

\$~7

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

Reserved on : 18.03.2021

%

Pronounced on : 26.03.2021

+ **BAIL APPLN. 2720/2019**

RIZWAN

..... Petitioner

Through: Mr. Sunil K. Mittal, Mr. Anshul Mittal, Mr. Sachit Arora and Ms. Aanchal Arora, Advocates.

versus

THE STATE

..... Respondent

Through: Ms. Manjeet Arya, APP for the State with Insp. Rajiv Kumar, P.S. Alipur.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. This is a petition filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case FIR No. 09/2018 under Sections 302/365/396/120B/34 IPC registered at Police Station Alipur, Delhi .

2. In brief, the facts of the case are that on 9.1.2018, an E-FIR was registered under Section 379 IPC on the complaint of Sh. Suresh Kumar, wherein he alleged that on 5.1.2018, 1050 cartoons of rice (each weighted 18 kg) (Keeva 1121 Basmati Rice brand) which were to be sent to Iraq, were loaded into the truck no. HR-38T-1586 from his warehouse situated at Alipur Delhi and necessary documents were provided to the driver Kamil Khan but even after 70 hours, he did not reach his destination i.e Mudra Port Gujarat, while the vacant vehicle was found abandoned near Vijay Ghat,

Delhi. During the course of investigation, it was revealed that phone of the driver Kamil Khan was also switched off and he had not contacted his family members.

3. During the course of investigations, manager Sh. Kulwinder Behl of VRC Logistics Ltd. came to PS and produced the vehicle no.HR-38T-1586 make Ashok Leyland close body container and stated to him that the said truck/vehicle was found lying abandoned near Vijay Ghat, but the material contained in the said truck was found missing. SI Jitender got the said truck examined through crime team Rohini District.

4. During investigation, SI Jitender had collected the CDR of mobile no. 7027587161 of driver Kamil and also checked the GPS location of the said truck. As per the GPS location, the aforesaid truck was found parked from 3:10 am to 5:40 am at Mukundpur Part-II, Delhi on 6.1.2018.

5. At the outset, it is submitted by the counsel for the petitioner that at the most the petitioner is liable under Section 412 IPC, and by no stretch of imagination he can be roped in other offence with the help of Section 120 B. It is further submitted that as per the case of the prosecution, when accused Jitu was interrogated he disclosed about the other co-accused and did not disclose anything against the petitioner. It is further submitted that petitioner is in the business of rice trade, that is why the recovery of rice bags from him were made. It is further submitted that the accused is in judicial custody since 12.1.2018. It is further submitted that petitioner was not present at the spot and he has been only implicated on the basis of the disclosure statements which are not admissible in evidence. It is further submitted that even as per the statement of Lal Mohan Prasad, it is evident that petitioner was looking for a godown for storing rice since long time prior to the date of

incident since the petitioner is involved in the rice trading. It is further submitted that the entire case of the prosecution is based on circumstantial evidence and there is no direct evidence to implicate the petitioner. It is further submitted that the prosecution has tried to connect the petitioner with other accused persons on the basis of telephonic calls, and the said calls are only made for the purpose of selling rice, and the same cannot show the proximity of the petitioner with the accused persons or to show that he had knowledge about the commission of the offence.

6. Learned APP has opposed the bail application of the petitioner, and submitted that the petitioner has been charged under Sections 302/365/396/120B/34 IPC and charges were framed on 3.4.2019 against the petitioner, and at no point of time petitioner has challenged the charges. It is further submitted that the petitioner is not only the receiver of the robbed goods but he is one of the main conspirator, and even prior to the commission of the offence the preparations were made by him for procuring the rice cartoons, which is evident from the testimony of PW-Lal Mohan Prasad. It is further submitted that the CDR records of the petitioner reveals that he was in constant touch with the other co-accused persons. It is further submitted by the learned APP that the petitioner is the prime conspirator and he was arrested while he was transferring the rice from cartoons into sacks of rice, and a total number of 210 sacks of rice with 10 sacks of empty pouches of rice and 630 empty cartoons of rice were recovered at his instance.

7. In the instant case, the allegations against the petitioner are grave and serious in nature and as per the case of the prosecution sacks of Basmati rice which bounded for Iraq and were being transported from Alipur, Delhi

to Mudra Port, Gujarat in a truck, were looted and the driver of the said truck murdered.

8. According to the prosecution, GPS Data of the truck revealed that it stayed for two hours somewhere in Mukundpur, Delhi, so owner of the plot was traced and it was revealed that the petitioner has taken the godown on rent four months ago, and had kept rice in a vacant plot for some time. The petitioner was arrested while transferring the rice and the interrogation revealed that associates of the petitioner have looted the said truck and he disclosed the names of other co-accused persons. As per the case of the prosecution, the dead body of the driver of the truck was found dumped in a jungle with gunshot injuries. As per the case of the prosecution, Apache Motorcycle which was used for the offence, also belonged to the petitioner. According to the call details collected by the prosecution during the course of investigation the accused persons were in constant touch with others and the contention of the petitioner that petitioner was implicated in false case. In any case, these are all matter of trial.

9. Keeping in view the facts and circumstances, and the fact that the allegations are very grave and serious in nature, no grounds for bail are made out. Therefore, the application is dismissed.

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

MARCH 26, 2021
ib

RAJNISH BHATNAGAR, J