

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on:18.01.2023

+ **BAIL APPLN. 3493/2022**

VICKY SINGH@CHIKU

..... Petitioner

versus

STATE (GOVT. NCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. A. F. Faizi, Mr. Akashdeep Pandey,
Mr. Amanpreet Singh and Mr. Sazid S. R.
Shah, Advs.

For the Respondent : Ms. Richa Dhawan, APP for State with SI
Deepak Patwal, PS Kirti Nagar.

CORAM

HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application under Section 439 of Code of Criminal Procedure, 1973 ("Cr.P.C.") is filed for grant of regular bail in FIR No. 327/2016 filed under Section 381/342/394/397/411/120B/34 Indian Penal Code, 1860 (IPC) registered at Police Station Kirti Nagar.

2. The FIR was registered at the instance of Smt. Tejinder Kaur, complainant who alleged that the Vinod was employed as domestic

help in her house. Vinod along with other co-accused persons committed robbery by entering the complainant house, threatened her with a knife and snatched keys of her almirah and took away Rs.40 lakh cash, one mobile phone and jewellery.

3. After the registration of FIR, the co-accused persons namely Vijay@ Rahul, Raghav, Rakesh, were arrested who admitted commission of alleged offence with other co-accused persons namely, Vinod and Vicky Singh @ Chiku, the present applicant.

4. Learned counsel for the applicant submits that the applicant is falsely implicated and has not committed any of the alleged offence. At the time of commission of alleged offence, he had gone to his native village Loni, Ghaziabad. The applicant was arrested only on the basis of disclosure statement of the co-accused persons.

5. He further submits that the applicant is in custody as an undertrial since last five years, 10 months and 29 days as on the date of filing of this application. The trial is still at the stage of prosecution evidence. In support of his contentions, he relies upon the judgement of *Shaheen Welfare Association v. Union of India*, (1996) 2 SCC 616 wherein the Hon'ble Apex court held that a protracted incarceration violates an undertrial's right to speedy trial and access to justice. Further he relies on *Satender Kumar Antil Vs. CBI*, (2022) SCC OnLine SC 825, wherein the Hon'ble Apex Court has emphasised that the delay in trial and interment for a prolong period as

an undertrial must be factored in while dealing with an application for bail.

6. The applicant was declared as proclaimed offender on 06.12.2016 after proceeding under section 82 of Cr.P.C.

7. Learned APP for the State opposes the present application on the ground that the applicant was declared as a proclaimed offender and there is recovery of gold earrings and rings at his instance.

8. She further states that since the accused was arrested only after he was declared as a proclaimed offender, there is likelihood of him jumping the bail again.

Reasoning

9. The first bail application of the applicant was dismissed by the learned Sessions Court *vide* order dated 10.02.2020 and the second bail application was dismissed by the learned Sessions Court by its order dated 22.07.2022.

10. The Hon'ble Apex Court in the case of ***Union of India Vs. K.A. Najeev in SLP (Crl) No. 11616 of 2019***, while considering the bail to an accused charged for offence under the Unlawful Activities (Prevention) Act, 1967 ("**UAPA**") which requires that a bail can only be granted in case the suspect is able to satisfy the twin conditions, held that the long period of incarceration for no fault of the accused can be a ground for grant of bail.

11. In the present case, the chargesheet has already been filed on 25.11.2016 and a supplementary chargesheet was also filed on 16.03.2017.

12. The applicant was arrested on 22.12.2016 and since then he is languishing in judicial custody as an undertrial.

13. The applicant in the present case is in custody for more than six years. Looking at the order-sheets produced during the course of hearing, it is apparent that the prime witnesses have not been produced on several dates. The matter has been dragging for more than six years. Even at this stage, the trial is likely to take a long period before reaching any finality.

14. At this stage, the evidence against the applicant is the disclosure statement made by the co-accused and the alleged recovery of two earrings and two rings recovered at the instance of applicant. It is claimed that the two earrings and two rings recovered from the applicant does not belong to the complainant and were, in fact, purchased by the applicant himself. The strength of the evidence would be tested at the time of trial and final hearing of the case.

15. While considering the plight of the undertrials, who are in custody for a long period of time, the Hon'ble Apex Court in ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners Vs. Union of India and Others, (1994) 6 SCC 731***, held that if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 of the Constitution would receive a jolt and would be

violative of the Fundamental Right visualized by the Article 21. The directions were given by the Hon'ble Apex Court in relation to undertrial prisoners, who were in custody for the offences under the NDPS Act, which prescribes a stringent provision in relation to bail. The Hon'ble Apex Court had directed as under :

“(iii) Where the undertrial accused is charged with an offence(s) under the act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than 5 years provided he furnishes a bail in the sum of Rupees one lakh with two sureties of the like amount.”

16. The Hon'ble Apex Court in a recent decision in the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation, 2022 SCC 825*** has reiterated that the long period of incarceration and the delay in trial is an important factor to be considered while deciding an application for grant of bail.

17. The maximum punishment provided for the alleged offence in the present case is upto 10 years. The applicant has already undergone more than 50% of the term of imprisonment provided for the alleged offence.

18. Without commenting further on the merits of the case and keeping in the view the above facts and circumstances in mind, I am satisfied that the applicant is entitled for grant of regular bail in the present FIR.

19. The applicant is, therefore, directed to be released on bail on furnishing a bail bond for a sum of ₹25,000 with one surety of the like amount to the satisfaction of the learned Trial Court/ Duty Metropolitan Magistrate, subject to the following terms and conditions:

- i) The applicant shall provide his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;
- ii) The applicant shall not take unwarranted adjournment and attend the Trial Court proceedings on every date;
- iii) The applicant shall not leave the city without informing the concerned IO / SHO;
- iv) The applicant shall not in any manner contact the complainant or any of the witnesses;
- v) The applicant shall not in any manner tamper with the evidence;
- vi) The applicant shall not leave the country without permission of the learned Trial Court.
- vii) The applicant on being released on bail shall present himself at the concerned Police Station once a month.

20. In the event of there being any FIR / complaint lodged against the applicant or the applicant is found to have violated the conditions stated above, the State is at liberty to file an appropriate application seeking cancellation of bail.

21. The present application is allowed in the aforesaid terms.

22. It is, however, made clear that any observation made in the present order are only for the purpose of deciding the present application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

23. *Dasti under the signature(s) of the Court Master.*

JANUARY 18, 2023
"SK"

AMIT MAHAJAN, J



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