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

Reserved on: 18th October, 2022
Decided on: 04th November, 2022

+ **BAIL APPLN.2805/2022**

BIJENDER @ BIRJU

.....Applicant

**Through: Mr. Hiren Sharma and
Mr. Vimal Tyagi , Advocates.**

versus

THE STATE (NCT OF DELHI)

..... Respondent

**Through: Mr. Hemant Mehla, APP for
State with SI Harender
Kumar P.S. Lahori Gate.**

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CORAM:

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT

1. The present application is filed under section 439 Cr.P.C. for grant of bail filed on behalf of Bijender @ Birju in FIR bearing No. 0142/2017 registered under sections 395/397/412/34 IPC and sections 25 and 27 of the Arms Act, 1959 at P.S. Lahori Gate.

2. The perusal of the FIR bearing number 0142/2017 reflects that it was got registered on the basis of complaint made by Khushi Ram Arora pertaining to the incident happened on 22.07.2017. As per the FIR the complainant is the sole proprietor of Shri Behariji Enterprises and carrying it's business at premises bearing no. 212, First Floor, Naya Bans, Khari Baoli, Delhi-06. It is further stated that on

22.07.2017, 3-4 robbers came inside the business premises of the complainant and took control of the entire office area. One of the robber put a pistol on the head of the complaint while another robber placed his pistol on the head of the son- in-law of the complainant. Other robbers took out of the draggers and thereafter, snatched the keys of the drawers and the wooden cupboards and other cupboards/office bags and looted the cash which was kept inside these drawers/cupboards. As per the evaluation made by the complainant, approximately 8.75 lakhs were looted in cash. On the basis of the complaint made by the complainant the present FIR bearing No. 0142/2017 under sections 395/397/412/34 IPC and sections 25 and 27 of the Arms Act, 1959 was got registered.

3. During investigation, the robbers were identified as Shakeel, Bijender @ Birju i.e. the applicant, Anil, Yunus Joginder @ Jugnu and Jagdev @ Jassi. The accused Bijender @ Birju was arrested on 03.08.2017. After the completion of investigation the chargesheet was filed. The accused Bijender @ Birju was also found involved in two other cases vide FIR bearing no. 236/93.

4. It is mentioned in the bail application that the applicant filed bail applications under section 439 Cr.P.C before the court of Additional Sessions Judge which was dismissed vide orders dated 03.08.2019, 21.02.2018, 13.08.2019 and 01.09.2022. The complainant during his examination in chief recorded on 27.03.2019 has failed to identify Bijender @ Birju i.e., the applicant and another eye witness namely, Vitesh Bhasin during his examination in chief recorded on 12.07.2019 also failed to identify Bijender @ Birju i.e., the applicant.

There is a delay of about 42 hours in registration of FIR. No CCTV footage of the alleged incident was provided to the police during the course of investigation. The applicant is in the custody for more than 3 years and 6 months and is not required for further investigation. The co-accused Joginder @ Jugnu has already been granted regular bail vide order dated 21.02.2018. No recovery was affected from the applicant. In the circumstances, it is prayed that the accused/applicant be released on bail.

5. The counsel appearing on behalf of the applicant argued on the facts as stated in the application under disposal as well as in written arguments. The counsel for the applicant submitted that no recovery was affected from the applicant and there was a delay of 02 days in the registration of FIR which is not explained properly. No TIP of the applicant was conducted during the course of investigation. The co-accused Joginder @ Jugnu was granted regular bail vide order dated 21.02.2018 passed by the Court of Additional Session Judge despite being identified by the complainant. The applicant was charged only with section 395 and 412 IPC.

6. The Additional Public Prosecutor for the respondent/State argued that the applicant is also involved in other cases and in the manner in which the offence was committed, no ground for bail is made out. He prayed that the application be dismissed.

7. In this case the investigation has already been completed. The chargesheet has already been filed. The witnesses have failed to identify Bijender @ Birju i.e. the applicant during the course of the trial. The applicant/accused was charged only for the offence

punishable under sections 395 and 412 IPC vide order dated 21.02.2018. After considering all facts, the petitioner/accused is admitted to bail on furnishing personal bond in the sum of Rs.25,000/- with one local surety of the like amount to the satisfaction of the concerned trial Court with following conditions:-

- (i) That he shall not extend any threat to the witnesses;*
- (ii) That he shall provide his mobile phone number to the concerned Investigating Officer (IO) immediately after release which shall be kept in working condition at all times;*
- (iii) That he will mark his presence before the concerned Investigating Officer on every second and fourth Friday of English Calendar month during day time;*
- (iv) That he shall not leave the country without prior permission of the Court;*
- (v) That he shall not indulge in any criminal activity;*

8. The bail application stands disposed of. Nothing in this order shall be taken as any opinion on merit of case.

SUDHIR KUMAR JAIN
(JUDGE)

NOVEMBER 04, 2022
SK/MYS