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

+ **BAIL APPLN. 1728/2024**

SH. KUNAL @ ANNUPetitioner

Through: Mr. Anuj Aggarwall, Mr. Abhishek
Gupta, Mr. Vineet Kumar Jain,
Advocates

versus

THE STATE NCT OF DELHIRespondent

Through: Mr. Laksh Khanna, APP for the State
SI Deepak Kumar along with Insp.
Satvinder Singh, P.S. Jahangirpuri

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% 31.01.2025

1. The present application has been filed under Section 439 read with Section 482 of the Criminal Procedure Code, 1973 (Cr.P.C.) seeking regular bail in FIR No. 145/2023 under Section 392/395/397/506/120B/34 of the Indian Penal Code, 1860 (IPC) and Section 25 of the Arms Act, registered at Police Station (PS) Jahangir Puri, Delhi.
2. The Applicant herein had moved an application under Section 439 of the Cr.P.C. before the Trial Court seeking regular bail. The Trial Court considering the facts that allegations against the accused are serious, charges not being framed against the Applicant/accused and the examination of the complainant is due, dismissed the said application vide order dated 16.12.2023.



Brief Facts

3. As per the case of the prosecution a PCR call was received at PS Jahangirpuri which was registered vide DD No. 123A, regarding an incident of loot at K-630, Jahangirpuri. It is stated that in the said PCR call it was mentioned that 5-6 persons armed with country made pistol (Katta) had entered the house and had looted cash along with phone. It is stated that on reaching the spot HC Manish and HC Dhanesh interacted with the complainant i.e., Bablu Mehto and his statement was recorded. It is stated that the complainant stated that he runs scrap business in Bhalswa Dairy since last four (4) years.

3.1 It is stated that the complainant in his statement revealed that on 23.01.2023 at around 9:30 PM he was having dinner along with his relative namely Shintu, when suddenly some unknown persons knocked the door and when he opened the door two (2) unknown persons entered his house and forced the complainant and Shintu to sit on the ground. It is stated that the complainant further revealed that thereafter two (2) more persons entered the house. It is stated that the said accused persons then tied up both the complainant and Shintu. It was stated that they were carrying knives and country made pistols (katta). It is stated that the said four (4) unknown persons looted Rs. 2,50,000/- in cash from the suitcase in the house and fled away.

3.2 It is stated that on the above statement of the complainant FIR No. 145/2023 under Section 392/397/506/34 of IPC was registered. It is stated that on the spot the raiding party found one dagger, unknown substance and tape.



3.3 It is stated that on 24.01.2023 supplementary statement of the complainant was recorded wherein he revealed that there was one more person who was guarding the door when the four (4) unknown persons were looting the house. It is stated that pursuant to the said revelation, Section 395 was also added in the offence.

3.4 It is stated that after investigation started accused Vinay alias lala was arrested on 25.01.2023 at the instance of complainant and weapon of offence i.e., pistol loaded with two live cartridges was recovered at the instance of the accused Vinay during his PC remand. It is stated that the accused Vinay disclosed that Sonu alias Sochu, Dileep alias Rohit, Abhishek alias Sheku and Applicant/Kunal alias Annu were also involved in the commission of the offence.

3.5 It is stated that on 26.01.2023 ASI Ganga Ram gave information in PS Jahangir puri that in FIR No. 106/2023 registered under Arms Act at PS Sultan Puri accused Sonu alias Sochu has disclosed his involvement in the captioned FIR. It is stated that after interrogation the accused Sonu was formally arrested in the present case. It is stated that the accused Sonu revealed that knife recovered in FIR 106/2023 is the same knife which was used by him in the commission of the offence in the captioned FIR.

3.6 It is stated that on 30.01.2023 accused Dileep alias Rohit was arrested. It is stated that during investigation on 02.02.2023 accused Sonu and Dilip refused to undergo TIP.

3.7 It is stated that on 07.05.2023 an information was received from PS Sultan Puri that accused Abhishek alias Sheku was arrested in FIR No. 400/2023 registered under Arms Act, had disclosed his involvement in the



offence of the captioned FIR. It is stated that on 10.05.2023 accused Abhishek was identified by the witness i.e., Shintu during the Judicial TIP.

3.8 It is stated that present Applicant/accused i.e., Kunal alias Annu was arrested on 06.06.2023 and was identified in the Judicial TIP by the eye witness Shintu.

3.9 It is stated that as per the complainant and the eye witness both accused Vinay and accused Kunal/the Applicant herein were carrying the country made pistols.

3.10 It is stated that during the investigation CCTV footage of the area near the crime scene was retrieved and, in the footage, Applicant herein is clearly seen along with the co-accused persons at the scene of crime i.e. the house at the relevant time.

3.11 It is stated that the Applicant herein is a habitual offender and chargesheet has already been filed against all the accused person. It is stated that there are around seven (7) cases pending against the Applicant herein and he is out on bail in some of them.

Arguments of the Applicant

4. Learned counsel for the Applicant states that the Applicant is in jail since 06.06.2023. He states that chargesheet has already been filed against the Applicant and till date charges have not been framed.

4.1. He states that out of the five (5) accused, two (2) accused namely Sunil was granted regular bail on 04.05.2023 and accused Dalip was granted bail on 08.05.2023. He states therefore, on the ground of parity Applicant is praying for grant of regular bail.



4.2. He states that no recovery has been affected from the possession of the Applicant at the time of his arrest and the Applicant was arrested on the disclosure statement of the co-accused.

4.3. He states that no purpose will be served in keeping the Applicant behind the bars and the Applicant undertakes to join the investigation as and when called for.

4.4. He relies upon the judgment of Supreme Court in **Prabhakar Tewari v. State of Uttar Pradesh And Another**¹ to state that the gravity and seriousness of the offence that there are several criminal cases against the accused are not factors by themselves which can be a basis for refusal of prayer for bail.

Arguments of the State

5. In reply, Mr. Khanna, learned APP states that the Applicant is a habitual offender and at present there are atleast six cases which are pending against him. He states there was one more case which has been compounded on 20.05.2024.

5.1. He states that offence committed by the Applicant is very serious in nature and becomes more glaring considering his past criminal antecedents. He states that clearly the Applicant has a propensity to commit crimes and there is a likelihood that he will repeat offences if enlarged on bail.

5.2. He states that charges in the captioned FIR are yet to be framed and next date of hearing is 17.03.2025 for arguments on charge.

5.3. He states that the offence in the captioned FIR was committed at gun and knife point. He states that the eye witness has positively identified the

¹ (2020) 11 SCC 648.



Applicant in the TIP and stated that he was holding the gun over the complainant and the witness.

5.4. He states that the complainant and the other eye witness are yet to be examined and if the Applicant is enlarged on bail, he might try to influence the witness and also might tamper with the evidence.

5.5. He states that the offence which is the subject matter of this FIR No. 145/2023 was committed by the Applicant while he was on bail in the pending 6 cases and if released on bail again there are high chances that he might commit the same crime again. He states that out of these 6 cases, 2 FIRs are under Section 392 IPC. He states in the other 6 FIRs as well charges have been framed against the applicant. He relies upon the Status Report dated 29.01.2025 and has handed over a copy during the hearing.

He is directed to have the said status report placed on record.

5.6. He states that there is a high risk of the Applicant fleeing away from justice considering his conduct and past involvements.

5.7. He states that in the interest of justice and society at large the present bail application should be dismissed.

Analysis and Findings

6. This Court has considered the submission of the learned counsels for the parties and perused the record.

7. Before advertng to the facts of the present case it would be apposite to refer to the factors which are to be taken into consideration for granting bail to an accused.



8. The Supreme Court in the case of **Prasanta Kumar Sarkar v. Ashis Chatterjee**², **State of Uttar Pradesh v. Amarmani Tripathi**³, and **Deepak Yadav v. State of Uttar Pradesh**⁴ has set out the conditions to be considered by Court while granting bail, which are summarized as under:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behavior, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of justice being thwarted by the grant of bail.

(Emphasis supplied)

9. In the present case as per the prosecution the investigation has revealed that the Applicant was actively involved in the commission of the offence of dacoity, which is a grave and serious offence. The Applicant herein has been positively identified by the eye witness during the TIP proceedings. The CCTV footage of the date of the incident close to the house where the offence happened shows the presence of the Applicant with the other accused. There is thus reasonable ground to believe that the Applicant had committed the offence.

10. The alleged role of the Applicant in intimidating the complainant and the eye witness during the alleged dacoity by showing them the gun is a

² (2010) 14 SCC 496.

³ (2005) 8 SCC 21.

⁴ (2022) 8 SCC 559.



serious allegation. The pendency of six previous FIRs including FIR No. 422/2015 and FIR No. 103/2019 under Section 392 IPC shows that there is a likelihood of the Applicant repeating the offence. In fact, the Applicant was on bail in the previous FIRs when the offence was allegedly committed.

11. This Court has perused the orders granting bail to the co-accused Sonu and Dileep. This Court does not find any parity in the circumstances which led the Trial Court to grant them the bail.

12. The Applicant in this case was absconding and was arrested on 06.06.2023. The supplementary charge-sheet qua the Applicant stands filed. The Status Report filed on record reveals that charges in the present case are to be framed and for this purpose the matter is listed before the Trial Court on 17.03.2025 and complainant as well as the eye witness is yet to be examined.

13. In the overall conspectus of the factual matrix, the past conduct of the Applicant, considering the stage of the trial and the settled position of law and further keeping in mind the yardsticks of granting bail to any accused involved in serious offence(s) like the present one, the Applicant has not been able to make out a fit case for grant of bail at this stage.

14. With the aforesaid directions/observations the present application stands dismissed along with pending application if any.

15. Needless to mention, observations made in the present order are purely for the purpose of adjudicating the present application and shall not be treated as an expression on the merits of the matter.

16. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated



as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

JANUARY 31, 2025/sk

MANMEET PRITAM SINGH ARORA, J

Click here to check corrigendum, if any