



2024:DHC:2640

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

% Judgment delivered on:03.04.2024

+ **BAIL APPLN. 3793/2023**

AKASH KUMAR

..... Applicant

versus

STATE (GNCT OF DELHI)

..... Respondent

+ **BAIL APPLN. 3894/2023**

AAKASH @ SANJU

..... Applicant

versus

STATE GNCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Applicants : Mr. Vineet Jain, Adv.

For the Respondent : Mr. Utkarsh, APP for the State with Insp.
Naveen Kr., PS Karol Bagh.

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present applications are filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') for grant of regular bail in FIR No. 191/2019 dated 02.06.2019, for offences under Sections 307/34 of the Indian Penal Code, 1860 ('IPC') and Sections 25/27 of the Arms

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Act, 1959, registered at Police Station Karol Bagh. Chargesheet has been filed against the applicants under Sections 302/307/120B/34 of the IPC and Sections 25/27 of the Arms Act, 1959.

2. On 02.06.2019, information was received about the incident. The police officers reached the spot of the incident and found that the injured person had been taken to Ganga Ram Hospital and was under treatment.

3. The present FIR was registered on the statement of the injured victim, namely, Bharat. It was stated that the victim operated his office from the ground floor of the house. It was stated that on 01.06.2019, around 11 PM, the victim was sitting along with his friends, namely, Bhagwan Dass and Asif, at the shop of Bhagwan Dass, when two unknown persons came there on a Scooty. It is alleged that one of the unknown persons, who was the pillion rider, asked the name of the victim and started abusing him. It is alleged that the pillion rider then shot 3-4 rounds at the victim while the rider of the Scooty kept an eye on the people passing by. Thereafter, the assailants fled from the spot. It is alleged that two bullets hit the victim on his leg and one hit him on his left shoulder. The victim alleged in his statement that his Roka ceremony was held 3-4 months back, which was broken as the girl was in love with some other boy. The victim stated that he suspected that the crime was done by the said boy.

4. The victim succumbed to his injuries, whereafter, Section 302 of the IPC was added in the FIR.



5. During the course of investigation, on basis of secret information, the applicant Akash Kumar was arrested on 05.06.2019. It is alleged that the said applicant disclosed that he had hatched the conspiracy to commit the offence with his accomplice, namely, Aakash *alias* Sanju. He allegedly also disclosed that he was riding the Scooty and the applicant Aakash *alias* Sanju was the pillion rider.

6. The pistol and Scooty allegedly used in the commission of the offence were recovered from the possession of the applicant Akash Kumar. Two live cartridges were also recovered at his instance.

7. The applicant Aakash *alias* Sanju was also arrested on 05.06.2019 on the basis of the disclosure statement of the applicant Akash Kumar. Two live cartridges were also recovered from the possession of the applicant Aakash *alias* Sanju.

8. The applicants are in custody since 05.06.2019.

9. It is alleged that the said applicants also disclosed that co-accused Dinesh *alias* Jony had helped them in procuring the pistol used in the commission of the crime. They also disclosed that they were working in gang of co-accused Makesh *alias* Mannu. Mobiles of the applicants were also recovered from them.

10. Co-accused Makesh *alias* Mannu named the applicants in his disclosure statement and stated that he was in constant touch with the accused persons, including the applicants, through co-accused Dinesh *alias* Jony.

11. Co-accused Dev Arjun also named the applicants in his



disclosure statement. He disclosed that he was involved in the commission of the offence and remained in constant touch with co-accused persons through his mobile.

12. Co-accused Dinesh was declared as a proclaimed offender on 07.12.2019 and, was, subsequently, arrested. He also disclosed that he had hatched the conspiracy to commit the present crime and had procured the weapon used in the commission of the crime.

13. The learned counsel for the applicants submitted that the applicants have clean antecedents and have been falsely implicated in the present case.

14. He submitted that the disclosure statements of the accused persons, including the applicants, have no evidentiary value unless they have been supported by independent evidence to corroborate the allegations levelled against the accused persons.

15. He further submitted that it is the prosecution's case that the applicants were in touch with co-accused Mahesh Kumar (who was in custody in another case), however, no mobile phone was recovered from co-accused Mahesh Kumar.

16. He submitted that the applicants were not named in the present FIR. He further submitted that there is no incriminating material on record to show that the applicants were involved in the commission of the crime.

17. He submitted that two of the eye-witnesses, that is, Bhagwan Dass (PW2) and Asif (PW3), have also turned hostile and failed to



identify the applicants as the assailants who allegedly shot the applicant. They have stated that they could not see the faces of the assailants due to it being dark. He submitted that even PW6 in his statement has not supported the case of the prosecution and stated that he could not identify the assailants as they were wearing helmets.

18. He submitted that the prosecution has relied on the CDRs of the accused persons to link them to the alleged conspiracy, however, the CDRs alone are insufficient to establish any nexus between the co-accused persons and the applicants.

19. He further submitted that co-accused Dinesh, who is alleged to have procured the weapon used in the commission of the offence, was granted bail by this Court by order dated 04.09.2023, in BAIL APPLN. 3329/2022. The Court noted that the CDRs, *prima facie*, do not establish any connection between co-accused Dinesh and the accused persons in regard to the present offence.

20. He submitted that the prosecution has relied on 50 witnesses, out of which, only 6 witnesses have been examined till now. He submitted that the trial will thus take a considerable amount of time.

21. He further submitted that the applicants had been released on interim bail on HPC guidelines whereafter they duly surrendered on time.

22. The learned Additional Public Prosecutor for the State opposed the grant of any relief to the applicant. He submitted that an active role has been attributed to the applicants in the commission of the offence.



23. He submitted that the CDR of the applicants indicates that they remained in touch telephonically with the other accused persons and also each other close to the day of the incident. He further submits that the location of the applicants, at the time of the incident, was near to the spot of the crime.

24. He further submitted that the crime in the present case is grave in nature and the offence, as alleged against the applicants, attracts a maximum punishment of death.

25. He submitted that the pistol used in the commission of the offence and live cartridges were also recovered from the applicants. He submitted that the FSL report regarding the recovered pistol was awaited.

26. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc.

27. The period of custody however is also an important factor which the Court has to keep in mind.

28. It is the case of the prosecution that the accused persons conspired to commit the present offence to extort money. It is alleged that the applicants were working in the gang of co-accused Mahesh



and had procured a pistol from co-accused Dinesh to commit the offence. The applicant Akash Kumar was arrested on the basis of secret information and the applicant Aakash *alias* Sanju was arrested on the basis of the disclosure statement of the applicant Akash Kumar. It is stated in the Status Report that the applicants were correctly identified by the witnesses in police custody. The pistol allegedly used in the commission of the crime was allegedly recovered from the applicant Akash Kumar. It has been stated in the Status Report that the FSL in regard to the said pistol is still pending.

29. In the absence of the FSL Report, at this stage, it cannot be said that the pistol allegedly recovered at the instance of the applicant was used in the commission of the crime.

30. While a Scooty was also recovered from the applicant Akash Kumar, at this stage, in the absence of any CCTV footage or corroborating evidence, the use of the same in the commission of the crime is a matter of trial.

31. Strong reliance has been placed on the CDRs of the applicants to show that they were in constant touch with the co-accused persons. It was noted by this Court while granting bail to the co-accused Dinesh that, *prima facie*, the CDRs do not seem to establish any connection between the accused persons. Merely because the accused persons were in connection with each other telephonically, cannot *prima facie* lead to the presumption that they were in touch to conspire to commit the alleged offence.



32. It is the case of the prosecution that there were public eye-witnesses who had seen the incident. It is not denied that the said eye-witnesses have not identified the applicant.

33. In such circumstances, the very presence of the applicants at the spot of the crime is disputable and the possibility of the applicants not being actively involved in the commission of the alleged offence, at this stage, cannot be ruled out. The allegations and defences in this regard are a matter of trial.

34. It is not contended that the applicants misused the liberty or attempted to influence the witnesses or tamper with the evidence when they were released on account of HPC Guidelines.

35. It is also not denied that the applicants have no antecedents and have been in custody since 05.06.2019. Chargesheet and supplementary chargesheet have already been filed in the present case.

36. The object of Jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment. It is stated that only 6 out of the 50 witnesses have been examined in the present case. The applicants cannot be made to spend the entire period of trial in custody specially when the trial is likely to take considerable time. No purpose would be served by keeping the applicants in further custody.

37. Considering the aforesaid discussion, this Court is of the opinion that the applicants have established a *prima facie* case for



grant of bail.

38. However, appropriate conditions ought to be put to allay the apprehension of the applicants tampering with the evidence or evading the trial.

39. In view of the above, the applicants are directed to be released on bail on furnishing a personal bond for a sum of ₹20,000/- with two sureties of the like amount respectively, subject to the satisfaction of the learned Trial Court / Duty MM / Link MM, on the following conditions:

- a. The applicants 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. The applicants shall under no circumstance leave the boundaries of Delhi without the permission of the learned Trial Court;
- c. The applicants shall appear before the learned Trial Court as and when directed;
- d. The applicants shall provide the address where they would be residing after their release and shall not change the address without informing the concerned IO/ SHO;
- e. The applicants shall, upon their release, give their mobile number to the concerned IO/SHO and shall keep their mobile phones switched on at all times.



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40. In the event of there being any FIR/ DD entry/ complaint lodged against the applicants, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

41. It is clarified that any observations made in the present order are for the purpose of deciding the present bail applications and should not influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

42. The bail applications are allowed in the aforementioned terms.

AMIT MAHAJAN, J

APRIL 03, 2024/ ssh

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