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

+ **BAIL APPLN. 2236/2023**

RAJKUMAR

..... Petitioner

Through: Mr. Suraj Prakash Sharma, Adv.

versus

STATE (GNCT OF DELHI)

..... Respondent

Through: Mr. Hemant Mehla, APP for State
with SI C.S. Yogi, Police Station
Khyala.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

31.01.2024

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1. The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in connection with FIR No. 0716/2021 under Sections 392/34 IPC read with Sections 25/27/54/59 Arms Act registered at Police Station Khyala, Delhi. Subsequently, chargesheet was filed under Sections 392/397/411/120B IPC read with Sections 25/27 Arms Act.
2. The case of the prosecution is that on 16.08.2021, the complainant after finishing his day's work sat in his car and at that time he had Rs. 9.6 lacs with him. Some persons came there and put a gun on the head of the petitioner and ran away with the bag.
3. The allegation against the present petitioner is that he had provided the information to the accused persons to the effect that the complainant in the course of his business usually carries cash with him.



4. The learned counsel appearing on behalf of the petitioner submits that the petitioner is in custody since 04.09.2021 and the chargesheet has already been filed and the trial is underway, therefore, the custody of the petitioner is no more required. He further submits that the testimony of the complainant has also been recorded, thus, there is no possibility of the petitioner extending any threat to the complainant in the event he is enlarged on bail.
5. Learned counsel also refers to the statement of the complainant namely, Rajiv Gupta, who was examined as PW6, to contend that though in his examination-in-chief, the complainant has stated that the person who had given the information, lived in his *gali*, but in his cross-examination he has stated that the said person does not live in his *gali*.
6. He further submits that there is no incriminating material on record in the form of CDRs etc. to show that the present petitioner was in touch with the other accused persons to whom he had provided information with regard to the complainant.
7. He further submits that the prosecution has cited as many as 40 witnesses, of which only 06 witnesses have been examined, therefore, the trial is inevitably going to be a protracted one. He further submits that the petitioner does not have a criminal record. Therefore, he urges the Court to enlarge the petitioner on bail.
8. *Per contra*, learned APP argued on the lines of the status report.
9. I have heard the learned counsel for the petitioner, as well as, learned APP for the State and have perused the record.
10. The only case against the present petitioner is that he has provided information to the other co-accused persons with regard to the complainant



carrying cash with him.

11. On a query posed by the Court, the learned APP on instructions, fairly states that there are no CDRs showing that the present petitioner was in touch with the other co-accused.

12. There is also a contradiction in the statement of complainant/PW6 in so far as the residence of the present petitioner is concerned. Though, the probative value of the evidence and the credibility of the witness shall be seen by the learned Trial Court at the stage of trial, however, the very fact that there is no incriminating material to show that the petitioner was in touch with the other co-accused persons tilts the balance in favour of the petitioner for the purpose of granting of bail.

13. It is also not in dispute that the petitioner has clean antecedents. Further, it is also not the case of the prosecution in the status report that the present petitioner is at flight risk. Furthermore, since the testimony of the complainant has already been recorded, there is no possibility of the petitioner influencing the complainant in the event he is enlarged on bail.

14. The prosecution has also cited 40 witnesses, of which only 06 have been examined, therefore, the conclusion of trial is nowhere in sight and in the facts and circumstances of the case, the petitioner cannot be kept in judicial custody for indefinite period to await the outcome of trial.

15. Considering the aforesaid facts in entirety, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is admitted to regular bail on his furnishing Personal Bond in the sum of Rs. 25,000/- with one Surety Bond of the like amount subject to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-



- a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
 - b) Petitioner shall provide his permanent address, as well as, his mobile number to the IO concerned. The mobile number shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
 - c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the witnesses.
16. The petition stands disposed of.
17. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on the merits of the case.
18. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.
19. Order *dasti* under signatures of the Court Master.
20. Order be uploaded on the website of this Court.

JANUARY 31, 2024/akc

VIKAS MAHAJAN, J