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NEUTRAL CITATION NO: 2022/DHC/004285



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

*Order reserved on :10/10/2022*  
*Order pronounced on :13/10/2022*

+ **BAIL APPLN. 511/2022**

**HARISH TIWARI**

..... Petitioner

Through: Mr. Prithvi Sabharwal and Mr.  
Shashank Shekhas, Advs.

versus

**THE STATE**

..... Respondent

Through: Ms. Richa Dhawan, APP for the  
State with IO Ins. Rajbir Singh, PS  
Punjabi Bagh.  
Mr. Anupam S. Sharma with Mr.  
Pankaj Gupta, Mr. Prakarsh, Ms.  
Harpreet Kalsi, Mr. Abhishek  
Batra and Mr. Nishant Choudhary,  
Advs. for complainant.

**CORAM:**

**HON'BLE MS. JUSTICE POONAM A. BAMBA**

**POONAM A. BAMBA, J.:**

**1.0.** Vide this application under Section 439 Cr.P.C filed through the Piarokar Mr. Sushil Kumar Shukla (brother-in-law/saala), the petitioner has sought bail in FIR No. 495/2017 dated 16.09.2017, under Sections 384/389/341/120-B IPC, PS Punjabi Bagh.

**2.0.** This is 8<sup>th</sup>/9<sup>th</sup> bail application of the petitioner and the fourth application before this Court. It is submitted that the petitioner is

an advocate by profession and has been falsely implicated in the present case. The petitioner was arrested on 23.10.2019 and was remanded to Police custody and thereafter was sent to the Judicial custody. He has already completed 4 years and 3 month approximately in custody and the maximum punishment for the offences he has been charged with, is 3 years. It is also submitted that the petitioner is a permanent resident of the given address and has deep roots in society and there is no likelihood of his fleeing from justice.



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- 2.1.** Ld. Counsel for the petitioner submits that since dismissal of his earlier bail application, material witnesses including the complainant has already been examined and discharged. It is also submitted that the petitioner had remained on interim bail from 21.03.2020 to 29.11.2021 and he never misused the liberty granted to him in any manner.
- 3.0.** **Per contra**, this application is vehemently opposed by the Ld. Addl. Public Prosecutor submitting that there are serious allegations against the petitioner. The petitioner in a well orchestrated conspiracy along with his co-accused blackmailed 92 years old leading industrialist of India. He extorted a sum of approximately 10 crores from the complainant over a period of 12 to 13 years by blackmailing him that his false, fake, doctored and morphed photos and video clipping showing him in awkward and embarrassing position with a certain woman, shall be released in public. It is further submitted that the petitioner was caught red-handed with two lacs of rupees of extorted money. Further, letter

for publication and the alleged morphed photographs have also been extracted from the petitioner's mobile phone.



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- 3.1.** Ld. Prosecutor also submits that voice of the petitioner/accused in the calls recorded by the complainant has been opined by the FSL in its report to be matching with the voice sample of the petitioner. Further, FSL vide its report has also found the photos and audios extracted from the petitioner's mobile phone to be morphed.
- 3.2.** It is also submitted that consequent to filing of second supplementary charge sheet, charge under Section 469 IPC has also been framed against the petitioner by the Ld. Trial Court on 04.05.2022. Ld. Prosecutor submits that investigation is still undergoing to unearth the entire conspiracy/involvement of other accused persons. She also submits that even FIR under Sections 3 & 4 MCOCA has been registered against the petitioner.
- 3.3.** Ld. Prosecutor further submits that one of the material witnesses namely Chander Shekhar Sharma (PW-15) is partly examined and his further examination/cross-examination is now fixed for 12.10.2022. PWs Birender Kumar Dass and S.K. Jain are also the material witnesses besides other witnesses ; release of the petitioner on bail at this stage would seriously hamper the prosecution evidence as even earlier while on interim bail in February 2018, the petitioner misused the liberty granted to him and extended threats to the driver of the complainant, a key witness, with respect to which, DD no. 38-B dated 20.02.2018, PS Punjabi Bagh was recorded. Status report mentions that even co-

accused J.D. Gupta had made a demand of fresh extortion money of Rs. 2 lacs with tempo traveller from the complainant, while the petitioner was on interim bail.



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- 3.4.** Status report further mentions that even the complaints from co-accused persons Subhash Sharma and Naresh Chaubey have been received against the petitioner. Co-accused Subhash Sharma has complained that the petitioner is misusing his (co-accused) name for extorting money from the complainant ; and co-accused Naresh Choubey vide his complaint has stated that he was abused by the petitioner's wife Ms. Manju Tiwari and was threatened by her with dire consequences in open Court. On which, non-cognizable information report was registered by the PS Subzi Mandi vide NCR no. 0070/2019 on 03.10.2019 under Section 506 IPC against the petitioner's wife.
- 3.5.** Ld. Prosecutor also submits that the petitioner had even defaulted in surrendering before the court despite directions of the Ld. Magistrate to surrender after expiry of interim bail. Thus compelling the Ld. Magistrate to issue NBWs against the petitioner vide order dated 27.11.2021.
- 3.6.** Status report further mentions that the petitioner is a kingpin and several other co-accused persons are still absconding. If released on bail, there is every likelihood of the petitioner influencing witnesses and is also likely to commit further offence and it is apprehended that the petitioner may even flee out of the country.

**4.0.** I have duly considered the submissions made by both the sides.

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**5.0.** Petitioner's bail application was dismissed by this court vide detailed judgment dated 20.06.2018 in Bail Application no. 752/2018. Ld. counsel for the petitioner submits that there is a significant change in circumstances since then as material witnesses have already been examined.

**6.0.** Ld. prosecutor in this regard has submitted that material witnesses namely Chander Shekhar Sharma (PW-15) is partly examined and his further examination/cross-examination is now fixed for 12.10.2022 and other material witnesses PWs Birender Kumar Dass and S.K. Jain, are yet to be examined.

**7.0.** Vide status report, it has come on record that while on interim bail in February 2018, the petitioner had threatened the key witness – driver of the complainant (Lalit Rai), on which DD no. 38-B dated 20.02.2018 PS Punjabi Bagh was recorded. The fact that the petitioner/accused threatened/influenced the witness has also been recorded in the order dated 01.02.2021 passed by Ld. ASJ while rejecting the bail application of the petitioner.

**8.0.** Further, the fact that the complaints were received from the co-accused regarding threats being extended to them at the behest of the petitioner also came on record vide additional status report filed by the State before this Court. Same also finds recorded in the order of this Court dated 20.08.2019 in the petitioner's earlier Bail Application no. 803/2019 (page 184 of paper book). The said bail

application was subsequently withdrawn by the petitioner vide hi  
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application bearing CrI. M.A no. 39667/2019,



- 9.0.** Ld. Prosecutor has submitted that the petitioner even defaulted in surrendering after expiry of interim bail, same was disputed by the ld. Counsel for the petitioner submitting that the petitioner was granted interim bail for a period of 10 days on 26.03.2021 on medical/ humanitarian grounds which was subsequently extended for a period of 20 days i.e. till 15.04.2021 vide order dated 25.03.2021.
- 9.1.** Admittedly the petitioner did not surrender on the given date or thereafter.
- 9.2.** Ld. counsel for the petitioner submitted that the petitioner was not required to surrender in view of the order of Hon'ble Supreme Court/order of Full Bench of this Court dated 20.04.2021.
- 9.2.1.** Ld. Prosecutor in this regard submitted that this argument is malicious to the knowledge of the ld. counsel for the petitioner. Ld. Prosecutor submits that vide order dated 22.10.2021 in WP (C) 4921/2021, Court on its own motion vs. State (Govt. of NCT of Delhi), this court modified the aforesaid earlier order dated 20.04.2021 in view of the subsequent order of the Supreme Court dated 23.09.2021 in *Suo Moto Writ Petition (Civil) no. 3/2020*, whereby considering the changed circumstances, it was directed that there shall be no further extension of the interim bail ; and 793 undertrials involved in heinous crimes, who were granted bails by the District Courts, shall surrender in a phased manner. Ld.

Prosecutor submits that as per the said schedule, the petitioner was required to surrender by 09.11.2021. Despite expiry of interim bail and despite directions of Hon'ble Supreme Court and even the order of Ld. M.M, the petitioner did not surrender. He surrendered only after issuance of NBWs by the Ld. Magistrate vide order dated 27.11.2021. Ld. counsel for the petitioner did not dispute that the petitioner surrendered on 27.11.2021, but contested the requirement for surrender.



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**10.0.** Be that as it may. Considering the nature of allegations against the petitioner and above facts and circumstance in entirety, and more particularly that the petitioner misused the liberty while on interim bail by influencing the witnesses ; and there also allegations of extending threat to the co-accused, the petitioner does not deserve to be released on bail.

**11.0.** Bail application is accordingly, dismissed.

**12.0.** Pending applications, if any, are closed.

**(POONAM A. BAMBA)**  
**JUDGE**

**OCTOBER 13, 2022/chandan**

[Click here to check corrigendum, if any](#)