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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 4270/2023

LOVE@SANDEEP

..... Applicant

Through: Ms.Dolly Sharma, Adv.

versus

STATE

..... Respondent

Through: Mr.Aman Usman, APP.

SI Naresh Kumar, PS Baba

Haridas Nagar.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

05.03.2024

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1. This application has been filed by the Applicant under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), praying for being released on Bail in FIR No. 80/2014 registered at Police Station: Baba Haridas Nagar, South-West District, Delhi originally under Sections 323/308 of the Indian Penal Code, 1860 (in short, 'IPC'). Later, charge-sheet has been filed *inter alia* against the Applicant herein under Sections 302/307/394/397/325/323/411/34 of the IPC.

2. It is the case of the prosecution that on 16.02.2014, at 11:20 PM, a PCR call vide DD No. 35A was received at Police Station Baba Haridas Nagar, New Delhi, regarding "accident and injured" at Dichaon, near the office of Bharat Singh. On local inquiry, it was revealed that there was a quarrel and the injured had been taken to an unknown hospital. Later, information was received from the RTRM Hospital, and on reaching there, four persons were found injured and



were admitted in the said hospital. These injured persons had been referred to the DDU Hospital, New Delhi. It is alleged that the statement of the injured Sh.Munna Gupta and Sh.Munshi Prasad were recorded, wherein they stated that the accused person, in furtherance of their common intention, committed the robbery of mobile phones and money from them after causing injuries to them with the help of *Dandas* and Rods. Later, injured Sh.Shyamji (Shyam Kumar Gupta) unfortunately succumbed to his injuries at the DDU hospital.

3. The Applicant herein was apprehended on 25.02.2014 in FIR No. 130/2014, registered at Police Station: Najafgarh, Delhi. It is alleged that the Applicant, along with the co-accused, admitted their guilt in the present case. Two further accused were also arrested. It is alleged that on the disclosure of the Applicant and the co-accused, the alleged weapon of offence, that is, a baseball bat and wicket of cricket game, as also the looted mobile phones, were recovered from their rented accommodation. The Applicant refused to join the TIP proceedings.

4. Unfortunately, another injured person, namely, Sh.Rohit Kumar also succumbed to his injuries on 10.11.2015.

5. The Status Report dated 18.01.2024 further states that the Applicant is involved in 11 other criminal cases. It is further stated that out of the total 36 witnesses, the statement of 29 witnesses has already been recorded before the learned Trial Court.

6. The learned counsel for the Applicant submits that the Applicant has already undergone custody for more than 7 years and 8 months; the co-accused persons have already been released on Bail;



and the Applicant was also released on *Interim* Bail due to the Covid-19 pandemic and under the HPC guidelines, and the Applicant did not misuse the indulgence and duly surrendered on expiry of the Bail period.

7. As far as the other criminal cases wherein it was stated that the Applicant was also involved, the learned counsel for the Applicant submits that in all other cases except FIR No. 542/2022 registered with Police Station: Najafgarh, Delhi, the Applicant already stands acquitted. She further submits that in FIR No. 542/2022, the Applicant has been granted Bail vide order dated 15.05.2023 passed by the learned Additional Sessions Judge-03/Special Judge (Companies Act), South-West District, Dwarka Courts, New Delhi, in Bail Appln. Registration No. 998/2023 titled ***State v. Gaurav @ Luv***.

8. She further submits that there are, in fact, a total of 48 witnesses cited by the prosecution, out of which only 27 have been examined so far, and the trial is not likely to conclude in the near future.

9. On the other hand, the learned APP for the State opposes the present application by contending that the Applicant is involved in a number of criminal cases. He submits that merely because he was acquitted in a few of them, probably because he was able to win-over the witnesses in those cases by threat or otherwise, cannot be a ground to presume his innocence, or as giving him a ground to be released on bail in the FIR in question. He submits that the Applicant is also a '*Bad Character*' of the area, that is, Najafgarh.

10. He further submits that as far as Bail granted to the Applicant in FIR no. 542/2022 is concerned, the same on the face of the said Order,



has been obtained by concealment, inasmuch as the order records a submission made on behalf of the Applicant that he is not a habitual offender, which is a false statement. He further submits that the order dated 07.12.2023 passed by the learned Trial Court also records that the trial is being delayed because, on many occasions, the Applicant did not appear, forcing the learned Trial Court to issue Non-Bailable Warrants against him.

11. He further submits that the testimony of PW-6, Sh.Rohit, who is an eyewitness and an injured, who has since died, has not been filed before this Court. He submits that the witness has corroborated the case of the prosecution by especially naming the Applicant as the main assailant.

12. He submits that the period of incarceration cannot be the sole ground for releasing the Applicant on bail, especially taking into account the fact that the Applicant has been granted *Interim* Bail due to the HPC guidelines, which would also ensure in him re-establishing his social ties.

13. He submits that the Applicant is a threat to the society, and the same is also evident from the various punishment tickets issued to the Applicant in jail, and also his alleged involvement in criminal cases when he was out on Bail.

14. I have considered the submissions made by the learned counsels for the parties.

15. The Nominal Roll of the Applicant indicates that he has already suffered incarceration for a period of more than 7 years and 8 months. He was released on *Interim* Bail under the HPC guidelines, which the



Applicant is not stated to have misused. He has stated that he surrendered on time. Only 27 out of the total 48 witnesses have been so far examined, therefore, the trial is not likely to conclude any time soon.

16. Though the prosecution has stated that the Applicant is involved in eleven criminal cases, the learned counsel for the Applicant has submitted that, barring the present FIR and in FIR No. 542/2022, the Applicant already stands acquitted. This Court is not to study the reasons on which the Applicant was acquitted in those cases or make any comment thereon. In FIR No. 542/2022 also, the Applicant has already been granted Bail. Though the learned APP submits that a submission was made on behalf of the learned counsel for the Applicant, as recorded in the order releasing him on Bail, that the Applicant is not a habitual offender, this itself does not seem to have persuaded the learned Additional Sessions Judge therein to release the Applicant on Bail. The application was allowed on merits and on consideration of all the relevant factors.

17. As far as the testimony of PW-6, Sh.Rohit, is concerned, the same would have to be appreciated by the learned Trial Court keeping in view the other evidence that is produced before the learned Trial Court. At the present stage, mere testimony of PW-6 cannot be held sufficient for keeping the Applicant in custody endlessly, while the trial is not likely to conclude in the near future.

18. As has been observed by the Supreme Court repeatedly, Bail is the rule, while jail is an exception. It has also been re-emphasized that the purpose of keeping the accused in custody is only to secure his



presence in the trial and not as a punitive measure to punish the accused. The Applicant, by his conduct while being released on *Interim* Bail during to HPC guidelines, has given confidence to this Court that the Applicant will duly present himself before the learned Trial Court as and when the trial is listed. The gravity of offence can also not be the sole criterion for denying bail to the Applicant.

19. Accordingly, it is directed that the Applicant be released on Bail in FIR No. 80/2014 registered at Police Station: Baba Haridas Nagar, South-West District Delhi on furnishing a personal bond in the sum of Rs.25,000/- with one local surety of the like amount 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. or tamper with the evidence of the case while being released on Bail. In case the Applicant is found involved in another case, it will be open to the prosecution to file an appropriate application seeking cancellation of his Bail in the present case as well.

20. Needless to state, any observation touching upon 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.

21. The application is disposed of in the above terms.

22. Copy of this order be sent to the Jail Superintendent for information and necessary compliance.

NAVIN CHAWLA, J

MARCH 5, 2024/rv/AS

Click here to check corrigendum, if any