



\$~14

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

+ **BAIL APPLN. 706/2024**

ABHISHEK KUMAR@ TANNU Petitioner

Through: **Mr. Gulshan Sharma, Advocate**

versus

THE STATE GOVT. OF NCT OF DELHI Respondent

Through: **Ms. Shubhi Gupta, APP for State with
SI Salman Ahmed, PS: Hauz Khas.**

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

%

02.05.2024

CRL.M.A. 6234/2024 & CRL.M.A. 6235/2024 (exemptions)

1. Allowed, subject to all just exceptions.
2. Applications stand disposed of.

BAIL APPLN. 706/2024

3. This is an application preferred on behalf of the applicant Abhishek Kumar @ Tanna, S/o Sh. Rajender Kumar, under Section 439 Cr.P.C. seeking regular bail, in case FIR No.176/2023 dated 10.05.2023 under Sections 392/398/34 IPC and Sections 25/27 of the Arms Act, 1959 registered at PS: Hauz Khas.

4. As per the case of the prosecution, an information PCR call was received at PS: Hauz Khas at 4:37 p.m., vide DD No.77A dated 10.05.2023 and when the staff reached the spot, i.e. Outer Ring Road, Panchsheel Park, towards IIT red light, the victim/complainant, namely Ram Janam Safi was present with his colleague Shaker. He stated that he is working as a



salesman at Sanvi Diamonds, Building No. 2633/34, Upper Ground Floor, Bank Street, Karol Bagh, New Delhi-110005. At about 1:00 p.m. on 10.05.2023, he alongwith his colleague left the shop with 181 items of gold and diamond jewellery, details of which are mentioned in the complaint, for selling them at various jewellery shops at Kalkaji market. However, none of the shops bought the jewellery that they were carrying and they finally left for showing the items at Malik Jewellers. When they reached the Outer Ring Road, they stopped at the roadside to drink water and suddenly, two men came on a scooty and caught them. One of them took out a pistol out of his pocket and pointed at the head of Shaker while the other took out a spray bottle and tried to spray over the complainant. After that, both started demanding the jewellery bag and threatened to fire. In the meantime, the complainant managed to escape and both persons snatched the bag from the hands of Shaker and ran towards IIT red light on the scooty. Hence, on the basis of the complaint made by the complainant, the present FIR was registered.

5. It is further stated in the status report that the crime spot was inspected by the Crime Team and a live cartridge was found from the spot. Efforts were made to work on the CCTV footages and possible CDRs. Team of AATS/SD traced the scooty used in committing the crime. Raid was conducted in Noor Sarai on 13.05.2023 and accused Pinku Kumar was found there, whose sustained interrogation led to recovery of a necklace from his house and the arrest of co-accused Rahul from Bihar Sharif. During the course of investigation, it came to light that a conspiracy was hatched between seven people including the applicant, all local residents of Bihar Sharif. Co-accused Ajay Kumar Verma has been working in Karol



Bagh at Goldsmith shops for the last 14 years. All co-accused sat together in Bihar Sharif and planned to rob the gold and diamond salesman at Karol Bagh. As Ajay Kumar Verma was working in Karol Bagh for long, he had knowledge about the salesman who kept gold and diamond jewellery, worth crores of rupees. It was planned that Ajay Kumar Verma will give tips about the movement of the salesman and Ranjan will give information about the topography of Karol Bagh while Pinku @ Pinnu and Rahul @ Sonu @ Tanna, applicant herein will dispose the looted jewellery in the market. Rintu provided the pistol and Rajesh provided Rs.50,000/- as fund to execute the plan.

6. It is further stated in the Status Report that on 10.05.2023, as per plan, Ajay Kumar Verma gave the tip to his younger brother Ranjan that two salesman of Shanvi Jeweller would leave for selling the gold and diamond jewellery at 01:00 p.m. The two salesmen left the shop at 01:00 p.m. and when they were on their way to Malviya Nagar, they stopped near Panchsheel Flyover road for drinking water. Suddenly, both Pinku and Rahul came on the Scooty and showed a pistol and snatched the bag and fled away. The role ascribed to the applicant is that he was part of the conspiracy to execute the robbery plan and after the incident, he shared the looted articles, which were recovered at his instance on 23.05.2023, post his arrest.

7. Learned counsel for the applicant submits that applicant has been falsely implicated. He is in judicial custody since 23.05.2023 and while Charge Sheet was filed on 10.07.2023 by the police, even charges have not been framed till date. There are no independent witnesses to corroborate the alleged recovery from the applicant. Applicant has clean antecedents and deep roots in the society. He is the only bread earner of his family with a



wife and three children to support. Most of the witnesses are police officials and moreover, applicant is a resident of Bihar and there is no possibility of tampering with evidence or threatening/intimidating the prosecution witnesses.

8. It is argued by the learned counsel that the Supreme Court in *Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40*, has held that object of the bail is to secure the presence of the accused persons at the trial and is neither punitive nor preventive. This Court has already granted regular bail to one of the accused namely Ajay Kumar Verma vide order 24.01.2024 in Bail Application 3393/2023 titled “*Ajay Kumar Verma v. State Govt. NCT of Delhi*”, against whom the allegations are more serious than the present applicant.

9. Learned APP for the State draws the attention of this Court to the status report and submits that the investigation reveals an active role played by the applicant, to rob the complainant and from him articles allegedly robbed were recovered and CDRs of his mobile number revealed that he was continuously in touch with the main accused Rahul and as many as 15 calls were made between them over a period of 8 days.

10. I have heard learned counsel for the applicant and learned APP for the State. Indisputably, investigation is complete *qua* the applicant and Charge Sheet has been filed. Applicant has been in judicial custody since 23.05.2023 and there is no doubt that it would take a long time for the trial to conclude as till date even charges have not been framed. Nominal Roll dated 21.03.2024 indicates that applicant has no criminal antecedents and his overall jail conduct is satisfactory. The allegation of recovery of some articles allegedly robbed by the accused persons from the applicant is a



matter of trial as it is the contention of the applicant that no independent witness was associated with the recovery proceedings. Mere fact that 15 calls were exchanged between the applicant and the main accused over a period of 8 days cannot be a ground at this stage to continue the applicant under incarceration as it is a settled law that analysis of the CDRs of the mobile phone is a matter of trial. Moreover, co-accused Ajay Kumar Verma has been granted regular bail by this Court and the allegations are of conspiracy between the accused persons.

11. Therefore, without adverting to and commenting on the merits of the case and keeping in view the totality of the facts and circumstances as also considering the fact that the applicant is in custody since 23.05.2023, as per the Nominal Roll, I am of the view that the applicant has made out a case for grant of regular bail. It is, therefore, directed that applicant be released on regular bail, on his furnishing a personal bond in the sum of Rs.25,000/- with two sureties of the like amount to the satisfaction of the learned Trial Court and further subject to the following conditions:-

- i. Applicant will not leave the country without prior permission of the Trial Court and would surrender his passport, if any;
- ii. He shall provide 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 the residential address;
- iii. He shall provide his mobile number to the IO concerned and shall keep the mobile in working condition at all times and the number shall not be changed without prior intimation to the IO and the Trial Court;



- iv. He shall not indulge in any criminal activity or communicate with or come in contact with the witnesses and/or any other person associated with the present case;
 - v. He shall report to concerned IO once in a month; and
 - vi. He shall appear before the Trial Court on each and every date of hearing.
12. It is made clear that the observations made in this order are only for the purpose of deciding this application and this Court has not expressed any opinion on the merits of the case.
13. Application stands disposed of.
14. Copy of the order be sent to the concerned Jail Superintendent for information and compliance.

JYOTI SINGH, J

MAY 2, 2024/kks