



2024:DHC:4854



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 01.07.2024

+ **BAIL APPLN. 720/2024**

RAHUL

..... Applicant

versus

STATE GOVT OF NCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Sumeet Shokeen, Mr. Pawash Piyush, Mr. Kartikey Anand, Mr. Piyush Bansal, Mr. Abhimanyu Singh, Mr. Sunny and Mr. Vikram Daggar, Advs.

For the Respondent : Mr. Ajay Vikram Singh, APP for the State with Mr. Mohit Rathi, Ms. Ankita and Mr. Anil Khatri, Advs. with SI Gaurav, PS Hari Nagar.

**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') for grant of regular bail in FIR No. 269/2022 dated 12.03.2022 under Sections 308/323/34 of the Indian Penal Code, 1860 ('IPC'), registered at Police Station Hari



2024:DHC:4854



Nagar. The charges against the applicant and accused persons have been framed under Sections 302/147/149/307/323/120B of the IPC and other provisions of the Arms Act, 1959.

2. The FIR was registered on a complainant made by Rahul @ Sunny. The complainant at the relevant time was lodged in the Tihar Jail when a verbal altercation ensued between one inmate, namely, Ramniwas and inmate Rupender. On 23.02.2022, it is alleged that Rupender threatened Ramniwas of dire consequences and on 24.02.2022, Rupender along with his other associates, namely, Abhishek, Arjun and Rajiv assaulted the complainant and Ramniwas. It was stated that at that time due to fear, no complaint was given. Ramniwas remained under treatment and succumbed to injuries on 13.03.2022.

3. During the investigation, the statements of the victims were recorded and it was revealed that about 19 inmates, including the present applicant had assaulted the deceased Ramniwas and other inmates, including the complainant. The CCTV footages of the incident were also obtained from the jail authorities which showed that accused persons had mercilessly beaten the deceased Ramniwas and other victims with kicks, sticks and fists & elbow blows.

4. The applicant was thereafter formally arrested in the present FIR on 03.04.2022 and has been in custody since then.

5. The learned counsel for the applicant submitted that the applicant has been unnecessarily and falsely implicated in the present case solely for the reasons that he was standing along with the various



inmates at the time of incident. He submitted that the applicant was merely an anxious onlooker and had not given any beatings to the victim or the deceased.

6. He submitted that the prosecution has made everyone, who are seen in the CCTV footages, an accused. Even though, they were not seen as actively participating in the beatings given to the victims.

7. The learned Additional Public Prosecutor for the State vehemently opposed the grant of the bail to the applicant. He submitted that the applicant is a gang member of a notorious Kala Jathedi and Nandu gang. He submitted that the deceased and other victims were mercilessly assaulted by all the accused persons which is clearly seen in the CCTV footages procured from the jail authorities.

8. He further submitted that applicant has been previously involved in the multiple cases and was involved in serious offences. He submitted that 05 more FIRs have been registered against the applicant apart from the present FIR.

ANALYSIS

9. During the course of the proceedings, I have perused the CCTV footages. The entire case of the prosecution is based on the statement of one of the victims and CCTV footages of the incident obtained from the jail authorities. The perusal of the CCTV footages indicates that the applicant is standing along with other accused persons who were giving beatings to the victims. The applicant is also seen holding a stick. It is, however, not denied that the CCTV footages do not



indicate that applicant was the one who had given the beatings to the victims.

10. In the present case, the charges, however, have also been framed under Section 149 of the IPC. The same reads as under :

"149. Every member of unlawful assembly guilty of offence committed in prosecution of common object

If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence."

11. Thus, even if an offence is committed by a member of an unlawful assembly in persecution of a common object, then every person who at the time of committing of that offence is a member of the assembly is also guilty of the offence.

12. The Hon'ble Supreme Court in numerous cases has interpreted the scope of Section 149 of the IPC. It has been held that in order to convict the accused with the aid of Section 149 of the IPC, a clear finding needs to be given by the Court regarding the nature of unlawful common object. It is also necessary to show that it was within the knowledge of all the members sought to be implicated under Section 149 of the IPC that such offence is likely to be committed in persecution of common object.

13. The Hon'ble Apex Court in ***Kuldip Yadav v. State of Bihar : 2011 5 SCC 324*** held as under :



“39. It is not the intention of the legislature in enacting Section 149 to render every member of unlawful assembly liable to punishment for every offence committed by one or more of its members. In order to attract Section 149, it must be shown that the incriminating act was done to accomplish the common object of unlawful assembly and it must be within the knowledge of other members as one likely to be committed in prosecution of the common object. If the members of the assembly knew or were aware of the likelihood of a particular offence being committed in prosecution of the common object, they would be liable for the same under Section 149 IPC.”

14. It has also been held that it is highly unsafe to apply Section 149 of the IPC and make everyone constructively liable for the offence committed by one person only on the statement of the victim that the accused was present. It is not disputed that the CCTV footages showed the presence of the applicant along with the other co-accused persons, who were seen as giving beatings to the victims. Whereas the allegations have been levelled against the crowd by invoking the provisions of Section 149 of the IPC, the Courts have to be extra cautious and cannot assume that every member of such assembly would be guilty of the offence under Section 302 of the IPC only because the victim has succumbed to the injuries given pursuant to beatings by some of the accused persons.

15. Every application of bail in such circumstances has to be based on careful consideration of facts of each case. It is not in doubt that the offence as alleged is grave and serious in nature. The same, however, cannot be the sole basis for refusal of the bail.



2024:DHC:4854



16. It is contended by the learned Additional Public Prosecutor for the State that the applicant has been involved in multiple cases of serious nature.

17. It is not in doubt that the allegations made are serious in nature. The mode and manner in which the applicant is alleged to have committed the crime makes it a grave offence. The allegation that he had earlier been involved in the offence of similar nature would normally disentitle the applicant of any order of bail. However, it cannot be lost sight of the fact that the object of bail is to secure the appearance of the accused during the trial, the object is neither punitive nor preventive and the deprivation of liberty must be considered punishment unless the same is required to ensure that the accused will stand his trial.

18. From the material relied upon by the prosecution, the non-involvement of the applicant in the offence under Section 302, cannot be ruled out. The same would be the subject matter of trial and cannot be, prima facie, held to be made out against the applicant.

19. The learned counsel for the applicant has filed the copy of the orders indicating that the applicant has been enlarged on bail in four out of the five FIRs which are referred by the prosecution. An order dated 06.04.2024 in FIR No. 255/2021 has also been placed on record indicating that the applicant in fact has not been named as an accused in the said fifth FIR and the reference of the same has been erroneously made by the prosecution.



2024:DHC:4854



20. As noted above, even though the applicant seems to be part of the assembly and was also seen holding a stick, but has not been shown to be giving the beatings to the victims. The applicant is in incarceration for last more than two years. The chargesheet has already been filed and as mentioned by the learned counsel for the applicant, he has been released on bail in other FIRs in which he has been allegedly named.

21. It is pointed out that the complainant has already been examined and has not named the applicant as one of the assailant. The apprehensions of the witnesses being threatened or the likelihood of the applicant fleeing if released on bail can be taken care of by putting appropriate conditions.

22. Considering the aforesaid and without commenting further on the merits of the case, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹50,000/- with two sureties of the like amount, one of whom should be in the blood relation of the applicant, subject to the satisfaction of the learned Trial Court/ Duty MM / Link MM on the following conditions:

- a. The applicant shall appear before the learned Trial Court on every date of hearing;
- b. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;
- c. The applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted



2024:DHC:4854



with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;

d. The applicant shall not leave the boundaries of NCT of Delhi without informing the concerned Investigating Officer;

e. The applicant shall, upon release, provide his address to the concerned IO / SHO, and shall not change the same with the permission of the learned Trial Court.

23. 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.

24. The applicant would be at liberty to pursue his rights and remedies in the proceedings with respect to the other FIRs which have been or which may be registered against him, and in that event, nothing contained in this judgment shall amount to an expression of opinion on the merits of such proceedings.

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

AMIT MAHAJAN, J

JULY 01, 2024