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

% ***Date of decision: July 19, 2023***

+ **BAIL APPLN. 1876/2023**

SANDEEP DAHIYA @ BAAJA **Applicant**

Through: Mr. Ankit Rana, Mr. Tushar
Rohmetra and Mr. Abhishek, Advs.

versus

THE STATE (GOVT. OF NCT OF DELHI) **Respondent**

Through: Mr. Mukesh Kumar, APP for the
State

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. The applicant vide this application under Section 439 Cr.P.C. is seeking grant of regular bail in FIR No. 170/2019 dated 16.04.2019 registered at P.S. Bawana under Sections 364A/395/397/34 IPC.
2. The applicant was formally arrested on 28.02.2020 based on a disclosure statement made in another FIR No. 01/2020 also registered at PS: Bawana under Sections 25/54/59 of the Arms Act, 1959 wherein he has been in custody since 01.01.2020. A supplementary charge sheet has since been filed. The charges have been framed and the trial is at the stage of prosecution evidence before the learned Trial Court.
3. As per FIR, the paternal uncle of the complainant, while returning in



his car (Honda Amaze Dark Grey) bearing registration number DL-3CCE2452 from his factory at A-161 Sector-2, DSIIDC Bawana was abducted by 2-3 men at around 10:40 pm on 15.04.2019. They not only demanded a ransom of Rs.10,00,000/- from him but also threatened to kill him in case of his failure to pay the same. Thereafter, the victim himself gave his statement on 17.04.2019 stating that he was abducted on gun point by 5 persons who took his car and also robbed him of certain valuable belongings, Rs.30,000/- and other important documents including his identity cards.

4. As per learned counsel for the applicant, the applicant has been falsely implicated in the FIR on unfounded allegations as he was never present at the place of incident. As is evident from the FIR, it has been registered at the behest of the complainant who has only narrated the incident as told to him by the victim. He submits that he has wrongly been apprehended on the basis of a disclosure statement made in another FIR and that no incriminating evidence has been found against him to substantiate his complicity in the commission of the offence. He submits that the victim and his wife, both being material witnesses have not supported the case of the prosecution and in any event, have since been discharged.

5. He also submits that the victim could not identify the applicant and he was identified in the TIP proceedings because the victim/ witness was shown the photographs of the accused persons before conducting the TIP proceedings. In view thereof, he claims parity with co-accused Sunil, who has since been granted bail as he was also not recognised by the victim. He further submits that pendency of the other cases against the applicant cannot be a ground to reject the bail since he has not been convicted in any of those



and has also been granted bail in 3 pending cases. He lastly submits that the applicant has been unduly incarcerated for almost 4 years, when the investigation in the case is already complete and the trial is already at the stage of prosecution evidence, wherein also, the material witnesses already stand discharged.

6. Notice was issued and the Status Report and the Nominal Roll was called for. As per Nominal Roll, the applicant has been in custody in the present case for almost 3 years and 5 months as on date. It is also stated that the applicant is on bail in three other FIRs. There are no previous convictions of the applicant and his overall jail conduct has been satisfactory.

7. The State in its Status Report has opposed the grant of bail to the applicant on the ground that he is a habitual offender involved in 4 other FIRs involving serious offences under the Arms Act. It is stated that the voice samples of the applicant have already been sent to the FSL and result thereof is awaited. Learned APP for the State submits that one of the accused has been absconding and has already been declared as a Proclaimed Offender and if the applicant is released on bail, there is every possibility that the applicant may threaten and influence the witnesses since one material witness being the complainant still remains to be examined. He further states that as recorded in the supplementary chargesheet, the role of the applicant in the commission of the offence was material as it was him who had provided the car which was being driven by the accused persons when they abducted the victim. He also states that the allegations are serious in nature and the applicant be not released on bail.

8. This Court has heard the learned counsel for the applicant and also the



learned APP for the State, and perused the documents on record.

9. As recognised, settled and followed by the various judicial pronouncements, the Court while granting bail to an accused, is to contemplate and consider-[i] the nature and gravity of the offenses/ charges coupled with the severity of punishment in case of conviction; [ii] if there are any chances of the accused absconding once out on bail; [iii] if there is a reasonable apprehension of the accused influencing the witnesses or tampering the records when released on bail; [iv] the past conduct and previous record of the accused as he should neither be a threat to the society of which he is going to be a part of once again nor there should be any chance of his repeating the same or indulging in any other offence; [v] whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; and [vi] behaviour, means, position and standing of the accused in the society [Re:*Deepak Yadav v. State of U.P.* (2022) 8 SCC 559]. No doubt, each of the above depends upon the factual matrix and circumstances involved in a particular case.

10. Thus, what emerges from the aforesaid is that an accused cannot seek the liberty of being released on bail as a matter of right, *similarly*, the State cannot also seek the denial of release on bail of the accused as a matter of right. Even though while granting bail the Court is dealing with the liberty of an accused, *however*, the same is not unfettered. As there are no hard and fast rules for granting or rejecting a bail and it is a discretionary remedy, *however*, while granting bail to an accused, the Court has to apply its judicious mind to the facts and circumstances of each case. The Court is to see the reality involved and how reasonable it is for granting bail to an accused. This is because at the end of the day granting bail to an accused



means that the accused is only being released from custody and is being entrusted in the hands of the sureties.

11. In the considered opinion of this Court, by and large the nature of offences/ charges involved being grave and serious and/ or pendency of other/ several criminal cases against an accused are/cannot be the only basis for rejection of bail to an accused and the Court has to take a holistic view of the facts and circumstances [*Re.: Prabhakar Tiwari vs. State of Uttar Pradesh* (2020) 11 SCC 648]. In view thereof, in the present case also, though the offences against the applicant are serious in nature, *however*, that itself cannot be a ground for refusal for grant of bail to him.

12. A perusal of the documents on record in the present case, *prima facie*, shows that the presence of the applicant at the place of incident has not been established and that the FIR has been registered by the complainant on a hearsay.

13. In the considered opinion of this Court, once the investigation is complete and the charge-sheet has also been filed and the trial has already commenced, there is no fruitful purpose of letting the accused be behind bars. Moreover, the applicant has been in custody for almost 4 years and there are no previous convictions of the applicant and his overall jail conduct has been satisfactory.

14. Furthermore, this Court cannot ignore the fact that both the victim and his wife have not supported the case of the prosecution and have since been discharged and that as on date, all the material witnesses have been examined and the sole material witness left to be examined, i.e. the complainant is not an eye-witness.

15. Lastly, that a co-accused Sunil of the applicant has since been granted



bail is not in itself a relevant ground for the applicant seeking parity in the facts and circumstances involved, but it can only have a persuasive value which can weigh in the mind of this Court for granting bail to the applicant. In view thereof, the same is not a relevant factor and thus is not being considered as a ground of granting bail to the applicant. [*Re.: Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana*, (2021) 6 SCC 230].

16. Considering the aforesaid, there is every likelihood that the trial in the matter will take a considerable period of time, which in the opinion of this Court, means that that the applicant will be languishing behind bars for such time. The same will serve no purpose [*Re.: Shah Alam vs. State Govt. of NCT of Delhi* [N.C. No.2023:DHC:41]].

17. Accordingly, this Court directs the applicant to be released on regular bail in FIR No. 170/2019 dated 16.04.2019 registered at P.S. Bawana under Sections 364A/395/397/34 IPC on his furnishing a personal bond in the sum of Rs.50,000/- along with one surety of the like amount by family member/friend having no criminal case pending against them, subject to the satisfaction of the learned Trial Court, and further subject to the following conditions:

- i. Applicant shall not leave the National Capital Territory of Delhi without prior permission of this Court and shall ordinarily reside at the address as per prison records. If he wishes to change his residential address he shall immediately intimate about the same to the Jail Superintendent by way of an affidavit.
- ii. Applicant shall surrender his passport to the Investigating Officer, within three days. If he does not possess the same, he shall file an affidavit before the Investigating Officer to that effect within the



stipulated time.

iii. Applicant shall appear before the Court as and when the matter is taken up for hearing.

iv. Applicant shall join investigation as and when called by the Investigating Officer concerned. He shall not obstruct or hamper with the police investigation and shall not play mischief with the evidence collected or yet to be collected by the Police.

v. Applicant shall provide all his mobile numbers to the Investigating Officer concerned which shall be kept in working condition at all times and shall not be switch off or change the mobile number without prior intimation to the Investigating Officer concerned. The mobile location be kept on at all times.

vi. Applicant shall report to the Investigating Officer at P.S.: Bawana, Delhi once every month in the first week of the month unless leave of every such absence is obtained from the learned Trial Court.

vii. Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the victim/ complainant or any member of the victim's/ complainant's family or tamper with the evidence of the case or try to dissuade them from disclosing such facts to the Court or to any police officials.

18. Any observations made on the merits of the matter are only for the purposes of deciding the present application for enlarging the applicant on bail and they shall not be construed as expressions on merits of the matter.

19. Copy of the present order be sent to the concerned Jail Superintendent



for onward information and necessary compliance thereof.

20. Accordingly, the present application is disposed of in the above terms.

SAURABH BANERJEE, J

JULY 19, 2023/So