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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3887/2024 & CRL.M.A. 32328/2024**
SUNDER THROUGH ITS PAROKAR MRS NISHAPetitioner
Through: Mr. Mukesh Gupta & Mr. Sachin
Singh Shah, Advocates.
versus
STATE GOVT. OF NCT OF DELHIRespondent
Through: Ms. Shubhi Gupta, APP for the State
with SI Arvind, P.S.: Crime Branch.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER
13.12.2024

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By way of the present petition filed under section 483 of the Bharatiya Nagarik Suraksha Sanhita 2023, the petitioner seeks regular bail in case FIR No. 0125/2021 dated 10.07.2021 registered under sections 392/397/342/411/120-B/34 of the Indian Penal Code, 1860 ('IPC') and sections 25/27 of the Arms Act, 1959 at P.S. Crime Branch, Delhi.

2. Notice on this petition was issued on 24.09.2024.
3. Status Report dated 19.11.2024 has been handed-up in court. The same is taken on record.
4. Ms. Shubhi Gupta, learned APP appearing for the State informs the court that the complainants have been intimated about the present proceedings, including by means of speed-post; and copies of the postal receipts in evidence thereof have been appended to the status report.
5. However, no one is present on behalf of the complainants when the matter is called-out.



6. The complainants are ordinarily stated to be residents of West Bengal and the Investigating Officer ('I.O.') informs the court that upon speaking to the complainants, he has been told that they would not be able to join the present proceedings either in-person or *via* video-conferencing from their native place.
7. The matter dates back to the time of the COVID-19 pandemic and it is alleged that the petitioner duped and defrauded the complainants, who were immigrant workers returning to India from Saudi Arabia.
8. Briefly, the factual matrix obtaining in the matter is that on 09.07.2021, the complainant alongwith 04 of his colleagues returned to India and landed at the IGI Airport, New Delhi and then headed for the New Delhi Railway Station to catch a train to Kolkata, West Bengal. The complainant alleges that on the intervening night of 09/10.07.2021, he and his colleagues were approached by an individual at the New Delhi Railway Station who informed them that to travel by train they would require a separate COVID-19 test report and that the test report provided to them at the IGI Airport, New Delhi would not be valid for travelling by train.
9. The complainant further alleges that on this excuse the complainant and his mates were asked to accompany the person to an office in Paharganj, New Delhi so that the required COVID-19 test reports could be arranged for them; whereafter, they were informed that their respective reports would be ready by the next morning; and accommodation for the night was also arranged for them at a hotel nearby.



10. It is the complainant's case, that subsequently on 10.07.2021 at about 12:00 p.m., when the complainant and his mates reached the Paharganj office of the accused persons, 06 persons were found sitting in the office who asked the complainant and his mates to pay a certain sum of money towards their respective COVID-19 test reports. It is alleged that when the complainant and his mates refused to pay the said amount, two of the accused persons threatened them by pulling out a country-made pistol and a knife; and the complainant and his mates were held hostage, threatened with dire consequences and robbed of their cash and other valuables, including wrist watches, mobile phones etc.
11. Mr. Syed Hasan Isfahani, learned counsel appearing for the petitioner submits, that insofar as the petitioner is concerned, the only allegation against him, as narrated in the chargesheet, is that when the victims were being robbed of their belongings, the petitioner was present in the office of co-accused Vijay Bhan Pandey and that therefore he participated in the commission of robbery/dacoity by the co-accused persons.
12. Merits of the case apart, Mr. Isfahani argues that of the 08 accused persons, 05 co-accused have already been admitted to regular bail; that charges have been framed in the matter *vide* orders dated 05.06.2024 and 24.07.2024; and that despite lapse of more than 03 years from the date of the offence, not even one of the 29 prosecution witnesses cited in the chargesheet have so far been examined.



13. It is accordingly argued, that the trial will take a very long time to complete, and in the meantime, the petitioner has already suffered judicial custody of more than 03 years as an undertrial.
14. On the other hand, opposing the grant of regular bail, learned APP argues that the petitioner is accused of an offence committed at a time when the public at-large were vulnerable; and the allegation against the petitioner shows that he took advantage of the vulnerability of migrant workers returning to India at a time of a global crisis, and instead of helping the complainant, he was involved in robbing the complainant.
15. Learned APP also points-out, that the petitioner is a habitual offender and is involved in two other cases bearing case FIR No. 289/2005 registered under sections 379/411 IPC at P.S.: Paharganj, Delhi and case FIR No. 245/2005 registered under section 411 IPC at P.S.: Mansarovar Park, Delhi; and that his overall jail conduct has been 'unsatisfactory'.
16. Upon a conspectus of the facts and circumstances of the case, the following two factors weigh with this court:
 - 16.1. There is no allegation of the petitioner having wielded any weapon and the only recovery alleged to have been made from him is a sum of Saudi Riyal 2,000, which is alleged to have been robbed from one of the victims;
 - 16.2. Though the overall jail conduct of the petitioner is recorded as being 'unsatisfactory', he would have served the requisite prison punishments awarded to him for the jail infractions;



- 16.3. It is also noticed that the petitioner has been granted interim bail once in August/September 2024 and there is no allegation that he misused the liberty; and
- 16.4. The petitioner has already spent about 3½ years in judicial custody as an undertrial, whereas evidence in the matter is yet to commence and not even one of the 29 prosecution witnesses cited has been examined in the trial court so far.
17. In the circumstances, this court is persuaded to grant to the petitioner – ***Sunder s/o Malak Raj*** – regular bail pending trial, subject to the following conditions :
- 17.1. The petitioner shall furnish a personal bond in the sum of Rs.25,000/- (Rs. Twenty-five Thousand Only) with 02 sureties in the like amount from family members, to the satisfaction of the learned trial court;
- 17.2. The petitioner shall furnish to the I.O. a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- 17.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
- 17.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise



indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial; and

17.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing.

18. Since the petitioner is facing trial and is therefore appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of regular bail.
19. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
20. The petition stands disposed-of.
21. Other pending applications, if any, are also disposed-of.
22. Needless to add that nothing in this order shall be taken as an expression on the merits of the matter.

ANUP JAIRAM BHAMBHANI, J

DECEMBER 13, 2024

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