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

+ **BAIL APPLN. 2341/2022**

DHARMENDER KUMAR ALIAS CHACHA Petitioner

Through: Mr. G. S. Sharma, Mr. R. A. Sharma,
Mr. V. K. Sharma and Mr. Afsrun,
Advs.

versus

STATE Respondent

Through: Mr. Amit Sahni, APP for State and
ASI Ashok Kumar, PS Wazirabad.

+ **BAIL APPLN. 258/2023**

RADHEY KRISHAN Petitioner

Through: Mr. D.K. Singh, Mr. Pankaj Chauhan,
Mr. Virender Rajput and Mr. Deepak
Shukla, Advs. (VC)

versus

STATE (NCT OF DELHI) Respondent

Through: Mr. Amit Sahni, APP for State and
ASI Ashok Kumar, PS Wazirabad.

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Date of Decision: 02.08.2023.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

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DINESH KUMAR SHARMA, J. (Oral)

CRL.M.A. 2154/2023

Exemption allowed subject to just exceptions.

Application stands disposed of.

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1. The present petitions have been filed under Section 439 Cr.P.C. seeking grant of regular bail in case FIR No.803/2021 dated 25.10.2021 under Sections 365/395/ 397/412/34 IPC registered at PS Wazirabad, Delhi.
2. Briefly stated the case of the prosecution is that on 25.10.21 complainant Sh. Ashok Kumar Chaurashiya S/o Sh. Kalyan Singh R/o Guru Nanak Colony, Bhalaswa Dairy, Delhialong with Amit @ Rinku came to the PS Wazirabad alleging that scrap material of Copper and brass were robbed from the vehicle No. DL 1 LAD 6376 TATA 407. It was alleged that on 24.10.21, the complainant picked up the consignment of scrap material of Copper and Brass from Prem Shri Enterprises Sanjay Gandhi Transort Nagar, Delhi to deliver at Rohit Metal in Shadara, Delhi. However, the complainant stated that when he reached the red light situated at Gandhi Vihar, Outer Ring road at around 2:30 PM; a person suddenly appeared in front of his vehicle and in order to avoid collision, he pressed on the break paddle and consequently, his vehicle only slightly touched the person.



3. The complainant further alleged that thereafter, the person started a verbal altercation with him, and in the meanwhile, another person forcefully entered his vehicle from the driver's side and overpowered him and removed him from the driving seat. Additionally, another person entered in his vehicle from conductor side wielding a sharp element at the neck of the complainant and threatened him to remain silent. Moreover, the complainant alleged that the person who had started the verbal altercation along and another person removed the Dala of his vehicle and entered the vehicle as well. The accused persons first drove the vehicle towards the old Wazirabad Bridge and then near Shiv Mandir Wazirabad and parked it on a service road. It was alleged that a person came at where they were parked with two champions and the accused persons removed the scrap materials from the vehicle to the two champions and thereafter; all the persons fled from the spot with the scrap materials. The complainant along with Amit came to the PS Wazirabad and as per the statement of Ashok Chaurasiya, the present case FIR No 803721 U/ 392/34 IPC was registered by ASI Mukesh and investigation was taken up.
4. The case of the prosecution is that upon scrutiny of the CCTV footage installed near the Place of incidence, two champions were seen of green and white colour respectively; wherein the mobile number 9599313155 was printed on the latter. Using this mobile number, the champions drivers were traced to be Ram Sharan and Ajay Kumar. They informed that on 24.10.21 in between 3-3:30 PM, they were approached by a



person stating that he required two vehicles on rent as his vehicle had broken down and he needed to transfer the material from that vehicle to Karawal Nagar. And that upon finalizing the terms of rent, they reached at Shiv Mandir Wazirabad where 4-5 people were standing near a TATA 407 vehicle and helped load the material from that vehicle to their Champion. Then they proceeded to transport the vehicle to Karawal Nagar as per their directions.

5. Moreover, the case of the prosecution is that on 25.10.2021, the accused Radha Kishan was arrested on the instance of PW Ram Saran and Ajay Shukla. And during the course of interrogation, Radha Kishan disclosed his involment in the present case and it was on his instance that a raid was conducted at H.No. K-258, Kali Ghatta Road, Karawal Nagar, Delhi and the robbed articles were recovered from possession of Jawahar @ Deepak who was later arrested in the present case. During his interrogation, Radha Kishan also disclosed that other accused Danish, Dharmender Kumar @ chacha, Illiyas and Shahrukh were also involved in the crime. Hence, during the course of investigation, Section 365/395/397/412/34 IPC were added as well. During the Police Custody remand, the Scooty No. DL SSCN 7388 which was used in crime was recovered on the instance of accused Radha Kishan as well.
6. Further the case of the prosecution relies on the fact that on 23.11.2021, information was received that accused Danish. Shahid, Dharmender Kumar @ chacha and Illiyas were arrested in FIR No 838/21 u/s U/s 365/395/412/34 IPC registered at PS Wazirabad. On 10.12.21, the



accused persons were interrogated and formally arrested in the present case after getting permission from the Court. During the TIP proceedings, PW Ram Saran correctly identified the accused Dharmender and Danish, whilst Co-accused Illyas refused to take part in the TIP Proceedings. The other co-accused Shahrukh is absconding from process of law and is yet to join the investigation, thereby, he has been declared Proclaimed Offender by the Court vide order dated 23/9/2022. Moreover, the prosecution has alleged that the accused Dharmender @ Chacha and accused Radhey Krishan can be seen clearly in the CCTV footage. On 22.01.2022, the charge sheet against Radha Kishan, Danish, Dharmender Kumar @ Chacha, Illiyas and Jawahar @ Deepak has been filed.

7. Learned counsel for the petitioner submits that the accused in the present case Dharmender Kumar @ Chacha and accused RadheyKishan are in custody since 25.10.2021 and 26.12.2021 respectively. It is submitted that the only evidence against accused Dharmender Kumar @ Chacha is that he was named by the co-accused and that there is no other evidence against him. Learned counsel further submits that all material witnesses have been examined and the trial may take a long time, therefore, the accused may be admitted to bail. Learned counsel for Radhey Kishan also submits that during the testimony of the prosecution witnesses, no material has come against them. It is also submitted that the accused, Dharmender Kumar @ Chacha is already on bail in a previous similar case.



8. Learned APP for the State has vehemently opposed the bail applications on the ground of the gravity and seriousness of allegations against the appellants. He submits that the accused were evidently present at the place of incidence and had an active role in the alleged offence. He further submits that one of the appellants, Dharmender@ Chacha, was also identified in the TIP proceedings by the public witness Ram Saran. Besides the CCTV footage establishing their presence at the place of incidence, public witness Ram Saran also confirmed the same in his supplementary statement. The learned APP further submits that the auto bearing no. DL-IRP-5140 was also recovered only on the instance of the appellant, RadheyKishan.
9. Discretion of granting bail in a serious offence case has to be exercised with due care and caution. Factors to be considered are the prima facie case, gravity of the offence, the possibility of the accused threatening the witnesses or tampering the evidence available. The court at the stage of bail cannot minutely examine the evidence nor can it examine the probative value of the witnesses.
10. It is a matter of record that no recovery was effected from accused Dharmender Kumar and the only evidence highlighted against him is that he was seen on the spot in the CCTV camera. However, the presence of the accused on the spot is required to be appreciated by the learned Trial Court. Similarly in respect of RadheyKishan, though the recovery has been affected, however in this regard, the learned defence counsel has pointed out that during the testimony of prosecution



witness Ajay Kumar Shukla, no material has come to light. It has also been submitted that no recovery has been affected from him. This court at this stage cannot hold mini-trial appreciate the evidence

11. I consider in the totality of the facts and circumstances both the present accused persons are entitled to be admitted to bail on furnishing a personal bond of Rs. 20,000/- with one like amount surety subject to the satisfaction of the learned Trial Court subject to the following conditions:
 - a) the Petitioner shall under no circumstances leave India without prior permission of the concerned Court;
 - b) the Petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
 - c) the Petitioner shall provide his/her mobile number(s) to the Investigating Officer and keep it operational at all times;
 - d) In case of change of residential address and/or mobile number, the Petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.
15. It is made clear that this is only the prima facie view of this court and no expression made herein shall tantamount to be expression on the merits of the case.
16. Hence, the present applications stands disposed of.

DINESH KUMAR SHARMA, J

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AUGUST 2, 2023/AR