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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 3259/2023

RAVI KUMAR

..... Applicant

Through: Ms.Dolly Sharma, Adv.

versus

STATE

..... Respondent

Through: Mr.Aman Usman, APP with
Insp. Manoj Kumar.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

28.03.2024

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1. This Application has been filed under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.'), praying for the applicant to be released on bail in FIR No.0292/2018 registered at Police Station: Mahendra Park, North-West District, Delhi under Sections 302/120B/420/468/471/34 of the IPC and Sections 25/27/54/59 of the Arms Act 1959 (in short, 'Arms Act').
2. It is the case of the prosecution that the above FIR was registered on a statement of one Mr.Dinesh Jain, wherein he informed that on 16.07.2018, at about 8.00 PM, when he and his friends, that is, Vineet and Rajesh Gupta, were coming out of their factory at SSI 53, Rajasthan Udyog Nagar, Near Jahangir Puri, Delhi, three men riding on a scooty came there and one of them got off from the scooty and opened a gunshot fire on the deceased Rajesh Gupta, who was keeping his brief case inside the boot of his car.



Subsequently, they fled away from the site of the incident on the same scooty towards the GT Road. The deceased was rushed to the Fortis Hospital, Shalimar Bagh, Delhi, however, he expired during the course of the treatment, within an hour of the said incident.

3. It is further the case of the prosecution that the CCTV cameras of the office of the complainant / informant were checked, which revealed the two suspects, who were identified as Paras Jain and Shivam @ Pandit, doing recce on the same scooty at about 7.00 PM. One Santro car bearing registration no.DL-4CR-3182, which had other associates of the accused seated in it, was positioned at some distance from the crime scene. Both the scooterists and the car riders were in the constant touch through the two new mobile phones and SIM cards purchased exclusively to commit the robbery.
4. The prosecution alleges that the accused had made a plan to demand / extort a sum of Rs.50 Lakhs from the deceased and his associates and in case of denial of the same, they had planned to kill the deceased.
5. The prosecution alleges that the Santro car was identified and co-accused Neeraj Kumar was arrested on 27.07.2018. He disclosed to have hatched the conspiracy with his school friend, the applicant herein.
6. The applicant was arrested on 30.07.2018, and he is alleged to have disclosed that he had worked as a driver with the complainant / informant's father about 8-9 years prior to the date



of the incident. He disclosed that about two weeks prior to the incident, he along with the co-accused Neeraj Kumar, had hatched the conspiracy to rob and extort money from the complainant / informant. Other associates were joined by the co-accused Neeraj Kumar, with whom a meeting was also arranged 2 to 3 days prior to the date of incident. The applicant had also pointed out the factory and also followed the complainant / informant and his partner upto Paschim Vihar, Delhi, and got their houses identified to his associates.

7. The prosecution alleges that the CDRs of the mobile phone of the applicant showed that he was in regular touch with the co-accused Neeraj Kumar from 05.07.2018 to 14.07.2018 and also post the incident as well.
8. The prosecution, most importantly, alleges that the applicant was not present at the scene of the crime on the date of the incident.
9. It is alleged that on the date of the incident, that is, 16.07.2018, the accused persons had switched off their personal mobile phone and had used two new mobile phones and SIMs purchased solely for the purpose of commission of crime. The said new SIM cards were found to have been purchased on the personal ID of the other customers in connivance with the shopkeeper-Md. Riaz, who was also arrested and chargsheeted under Sections 420/468/471 of the IPC.
10. The charges had been framed against all the accused persons on 24.10.2019. It is stated that four out of 54 witnesses have been examined so far in the trial before the learned Trial Court.



11. The learned counsel for the applicant submits that the applicant has been involved and implicated in the present case only on the alleged disclosure statement of the co-accused-Neeraj Kumar and on the basis of his own alleged confessional statement, which both are inadmissible in evidence.
12. She submits that it is the own case of the prosecution that the applicant was not present at the site of the incident.
13. She further alleges that the other evidence against the applicant is the alleged CDRs, which pertain to only two calls made between the applicant and the co-accused Neeraj Kumar, lasting only for about 43 seconds and 15 seconds, respectively. She submits that, therefore, the applicant has been falsely implicated in the present case.
14. She submits that the applicant has been in custody for a period of more than 4 years, leaving aside the period when he was released on *interim* bail under the HPC guidelines. She submits that the applicant did not, in any manner, violate the conditions of his release on the HPC guidelines and had, in fact, surrendered on time. She submits that the applicant also has clean antecedents.
15. On the other hand, the learned APP for the State submits that the involvement of the applicant in the crime is evident from the fact that he was known to the complainant / informant, having worked as a Driver with his father in the past.
16. He submits that there are other incriminating material also available with the prosecution against the applicant.
17. He submits that the two eyewitnesses are yet to be examined and



there is every possibility that if the applicant is released on bail, he may coerce them to change their testimony.

18. Placing reliance on the cross-examination of the PW-3- Sh.Dinesh Jain, who is the complainant / informant, he submits that, in fact, the suggestions put to the said witness amounts to an admission on part of the applicant of him being present at the spot at the time of the incident. In support, he places reliance on the judgment of the Supreme Court in ***Balu Sudam Khalde v. State of Maharashtra***, 2023 SCC OnLine SC 355.
19. I have considered the submissions made by the learned counsels for the parties.
20. As is evident from the case of the prosecution, it is based on the alleged disclosure statement of the co-accused-Neeraj Kumar and the alleged confessional statement of the applicant herein. I need not say any further in regard to its relevance at this stage. Similar observation needs to be made with respect to the CDRs.
21. Only 4 out of 54 witnesses have been examined. The applicant has already been in custody for a period of more than 4 years, having been arrested on 30.07.2018. There is no allegation of him having misused the indulgence of being released on *interim* bail under HPC guidelines during the period of Covid-19. The applicant is also not reported to have any criminal antecedents.
22. It is the own case of the prosecution that the applicant was not present at the site of the incident. If that be so, him influencing the eyewitnesses is not material.
23. As far as the reliance on the testimony of PW-3 and the alleged



suggestion given to the said witness on behalf of the applicant is concerned, the same has to be considered by the learned Trial Court on completion of evidence. *Prima facie*, I am not in agreement with the submission made by the learned APP in this regard.

24. The Supreme Court has repeatedly emphasized that 'bail is the rule, while jail is an exception'. The purpose of keeping an accused in custody pending trial is not to punish him, but to ensure his presence to face the trial.
25. Keeping in view the above circumstances and the principles governing an application filed by an accused seeking bail, the applicant, Ravi Kumar is directed to be released on bail in FIR No.0292/2018 registered at Police Station: Mahendra Park, North-West District, Delhi under Sections 302/120B/420/468/471/34 of the IPC and Sections 25/27/54/59 of the Arms Act, on furnishing a personal bond in the sum of Rs.25,000/- with one surety of the like amount, subject to the satisfaction of the learned Trial Court, and further subject to the following conditions:
 - i. The Applicant will not leave the country without the prior permission of the learned Trial Court.
 - ii. The Applicant shall provide his permanent address to the learned Trial Court. The applicant shall also intimate the Court, by way of an affidavit, and to the IO regarding any change in his residential address.
 - iii. The Applicant shall appear before the learned Trial Court



as and when the matter is taken up for hearing.

- iv. The Applicant shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the applicant in a working condition at all times and shall not be switched off or changed by him without prior intimation to the learned Trial Court and the IO concerned. The mobile location be kept on at all times.
- v. The Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact, directly or indirectly, with any of the prosecution witnesses.

26. Needless to state, any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on the merits of the matter.

27. The bail application is disposed of in the above terms.

28. A copy of this order be sent to the Jail Superintendent for information and necessary compliance.

NAVIN CHAWLA, J

MARCH 28, 2024

RN/ss

[Click here to check corrigendum, if any](#)