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

+ **BAIL APPLN. 1760/2024**

DEVKI SHARMA

..... Petitioner

Through: Dr. Abhishek Atrey and Mr. Brijesh
Panchal, Advs.

versus

THE STATE (GNCT OF DELHI)

..... Respondent

Through: Mr. Raghuvinder Verma, APP for
State with SI Ghan Shyam, PS. Sarai
Rohilla.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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28.05.2024

1. The present petition has been filed under Section 439 CrPC read with Section 482 Cr.PC seeking regular bail in connection with FIR No. 248/2023 under Sections 392/394/395/397/412/120B/34 IPC and Sections 25/27/59 of Arms Act registered at PS Sarai Rohilla.
2. Notice was issued in the present petition with a direction to the State to file its Status Report, which has been handed over in the Court today and the same is taken on record.
3. The FIR was registered on the basis of the statement of the complainant i.e. Pawan Kumar Jain wherein he alleged that on 13.04.2023 at about 8PM his car was stopped by three Motorcycle borne riders who were armed with pistols. They broke the window glass of the driver seat by hitting the glass hard with the butt of the pistol and forcibly took out the keys of the car. The complainant was hit on his chest and hand with the butt of pistol



and thereafter two bags containing an amount of Rs 16 lakhs and 5 lakhs which he was carrying were robbed by the said three accused persons who fled away on their motorcycle.

4. It is thus, the case of the prosecution that the complainant was robbed of an amount of Rs 21 lakhs by the accused persons.

5. The learned counsel appearing on behalf of the petitioner submits that the case of the prosecution as borne out from the FIR is contrary to the very first version given by the complainant over telephone by dialing at number 100 wherein he stated that persons had robbed him of an amount of Rs. 1 – 1.5 Lakhs in respect of which DD Entry 128A dated 13.04.2023 was recorded.

6. He submits that the petitioner was not present at the place of occurrence and there is no CDR location establishing the petitioner's presence at the date and place of incident.

7. It is further contended that no offence weapon was recovered from the petitioner. Only an amount of Rs. 3.75 lacs was recovered from the petitioner's residence, though the said amount does not pertain to the incident of robbery.

8. He submits that there is also a contradiction in the prosecution version as regard the number of accused who had committed the robbery. It is in the statement of the complainant that 03 persons had robbed him whereas one eye witness namely Manoj, whose statement was recorded by the IO, has stated that the number of persons who robbed the complainant were 05 in number, whereas now 07 persons have been arraigned as an accused in the chargesheet.



9. He further submits that co-accused Sunny, who is similarly situated as the present petitioner has already been enlarged on bail *vide* order dated 10.05.2024 passed in BAIL APPLN. 526/2024.

10. He further submits that the petitioner has clean antecedents. Further, the petitioner is a permanent resident of Delhi and is not a flight risk.

11. *Per contra*, the learned APP has argued on the lines of the status report. He clarifies that the prosecution is still in the process of procuring the CDR to verify the petitioner's location at the time of occurrence.

12. He submits that the petitioner had refused to participate in the TIP proceedings. Further, 05 persons actually committed robbery but two more persons were involved in the conspiracy, therefore, 07 persons have been arraigned as accused. He also contends that the present petitioner was very much present at the place of incident.

13. In rejoinder, the learned counsel for the petitioner submits that in so far as the petitioner is concerned, no application was moved by the prosecution for his TIP nor the same has been filed along with the charge sheet.

14. I have heard the learned counsel for the petitioner, as well as, learned APP for the State and have perused the material on record.

15. It is not in dispute that the DD entry recorded on the phone call made by the complainant by dialling 100 shows that he had stated that 03 persons have committed robbery and have robbed him of an amount of Rs. 1 – 1.5 Lakhs. However, the FIR reveals that the complainant was robbed of Rs. 21 Lakhs. Therefore, there is an evident contradiction in the figure of robbed amount given by the complainant at the initial stage, as well as, in the subsequent complaint which culminated into the FIR.



16. Admittedly, no recovery of any offence weapon has been made from the present petitioner. The only recovery is of an amount of Rs. 3.75 lacs which the learned counsel for the petitioner states was an amount belonging to him and his family. Even otherwise, recovery is not a substantive piece of evidence.

17. Further, no CDR is available to establish petitioner's presence at the place of occurrence. It is trite that conviction cannot be based solely on the basis of CDRs as the same are only corroborative piece of evidence.

18. On a query posed by the Court, the learned APP, on instructions from the IO who is present in Court, states that no further recovery is required to be made from the petitioner. He also affirms that the petitioner does not have any criminal record nor it is the case of the prosecution that the petitioner is a flight risk.

19. 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 enlarged on bail subject to his furnishing a Personal Bond in the sum of Rs. 25,000/- and one Surety Bond of the like amount 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 mobile number to the IO concerned which 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 the witnesses.

20. The petition stands disposed of.

21. It is made clear that nothing stated above is to be construed as an expression of opinion on the merits of the case.

22. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.

23. Order *dasti* under signatures of the Court Master.

24. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

MAY 28, 2024/dss