



2024:DHC:1259



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 19th February, 2024

+ **BAIL APPLN. 3332/2023**

PUNIT KUMAR

..... Applicant

versus

STATE (GNCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Vineet Jain, Adv.

For the Respondent : Mr. Pradeep Gahalot, APP for the State
with SI Baljit Singh, PS Pahar Ganj.

CORAM:

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application has been filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeking regular bail in FIR No.87/2021, dated 07.04.2021, for offences under Sections 392 / 397 / 34 of the Indian Penal Code, 1860 ('IPC'), registered at PS Pahar Ganj. Chargesheet has been filed against the applicant for offences punishable under Sections 397 / 34 / 392 / 394 / 395 / 408 / 411 / 201 / 120B of the IPC. Supplementary chargesheet has also been filed in the present

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matter.

2. The brief facts of the present case are that the applicant was an employee of the complainant, and used to routinely go to shops for collection of money against the delivery of goods. On 07.04.2021, the applicant along with another employee Jaswant had been tasked with collecting Rs.70 lakhs from a client of the complainant, namely Sachin. It is alleged that the applicant concocted a story that the bag with the said amount had been robbed from him and Jaswant at gunpoint by some persons standing near a Wagon-R car. However, he kept changing his version during interrogation and finally disclosed that he had hatched a conspiracy with his friends to loot the said amount. It is also alleged that one of the said co-accused Haridwari had given him a mobile phone and SIM to give information to carry out the plan of looting the cash.

3. The applicant was arrested on 08.04.2021, and has remained in custody since then. Cash of Rs.50,000/-, along with one stolen mobile phone and a SIM were recovered at the instance of the applicant, which was allegedly used by him to give information about the cash to the co-accused Haridwari, and hidden by the applicant after committing the crime.

4. During the course of investigation, a total amount of Rs.64.30 lakhs, two country made pistols, 5 live cartridges, one toy gun, one Wagin R car, two mobile phones, the robbed bag and some documents

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of the complainant's office have been recovered and seized at the instance of the other co-accused persons.

5. The applicant preferred five bail applications before the learned Trial Court which have all been dismissed. His fifth bail application was dismissed by the learned ASJ, Central, Tis Hazari Courts, by order 15.09.2023. The learned ASJ observed that except for the period of custody, there was no change in circumstances, and no fresh ground had been raised by the applicant for moving the bail application.

6. The learned counsel for the applicant contended that the applicant has been falsely implicated in the present case and has clean antecedents. He submitted that the investigation in respect to the applicant is complete and charge sheet has already been filed in the present case, despite which the applicant has been suffering incarceration for more than two and a half years without facing any fruitful trial.

7. He stated that at least 33 witnesses are to be examined in the present case, but charges are yet to be framed, and trial is not likely to be concluded in the near future.

8. He submitted that the complainant has changed his statement wherein he had initially stated in the complaint that he had sent the applicant to collect an amount of Rs.20 lakhs from his client, but later in his statement under Section 161 of the CrPC stated that his client had



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sent an amount of Rs.70 lakhs instead of Rs.20 lakhs through the applicant and Jaswant.

9. He submitted that the applicant has been arrested in the case only upon the disclosure statement of the co-accused, except which there is no other incriminating evidence against the applicant.

10. On the other hand, the learned counsel for the State contended that the learned Trial Court has rightly dismissed the applicant's bail applications on earlier occasions. He submitted that there is no material change in circumstances after the dismissal of the applicant's previous bail applications, and all the grounds raised by the applicant have already been considered. He further submitted that there is enough incriminating evidence against the applicant, and his bail application ought to be dismissed.

11. The learned Additional Public Prosecutor submitted that the applicant was the main conspirator in the present case as he had been the one to share the information with the other accused persons to commit the loot of the cash. He further submitted that the CDRs of the accused persons corroborated the disclosure statement of the applicant that they were in regular contact.

12. He further submitted that there was a chance that the applicant could influence the main witness of the incident, Jaswant, who was his colleague earlier.

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13. It is true that the applicant had filed more than one application before the learned ASJ seeking grant of bail, and the same were dismissed.

14. It is also true that only because the accused has undergone a substantial period of incarceration, the same in itself cannot be a ground to enlarge the accused on bail. However, this Court cannot lose sight of the fact that the applicant was arrested way back on 08.04.2021, and the order on charge was finally passed on 18.12.2023, with the formal charges yet to be framed. Thus, there is no possibility of conclusion of trial in the near future.

15. It is well settled that an accused cannot be kept in custody for an indefinite period of time, and the bail application can be considered on its own merits, even if filed repeatedly. Moreover, the present is the first application for Bail before this Court.

16. In such circumstances, the incarceration of the applicant for almost three years, without even charges being framed, in the opinion of this Court, is a fresh ground for considering the bail application.

17. In the present case, the allegation against the applicant is that he provided information to the co-accused Haridwari Lal pertaining to the cash. It is not alleged that the Applicant had committed the act of robbery. It is alleged that a sum of ₹50,000/- was recovered on the disclosure of the applicant and the said amount was taken out from the



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amount which was robbed by the co-accused Haridwari Lal and other accused persons. The State has not been able to point out as to how the sum of ₹50,000/-, recovered allegedly at the instance of the applicant, was part of the sum allegedly robbed.

18. It is not denied that a call was made to the Police by the applicant informing them about the robbery. It is also alleged that ₹64.30 lakhs, out of the total money that was looted, was recovered from the possession of the other accused persons, that is, Haridwari Lal, Parvesh, Rajender, Mukesh Mishra and Sunny, who were arrested on the basis of the disclosure made by the applicant. The Police has also allegedly recovered a mobile phone with a sim card from a dustbin on a disclosure made by the applicant. The applicant denies any such disclosure being made by him. The allegation and the defence in this regard, in the opinion of this Court, is a matter of trial.

19. The applicant is not stated to have any antecedents and is a young man of 23 years of age. He has been in incarceration since 08.04.2021 and there is no possibility of conclusion of trial in near future. Further incarceration in such scenario would amount to punishment without the conclusion of trial.

20. The case of the prosecution against the applicant, at this stage, is based merely on the disclosure statement of the applicant himself and that of the other accused persons, and is not corroborated by any public witness. The veracity of the said evidence would also be tested during



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the course of trial.

21. The law in regard to grant or refusal of bail is well settled. The discretion is to be exercised in a judicious manner and not as a matter of course. A detailed examination of evidence is not required to be undertaken, at this stage, and only a *prima facie* reason for the grant or refusal of bail, has to be indicated. The Court has to consider the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, reasonable apprehension of tampering with the witness or threat to the complainant and the possibility of the accused fleeing from the course of justice.

22. The Hon'ble Apex Court in the case of *Union of India v. K.A. Najeeb*: AIR 2021 SC 712, has held that once it is obvious that a timely trial would not be possible, and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

23. A long period of incarceration, thus, is also a factor which has to be kept in mind at the time of deciding the question of grant or refusal of bail.

24. It is not stated that the applicant is required for further investigation, however, appropriate conditions ought to put to allay the apprehension of tampering the evidence and hampering the witness.

25. In view of the above, the applicant is directed to be released on



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bail on furnishing a personal bond for a sum of ₹20,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court / Duty MM / Link MM, on the following conditions:

- a. He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. He shall under no circumstance leave the boundaries of the National Capital Region without the permission of the Trial Court;
- c. He shall appear before the learned Trial Court as and when directed;
- d. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- e. He shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

26. 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 by filing an application seeking cancellation of bail.

27. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not



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influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

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

AMIT MAHAJAN, J

FEBRUARY 19, 2024

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