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

+ **BAIL APPLN. 255/2024**

TARUN KAUSHIK

..... Petitioner

Through: Mr. Hirein Sharma, Mr. Arpit Bhalla
and Mr. Vimal Tyagi, Advocates.

versus

THE STATE OF DELHI

..... Respondent

Through: Mr. Yudhvair Singh Chauhan, APP for
the State with SI Raj Kumar, PS: Paschim Vihar
West.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

22.02.2024

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1. This is an application preferred on behalf of the Applicant Tarun Kaushik S/o Sh. Subhash under Section 439 Cr.P.C. seeking regular bail, in case FIR No.541/2023 dated 20.04.2023 under Sections 323/341/34 IPC registered at PS: Paschim Vihar West. Sections 365/395/397/336 IPC and Section 27 of the Arms Act, 1959 were added later in the charge sheet.
2. Case of the prosecution forthcoming from the status report is that present FIR was registered on a complaint made by Adarsh Yadav, who alleged that on 19.05.2023 Vishnu Sharma came to his house on scooty and took him to DDA ground in front of S.S. Mota School, Paschim Vihar, Delhi, where Tarun Kaushik, Anshu, Hemant and one unknown person were present in a Brezza Car. All the accused persons kidnapped the Complainant in the Car and started beating him with pistol butt and robbed his golden chain, purse containing Rs.12,000/-, driving licence copy etc. and then took



him in front of Richmond School, purchased a water bottle and came back to the same location and started beating the Complainant again with pistol butt and fists. Pistol butt was put in the mouth of the Complainant and a video of the incident was made in their mobiles. One accused namely Rahul Bhardwaj fired in the air to threaten him. Later they dropped the Complainant in an unconscious state and ran away from the spot. When the Complainant regained his consciousness, he came back home and narrated the entire incident to his uncle, who called the police on 112 and took him to Satyabhama Hospital. MLC was conducted and the injury was opined to be simple in nature. On inspection of the spot by Crime Team/OD, one empty cartridge was recovered and present FIR was registered. A gold chain was produced by Vishnu Sharma during investigation and the Brezza Car bearing No.DL-8CBD-3765 was seized, but later released on *superdari* to the owner. Applicant was arrested on 15.12.2023 and is currently in judicial custody.

3. Learned counsel for the Applicant submits that the Applicant is innocent and has been falsely implicated. As per the allegations in the FIR, co-accused Vishnu Sharma and injured Adarsh Yadav were friends and known to each other and it was Vishnu, who took the Complainant to the park, where he was allegedly beaten up. Story of the injured is wholly unbelievable that the accused persons gave him beating and then started roaming about and went to a distance to drink water and then came back and started beating again. The empty cartridge is stated to have been found on the next day and that too, was handed over by the tenant of the injured and could not be found by the Crime Team, who admittedly inspected the crime spot. As per the injured, Vishnu came back to him and handed over a gold



chain and wrist watch on 19.04.2023, which is an unnatural act of a person who allegedly robbed the articles. As per the MLC, the injury of the victim has been opined to be simple. Applicant is in judicial custody since 15.12.2023. Investigation is over and charge sheet has been filed and thus no purpose will be achieved in continuing the Applicant in custody. At the pre-conviction stage, there is a presumption of innocence of the accused and bail is the rule and not jail. Two of the co-accused Vishnu Sharma and Rahul Bhardwaj have been granted anticipatory bails by the Trial Court, though allegation of firing is against Rahul. The contention of the State that since two other co-accused are absconding, bail should not be granted to the Applicant, is misconceived, in view of the observations of the Supreme Court in *Sebil Elanjimpally v. The State of Odisha, 2023 SCC OnLine SC 677* and *Munshi Sah v. The State of Bihar & Anr., Criminal Appeal Nos.3198-3199/2023, date of decision: 13.10.2023*, that non-surrendering of a co-accused cannot be a germane factor to decline bail to the co-accused.

4. Learned APP, on the other hand, opposes the bail application on the ground that the allegations are serious in nature as Applicant has indulged in day light robbery and beaten up the victim. Charge is yet to be framed by the Trial Court. There is no parity between the case of the Applicant and the other co-accused Vishnu and Rahul, who have been enlarged on anticipatory bails, as there are no allegations of beating the victim, against them.

5. I have heard learned counsel for the Applicant and the learned APP for the State.

6. Indisputably, investigation pertaining to the present FIR is over and charge sheet as well as supplementary charge sheet have been filed by the police. Two of the co-accused have been granted anticipatory bails by the



Trial Court. As per the MLC, injury suffered by the victim is 'simple' in nature. Even as per the prosecution, the allegation of firing is against Rahul Bhardwaj and not the Applicant. The empty cartridge was not recovered by the Crime Team on inspection of the crime scene but was handed over by the tenant of the injured on the next day of the incident. Nothing has been recovered from the Applicant or at his instance. In the trial, charges have not been framed and there is no possibility of the trial concluding soon. At the pre-conviction stage, there is presumption of innocence and while seriousness of allegations is a crucial factor while considering an application for bail, the delay in conclusion of the trial and prolonged incarceration of the accused are equally significant factors.

7. Having regard to the aforesaid facts and circumstances, this Court is of the view that the Applicant has made out a case for grant of regular bail. Accordingly, Applicant shall be released on regular bail, subject to his furnishing a personal bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the learned Trial Court and further subject to the following conditions:-

- i. Applicant shall not leave the country without prior permission of the Trial Court;
- ii. He shall provide his mobile number to the IO concerned and keep the same active at all times and shall not change the number without prior intimation to the IO and the Trial Court;
- iii. He shall furnish his permanent residential address to the concerned IO and shall intimate the IO as well as the Trial Court by filing an affidavit regarding any change in his residential address;



- iv. He shall not indulge in any criminal activity or communicate with or come in contact with the Complainant/victim as well as the witnesses and/or any other person associated with the present case;
 - v. He shall report to concerned IO once a month on every third Monday at 2.00 pm; and
 - vi. He shall appear on every date of hearing before the Trial Court unless exemption is sought and granted by the Court on any given date.
8. It is made clear that nothing stated in this order shall tantamount to expression of an opinion on merits of the case.
9. Application stands disposed of.
10. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

JYOTI SINGH, J

FEBRUARY 22, 2024/shivam