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

+ **BAIL APPLN. 1229/2024**

MAHAVIR SINGH

..... Petitioner

Through: Mr. Amrendra Kumar Choubey and
Mr. Lankesh Dulai, Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Through: Ms. Richa Dhawan, APP for State.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

24.05.2024

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1. This is an application preferred on behalf of the applicant seeking regular bail under Section 439 Cr.P.C. read with Section 482 Cr.P.C. in case FIR No. 0711/2023 dated 11.10.2023 registered at PS: Mundka under Sections 394/397/34 IPC and Sections 25/27/54/59 of the Arms Act, 1959.
2. In brief, case of the prosecution is that on 11.10.2023, a PCR call was received vide DD No. 7A and ASI Vinod Pandey entrusted with the inquiry reached the place of occurrence i.e. Bhagwati Petrol Pump, Ghewra Turn, Delhi with other staff members where the employees of the petrol pump informed that there were 3 to 4 boys on two motorcycles, who opened fire and injured one of the employees Om Prakash with the butt of the pistol and ran away after robbing the cash. The injured was shifted to Sanjay Gandhi Memorial Hospital, Mangolpuri, Delhi for treatment by PCR van.
3. It is stated in the status report that when the IO reached the hospital, he found the injured and received the MLC on which the Doctor had



mentioned 'A/H/O Physical Assault L/E aberration on forehead, no other external injury seen'. Injured had left the hospital after requisite treatment. Statement of the complainant was recorded later in which he stated that he was working as a Pump Operator at Bhagwati Petrol Pump for the last 5 years. In the intervening night of 10/11.10.2023, he was on duty when at about 01:00 to 01:30 AM, two bikers with five riders came at the petrol pump. One of the boys pulled the shirt collar and on gun point threatened him to give cash. Complainant refused, upon which he was hit with the butt of the pistol. Scared for his life, complainant took out all the cash in his pocket i.e. Rs.10,000/- and gave to the robbers, after which they all ran away from the spot firing in the air. Present FIR was registered and investigation was taken up.

4. It is stated that during investigation, site plan of the place of occurrence was prepared and inspection was carried out by the Crime Team. During investigation, CCTV footage was obtained in which six suspects were seen and Section 395 IPC was added. CCTV footage of the concerned area was also checked and one suspect on a motorcycle bearing no. DL/4S/9990, red colour super splendor was identified and the motorcycle was recovered from Sameer Service Centre, Prem Nagar, Kiradi, Delhi. Owner of the service centre provided the mobile number of the person who had left the motorcycle and the number was XXXXXXXX843. Through this number, owner of the motorcycle Guddu was traced and interrogated. He admitted his involvement in the present case and was arrested on 14.10.2023. During further investigation, he disclosed the name of his associates which included the applicant. Motorcycle was seized and deposited in the *malkhana*. At the instance of Guddu, applicant was arrested



and the second offending motorcycle bearing No. DL-4S BJ-1612 Platina black colour was recovered from the applicant.

5. It is further stated that investigation disclosed that applicant and his other associates were also involved in another robbery case of two mobile phones and one scooty on 13.10.2023 at Uttam Nagar in case FIR No. 614/2023 under Sections 392/34 IPC in which one robbed mobile phone was recovered from the applicant and taken into police possession by virtue of powers under Section 102 Cr.P.C. Other co-accused persons Pandav, Manohar and Ashish etc. were arrested at the instance of the applicant. Weapon of offence '*desi katta*' and two live cartridges were recovered from the possession of the accused Ashish while one *desi katta* and 3 live cartridges were recovered from Manohar. TIP proceedings of all six accused persons were conducted in the jail and except Guddu other 5 accused persons were correctly identified by the complainant. MLC of the complainant reflects that the nature of injury on the complainant was 'simple'. All the recovered firearms were sent to FSL, Rohini for examination. CDR, CAF and location charts of all mobile numbers of the accused persons were obtained from Nodal Officers and clearly indicate that all the accused persons were present at the place of occurrence at the time of the incident. Statements of witnesses recorded under Section 161 Cr.P.C. implicate the applicant. Charge sheet has been filed against accused Guddu, applicant, Manohar, Ashish and Pandav. Supplementary charge sheet has been filed against accused Vikas along with FSL report, who was absconding earlier but surrendered later.

6. Learned counsel for the applicant submits that applicant has been falsely implicated and no incriminating evidence has been recovered from



him. He is a daily wager and has no criminal antecedents. Other co-accused persons had forcibly taken his motorcycle without informing him. CCTV footage of the petrol pump seized by the Police would show that applicant has not committed the offence alleged. Some of the co-accused are co-villagers and knowing the applicant, they took the motorcycle without his permission. It is not the case of the prosecution that applicant used any arm or robbed the complainant. Neither any robbed article nor the alleged weapon of offence or the live cartridges were recovered from the applicant.

7. It is further contended that applicant has no criminal antecedents, save and except, the second FIR pending against him in which he has been granted bail by the Trial Court where the alleged robbed amount was Rs.45,000/- as compared to Rs.10,000/- in the present case. Applicant is a daily wager and sole bread earner of his family and undertakes to abide by any condition that may be imposed if the Court enlarges the applicant on bail.

8. Learned APP for the State, *per contra*, relying on the status report submits that the offences in the FIR allegedly committed by the applicant are serious. Section 394 IPC is punishable with the maximum sentence of imprisonment for life. Investigations revealed that applicant with his associates was a part of the bike riders who came to the Petrol Pump in the intervening night of 10-11.10.2023 and robbed the complainant of his cash at gun point. Applicant can be clearly seen in the CCTV footage at the Petrol Pump. The motorcycle used in the commission of offence was owned by the applicant and recovered from him. Applicant has been duly identified by the complainant during judicial TIP.

9. Heard counsel for the applicant and learned APP for the State.



10. The Supreme Court has time and again laid down the parameters that must be taken into account by a Court while considering an application seeking grant of bail. In the case of ***Ram Govind Upadhyay v. Sudarshan Singh and Others, (2002) 3 SCC 598***, the Supreme Court has observed that the following factors must guide the exercise of the power to grant bail:

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

11. Similarly, in ***Prasanta Kumar Sarkar v. Ashis Chatterjee and Another, (2010) 14 SCC 496***, the Supreme Court held as under:



“9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

[See *State of U.P. v. Amarmani Tripathi* [(2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] (SCC p. 31, para 18), *Prahlad Singh Bhati v. NCT of Delhi* [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] , and *Ram Govind Upadhyay v. Sudarshan Singh* [(2002) 3 SCC 598 : 2002 SCC (Cri) 688].]

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal.....”

12. There is no doubt that this case is of a serious nature where the applicant with the others robbed the complainant of his cash at a gunpoint. Material on record discloses that Applicant has played crucial role in commission of alleged offence. Applicant is seen in the CCTV footage at the Petrol Pump and his pillion rider co-accused Manohar was the one who had fired at the spot with the intention to rob the complainant. Applicant has a propensity to commit crime and is involved in another FIR *albeit* he has been enlarged on bail. The motorcycle used in the commission of crime is owned by the applicant and was recovered from him and this is an admitted



position of the defence. Five out of six co-accused have been identified by the complainant in judicial TIP including the applicant. At this stage, therefore, it cannot be claimed by the applicant that he is wholly innocent and has no role to play in the alleged crime or that he was taken by the co-accused innocently, who happened to be his friends from the same village. Section 394 IPC has been invoked, which entails a punishment extending up to life imprisonment, if convicted. In view of these facts and circumstances, I am of the considered opinion that this is not a fit case for grant of regular bail to the applicant at this stage. The application is dismissed.

JYOTI SINGH, J

MAY 24, 2024/DU/SHIVAM