



2024:DHC:2133



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on:18.03.2024

+ **BAIL APPLN. 493/2023**

SATPAL @ KAKE

..... Applicant

versus

**THE STATE THROUGH SHO WITH P.S
PRASHANT VIHAR**

..... Respondent

Advocates who appeared in this case:

For the Applicant : Ms. Komal & Mr. Satish Sharma, Advs.

For the Respondent : Mr. Utkarsh, APP for the State
SI Gagandeep, PS- Prashant Vihar

**CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN**

JUDGMENT

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeking regular bail in FIR No. 288/2022 dated 13.04.2022, registered at Police Station Prashant Vihar, for offences under Sections 394/34 of the Indian Penal Code, 1860 ('IPC') and Sections 25/27 of the Arms Act, 1959. Chargesheet has been filed against the applicant for the offences under Sections 394/34/120B of the IPC and Sections 25/27 of the Arms Act, 1959.

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2. The FIR was registered on a complaint given by the complainant, namely, Rajesh Kumar Singh. It is alleged that the complainant used to collect payment on behalf of Berry Tex Pvt. Ltd. from various places. It is alleged that on 13.04.2022, two persons robbed the victim on gun point and ran after looting his bag, which had an amount of ₹15.48 lakhs in it. Thereafter, the complainant chased the assailants for a while. It is alleged that both the said assailants escaped on a motorcycle that was driven by the applicant.

3. It is alleged that a secret information was received by the Police that, one, Pratima Singh, is in possession of some part of the looted amount. The said Pratima Singh, on being interrogated, allegedly disclosed that she is friends with one person, namely, Yogesh, who had informed her that he had committed the robbery along with the applicant and another co-accused person. It is alleged that the case property of ₹75,000/- was recovered from her.

4. It is alleged that the applicant was, thereafter, arrested on 16.07.2022. It is alleged that the applicant disclosed that the motorcycle on which the accused persons had fled from the crime scene, was left by him in Civil Lines in the month of April, 2022 after the incident. It is alleged that the applicant further disclosed that the said motorcycle was stolen in the month of December, 2021.

5. It is the prosecution's case that during investigation, it was found that the motorcycle used in the commission of the crime, that had been ditched by the applicant, had been recovered by the staff of PS Civil Lines and deposited in the PS Civil Lines on 18.04.2022.



6. The learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case.

7. She submitted that there is no evidence against the applicant and he has been arrested solely on the basis of the disclosure statement given by co-accused Pratima Singh. She submitted that the disclosure statement of the co-accused person has no evidentiary value as it is not supported by independent evidence to corroborate the allegations levelled against the applicant.

8. She further submitted that, even though, it is claimed that the motorcycle recovered by the staff of PS Civil Lines was the one used in the commission of the robbery, however, there is no evidence to corroborate the said allegation. She submitted that only because the applicant was arrested, the offence in relation to some motorcycle being stolen has been fastened on him.

9. She submitted that even if one motorcycle was found lying abandoned in the Civil Lines area, there is no evidence to either show that the said motorcycle was the one that was used in the commission of the crime, or that the applicant was riding the said motorcycle.

10. She further submitted that the CDR location of the applicant also does not support the case of the prosecution as the offence took place in Prashant Vihar, but the applicant as per his CDR was at Khyber-pass Civil Lines at the time of the incident.

11. She submitted that the applicant was shown to the complainant in the police station, due to which, he identified the complainant during the Test Identification Parade Proceedings.



12. She submitted that the face of the applicant cannot be identified in the CCTV Footage of the incident whereby the very presence of the applicant at the place of the incidence is doubtful.

13. The learned Additional Public Prosecutor for the State submitted that the applicant is a habitual offender and has as many as eight previous involvements., out of which he is on bail in only one of the cases.

14. He further submitted that the complainant has duly identified the applicant in the judicial Test Identification Parade. He submitted that the victim is yet to be examined by the learned Trial Court and there is every likelihood that the applicant will threaten the victim.

15. The learned counsel for the applicant, however, submitted that the order sheet clearly shows that the victim is not appearing before the learned Trial Court and bailable warrants have been issued against him.

16. She submitted that there has been inordinate delay in examination of the victim only because he has failed to appear before the learned Trial Court, and the same cannot be a ground for denying the bail to the applicant.

ANALYSIS

17. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; the nature and gravity of the



accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being honest; etc.

18. While it is true that the applicant is embroiled in multiple criminal cases, however, it is settled law that pendency of several criminal cases against an accused person, by itself alone, cannot be the basis for refusal of prayer for bail and a holistic view of the facts has to be taken by the Court while considering grant of bail (**Ref. *Prabhakar Tewari v. State of U.P. and Anr.* : (2020) 11 SCC 648**)

19. It is alleged that the accused persons who had robbed the bag from the victim had fled on the motorcycle that was driven by the applicant. It is not disputed that the motorcycle alleged to have been used in the commission of the offence had been recovered before the arrest of the applicant.

20. *Prima facie*, it seems that no evidence, other than the disclosure statement of the applicant, has been adduced by the prosecution to establish that the motorcycle allegedly used in the commission of the crime was ditched by the applicant or to draw a nexus between the recovered motorcycle and the alleged crime.

21. The case of the prosecution, at this stage, *prima facie* seems to be based solely on the disclosure statement of the co-accused Pratima Singh. The statement given by the co-accused Pratima Singh is also a hearsay evidence since she stated that another co-accused, namely, Yogesh, told her that the crime was committed by him along with the applicant and other co-accused person. She admittedly had no



knowledge of the applicant being involved in the crime. The veracity of the said evidence would be tested during the course of the trial.

22. It is also not denied that the applicant is in custody since 16.07.2022. Chargesheet has also already been filed in the present case. In view of the same, this Court is of the opinion that no purpose would be served by keeping the applicant in further custody.

23. However, appropriate conditions ought to be put to allay the apprehension of the applicant threatening the victim or evading the trial.

24. In view of the above, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹20,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court / Duty MM / Link MM, on the following conditions:

- a. He shall not directly or indirectly make any inducement, threat or promise to the victim, his family members or any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. He shall under no circumstance leave the boundaries of Delhi without the permission of the learned Trial Court;
- c. He shall appear before the learned Trial Court as and when directed;
- d. He shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- e. He shall, upon his release, give his mobile number to the



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concerned IO/SHO and shall keep his mobile phone switched on at all times.

25. In the event of there being any FIR/ DD entry/ complaint lodged against the applicant, it would be open to the State to seek redressal by way of filing an application seeking cancellation of bail. It is clarified that any observations made in the present order are for the purpose of deciding the present bail 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.

26. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

MARCH 18, 2024

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