



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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+ BAIL APPLN. 1783/2021

Reserved on : 10.02.2022

Pronounced on : 26.04.2022

ISHWAR SINGH

.....Petitioner

Through: Mr. Girdhar Lal Soni,
Advocate

Versus

STATE AND ANR.

..... Respondents

Through: Mr. Amit Ahlawat, APP for the State
with Inspector Yashendra.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. This petition is filed by petitioner seeking regular bail in FIR No. 268/2020 under Section 302 IPC and Sections 25/27/54/59 Arms Act registered at police station Gulabi Bagh.

2. In brief the facts of the case are that on 11.12.2020 SI Anjani Kumar received a PCR Call that "*metro pillar no 142 Pratap Nagar Ek admi ko Goli Lagi Hai*". Thereafter, he along with other staff reached the spot where victim later identified as Vikas Garg was found injured with gunshot at the spot with his motor cycle nearby. It is alleged that Vikas was shifted to Hindu Rao Hospital where he was declared brought dead and no eye



witnesses were found at the spot. Thus, the case FIR No. 268/20 under Section 302 IPC and Sections 25/27/54/59 Arms Act was registered.

3. During the investigation of the case, on 13.12.2020 an eye witness, namely, Kamlesh was found, who narrated the whole incident, that he plied Vikram Tempo and carried goods. On 11.12.2020 four bike riders on two motor cycles tried to rob the deceased of his bag and when he did not leave the bag one of them shot him and they all fled away taking the bag with them. He also disclosed the number of one motor cycle as DL5SBT 3904, hence on 14.12.2020 initially the accused Harish was arrested on the basis of ownership of the motor cycle which belonged to his *bhabhi* Pushpa, and Sections 392/395/396/412/120B/34 IPC were added in the case.

4. During further investigation, it was revealed that deceased Vikas Garg used to work in the factory of Vipin Goel and on 11.12.2020 he was asked to collect payment of Rs 99,700/- from one Ramesh Kumar, Chandni Chowk. It is alleged that Vikas had collected the money and was returning to his workplace on his motor cycle. Ishwar Singh started following him and he also passed this information to Harish from his mobile No 8527611968 on Harish's mobile number 7838563583. When the deceased Vikas Garg reached Banda Veer Vairagi Marg Metro Pillar No 142, he was robbed of his bag by both the motor cycle riders and when he did not leave the bag he was shot by the accused Gaurav and all four of them fled away from the spot.

5. I have heard the learned counsel for the petitioner, learned APP for the State and perused the status report filed by the State.



6. It is submitted by the counsel for the petitioner that the petitioner has been falsely implicated in the present case. It is further submitted that applicant is in judicial custody since 16.12.2020. It is further submitted that he is a permanent resident of Delhi and has deep roots in society. It is further submitted that petitioner was working as a Security Guard with Panth Hospital at the time of his arrest and that he is not named in FIR and he does not have any criminal background. It is further submitted that there is no legally sustainable evidence against the accused and no purpose would be served by keeping him in judicial custody.

7. On the other hand, while opposing the bail application, learned APP for the State submitted that the allegations against the petitioner are grave and serious in nature as he is the person who has given information about deceased to co-accused. It is further submitted that the applicant is actively involved in the heinous offence of murdering the deceased to rob him, as he was the one who passed the information to the other accused persons.

8. It is further submitted by learned APP that mobile phone Vivo bearing Mobile no 8527611968 which was used to make call to Harish on the day of offence was recovered from applicant's possession and his CDR of the phone confirms the call made and his location at the place where victim was present prior to his death.

9. As far as the question of grant of bail under Sections 437 Cr.P.C and 439 Cr.P.C is concerned, the law in this regard has been settled by the Hon'ble Supreme Court in various judgments and has laid down various



considerations for grant or refusal of bail to an accused in non-bailable offences like:

- (i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) Gravity and seriousness of offence and punishment which the conviction will entail;
- (iii) Nature of accusation and evidence therefor;
- (iv) Reasonable possibility of securing presence of the accused at trial and likelihood of him absconding or fleeing if released on bail;
- (v) Possibility of the offence being repeated;
- (vi) Conduct, character and behavior of accused;
- (vii) Reasonable apprehension of the witnesses being tampered with;
- (viii) Means position and standing of the accused in the society;
- (ix) Danger, of course, of justice being thwarted by grant of bail;
- (x) Balance between the rights of the accused and the larger interest of the Society/State;
- (xi) Any other factor relevant and peculiar to the accused;
- (xii) While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, but if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. Furthermore, in the landmark judgment of ***Gurcharan Singh and others Vs. State (AIR 1978 SC 170)***, it was held that there is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the courts. It was

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further held that there cannot be any inexorable formula in the matter of granting bail and the facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. It was further held that such question depends upon a variety of circumstances, cumulative effect of which must enter into the judicial verdict. Such judgment itself mentioned the nature and seriousness of nature, and circumstances in which offences are committed apart from character of evidence as some of the relevant factors in deciding whether to grant bail or not.

10. It is also a fact that there is no straight jacket formula governing the exercise of discretion by the courts as regards the grant of bail is concerned, the same depends upon the facts and circumstances of each case, and each criminal case revolves on its own facts. It is also not in dispute that at the time of consideration of an application of bail detailed examination of the facts and elaborate examination of documents relied upon by the prosecution are not to be undertaken, however, the court can make reference to the material relied upon by the prosecution as detailed and in depth analysis of the same might prejudice the case of either of the parties, and acceptability or otherwise of the material relied upon by the prosecution in the chargesheet is a matter of trial and not to be considered meticulously at the time of considering the bail application of the accused.

11. In this case, though the accused is not named in the FIR, but it is also a fact that the FIR is not an encyclopedia of the case. The FIR only sets criminal law into motion, and it is only thereafter that the police comes into action and starts its investigation.



12. In the cases especially of robbery and dacoity, robbers are not known to the victim so it is very difficult for the complainant or the victim to name or identify the perpetrator of the crime. It is only when the investigation unfolds that the role of each of the accused person comes into force. In the present case there are eye witness and other public witnesses who are yet to be examined. According to the prosecution, the petitioner passed a piece of information regarding the movement of the deceased and also the fact that he was carrying cash with him and thus, he is part of the conspiracy. The role assigned by the prosecution to the present petitioner/applicant/accused is that of giving information about the movement of the deceased which has a vital link in the present case as there are call details connecting the petitioner with one of the co-accused on the date of the offence as his CDR recovered from his phone confirms the call made by him to the co-accused and his location at the place where the victim was present prior to his death.

13. The allegations against the petitioner/accused are grave and serious in nature and the testimony of the public witnesses is yet to be recorded. No ground for bail is made out and the bail application of the petitioner is, therefore, dismissed.

14. Nothing stated herein above shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

APRIL 26, 2022/ib

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