAIL APPL. 1124/2020 (for regular bail)

The applicant, who is an undertrial in case arising from FIR No. 39/2019 registered under sections 394/397/307/34 IPC and sections 25/27 of Arms Act at PS : Lahori Gate, seeks regular bail. Although various grounds, including those that pertain to an interim bail plea, have been taken in the present application, the present application is being considered only as an application for regular bail.

2. Mr. Harsh Hardy, learned counsel for the applicant has been heard at length. Mr. Tarang Srivastava, learned APP for the State has also made detailed submissions in the matter.

3. Status report dated 09.07.2020 has been filed by the State.
4. Nominal roll dated 26.06.2020 has been received in the connected BAIL APPL. No. 1325/2020.
5. A copy of SCRB report dated 23.07.2020 has also been forwarded by e-mail. Let the same be placed on record.
6. As per the contents of the application, the status report and the nominal roll; and based on submissions made on behalf of the applicant and the State, the following position emerges :
 - (a) On 06.03.2019 the subject FIR was registered against unknown persons but subsequently 07 persons were implicated in the matter, by name Rohit @ Soni, Prashant @ Jontu, Parvinder @ Kala, Ashish @ Anup, Deepak and Kanta and the applicant Vinod @ Dada;
 - (b) All accused persons are alleged to have been involved in commission of offences under sections 394/397/307/34/120B IPC and sections 25/27 of the Arms Act;
 - (c) The applicant was arrested on 09.03.2019 and has been in judicial custody since 12.03.2019;
 - (d) Accused Parvinder, Prashant and Rohit are stated to be absconding and have been declared proclaimed offenders by the concerned court *vidé* order 22.06.2019;
 - (e) As of date 03 persons are in judicial custody, namely Ashish, Deepak and the applicant/Vinod;

- (f) According to the State, all accused were untraceable; and finally the police were able to reach some of them through a WiFi router which was left at the scene of crime in the clothes of one of the assailants; whereupon, by tracing the IMEI number of the router, the police reached one Rupesh, who is stated to be the previous user of the SIM card in the router. It is the State's contention that upon questioning Rupesh, the identity of other accused persons was disclosed;
 - (g) Insofar as the applicant is concerned, the State says that when Rupesh was being questioned, a WhatsApp call was received from the applicant on Rupesh's mobile phone; and in the course of conversation, the applicant inquired from Rupesh the status of a 'job' that was entrusted by the applicant to Prashant, which the applicant said had 'gone wrong'. Thereafter, the State says, at Rupesh's instance, the applicant came to the Bahadurgarh Bus Stand, whereafter he was arrested on 09.03.2019, produced before the concerned court on 10.03.2019 and remanded to judicial custody on 12.03.2019.
- 7. Charge-sheet dated 05.06.2019 has since been filed against the applicant; but, especially by reason of the restricted functioning of courts due to the prevalent pandemic, trial is unlikely to commence any time soon.
 - 8. Mr. Hardy contends that even upon a plain reading of the allegations against the applicant in the charge-sheet; and the nature of evidence based on which he was roped into the offence, it will be seen that the

prosecution has very little credible evidence to bring home guilt upon the applicant.

9. On the other hand, Mr. Srivastava submits that the applicant is believed to be the 'kingpin' of a gang which was committing robberies; and it is for this reason that the applicant had kept himself at arm's length from the incident that is the subject matter of the FIR. Mr. Srivastava further submits that an offence under section 307 IPC attracts upto life imprisonment and is therefore very grave and serious.
10. That being said, Mr. Srivastava concedes that no other criminal involvement of the applicant is disclosed either in the nominal roll or in SCRB report dated 23.07.2020, copy of which has been forwarded by e-mail during the course of the hearing.
11. In the nominal roll the applicant's jail conduct is stated to be 'satisfactory'. The applicant was also granted interim bail twice : from 23.10.2019 to 12.11.2019 and again from 06.01.2020 to 10.01.2019; and there is no allegation either that he did not surrender on time or that he misused the privilege of interim bail.
12. Clearly, the fact that 03 other accused are absconding and have been declared proclaimed offenders is not material for grant or denial of bail to the applicant. What is telling is that though the State alleges that the applicant discussed the 'job' entrusted to Prashant with Rupesh on the WhatsApp call; and that at Rupesh's instance the applicant came to a bus stand, which led to the applicant's eventual arrest, Rupesh is not an accused in the matter. Moreover, inspite of

saying that the applicant is the 'kingpin' of a robbers' gang, no other case is stated to be pending against the applicant. The State principally relies upon this WhatsApp call to link the applicant with the offence.

13. Without commenting on the merits of the evidence however, in the circumstances, this court is persuaded to admit the applicant to *regular bail* during the pendency of the trial, subject to the following conditions :

- a. The applicant shall furnish a personal bond in the sum of Rs. 30,000/- with 01 surety in the like amount from a family member, to the satisfaction of the Trial Court ;
- b. The applicant shall furnish to the Investigating Officer/SHO PS : Lahori Gate a cell phone number on which the applicant may be contacted at any time and shall ensure that the number is kept active and switched-on at all times ;
- c. If the applicant has a passport, he shall also surrender the same to the Trial Court;
- d. The applicant shall not contact nor visit nor offer any inducement, threat or promise to the first informant/complainant or to any of the prosecution witnesses. The applicant shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the matter.

14. Nothing in this order shall be construed as an expression on the merits of the pending matter.

15. The bail application stands disposed of.
16. Other pending applications, if any, also stand disposed of.
17. A copy of this order be sent to the concerned Jail Superintendent.

BAIL APPL. 1325/2020 (for interim bail)

18. In view of the order in BAIL APPL.No.1124/2020 above, this application is disposed of as infructuous.
19. Other pending applications, if any, also stand disposed of.

ANUP JAIRAM BHAMBHANI, J.

JULY 24, 2020/uj