



\$~4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 4467/2024**
JAGDISH NARBAHADURPetitioner

Through: Mr. Satyam Thareja, Adv. (DHCLSC)
with Mr. Shaurya Katuch, Adv.

versus

THE STATE (GOVT. OF NCT) DELHIRespondent
Through: Mr. Laksh Khanna, APP for the State
SI Naveen Kumar, PS Mehrauli

CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

%

30.01.2025

1. The present application has been filed under Section 483 read with Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') for grant of Regular Bail in FIR No. 618/2021 registered for offence under Sections 395/412/120B/506 of the Indian Penal Code, 1860 (IPC) registered at Police Station (PS) Mehrauli (South).

2. The Applicant herein had moved 5th application for Bail before the Trial Court. The Trial Court on the grounds of seriousness of allegations, and mode and manner of commission of offences dismissed the said application vide order 06.09.2024.

Brief Facts

3. As per the case of prosecution the complainant i.e., Shanky Sharma on 06.08.2021 got registered an e-FIR No. 0618/2021 under Section 379 of the Indian Penal Code, 1860 (IPC) regarding theft. It is stated that thereafter, the



statement of the complainant was recorded under Section 161 the Code of Criminal Procedure, 1973 ('Cr. P.C.') wherein he stated that four (4) persons entered forcefully into the house and Rs. 1,21,58,000/- were robbed at gun and knife point from J-41/42 Paryawaran Complex, Saidulajab, New Delhi.

3.1. It is stated that during the investigation through a CCTV footage it was identified that one Innova Car bearing No. GJ-01-HM-9373 ('said Innova Car') was used in commission of the offence of robbery. It is stated that owner of the said Car was one Kulbadan Rajbhar. It is stated that Kulbadan Rajbhar was interrogated and he revealed that the said Innova Car was rented out to one Sunil, who had further handed over the said car on rent to one Rajkumar Rajput (the co-accused who is absconding).

3.2. It is stated that on secret information said Innova Car was recovered on 11.08.2021 from an under-construction building at Roop Avenue Vatva, Ahmedabad, Gujarat. It is stated that on enquiry it was found that co-accused Rajkumar Rajput was living with his family at the same place from where the Innova Car was recovered. It is stated that raid was conducted at Rajkumar Rajput's house where accused Rajkumar Rajput and his brother Amit Rajput (who is a co-accused in the captioned FIR) were not found and instead their father i.e., Narender Singh was found and key of the Innova Car was recovered from his possession. It is stated that Rs. 8,60,000/- were recovered from the house of Rajkumar Rajput at the instance of his father. It is stated that Narender Singh father of the accused persons was aware about the involvement of said Innova Car in the robbery and about the money recovered from the house being robbed money. Narender Singh was also arrested on 11.08.2021.



3.3. It is stated that on 12.08.2021, PS Mehrauli (South) received an information that three accused i.e., (i) Prakash alias Bakka alias Pakka; (ii) Sahil Patel and (iii) Harsh alias Sunny, were arrested by the Crime Branch, Shakarpur, New Delhi vide Kalandra under Section 41 of the Cr.P.C. It is stated that during the PC remand of the said three (3) accused persons all of them were taken to Ahmedabad, Gujarat and at their instance present Applicant/accused Jagdish Narbahadur Gorkha was arrested on 17.08.2021. It is stated that Rs. 1,46,000/- and a car i.e., XUV 500 bearing registration number GJ-18-BG-4664 was recovered from his possession. The accused informed the police that said XUV 500 was purchased using the money robbed.

3.4. It is stated that further during the PC remand, Rs. 3,06,000/- and Rs. 3,39,000/- were recovered at the instance of accused persons Prakash and Harish respectively from their respective houses.

3.5. It is stated that during investigation, eight (8) days PC remand of Applicant/Jagdish was secured and he was taken to Ahmedabad, Gujarat where at his instance Rs. 27 Lakhs were recovered from his house.

3.6. It is stated that during further investigation name of three (3) other accused came to light i.e., (i) Amit; (ii) Raj Kumar; and (iii) Nikhil and it was revealed they were also involved in the said offence of robbery.

3.7. It is stated that chargesheet against the Applicant and accused was filed on 08.11.2021. It is stated that supplementary chargesheet with respect to the co-accused Amit and Nikhil was filed on 01.07.2022. It is stated that accused Raj Kumar is still absconding and chargesheet against him has not been filed.



Arguments of the Applicant

4. Learned counsel for the Applicant states that the Applicant had moved an application before the Sessions Judge for praying for grant of bail and the said application was dismissed by the Sessions Judge vide the impugned order dated 06.09.2024 without appreciating the case of the Applicant.

4.1. He states that the investigation of the case qua the Applicant is already over and hence the Applicant if enlarged on bail cannot possibly create any hindrance in the investigation and there is no likelihood of tampering of evidences.

4.2. He states that the Applicant herein is in custody since more than 3 years from the date of his arrest i.e., 16.08.2021. He states that even after 3 years the trial is still at the stage of Prosecution Evidence (PE). He states that there are 29 witnesses to be examined and considering the current pace of the trial, it will take considerable time for the trial to conclude.

4.3. He states that the alleged incident had occurred on 02.08.2021 and the complaint was registered on 06.08.2021 that is after delay of four (4) days.

4.4. He states that the Applicant was released on three (3) occasions on interim bail and has never misused the liberty granted by this Court and Trial Court.

4.5. He states that the Applicant has two (2) minor children who do not have anyone to take care of them as they are staying with the mother of the Applicant, who herself is old and suffering from various ailments.

4.6. He states that the Applicant has earlier been out on bail on three (3) occasions and has not misused the liberty granted by this Court and the Trial Court.



Arguments of the State

5. In reply, Mr. Khanna, learned APP states that the offence was committed by the accused persons including the Applicant herein on gun and knife point.

5.1. He states that at the instance of the Applicant Rs. 27,00,000/- was recovered along with the toy gun which was used in the commission of the offence from his house. He further states that substantial recoveries have been made from the accused persons corroborating with the version of the complainant.

5.2. He states that the Registration Certificate of the said Innova Car GJ-01-HM-9373 used during the commission of offence of robbery was recovered from his possession.

5.3. He states that during the Judicial TIP, an eye witness namely Abbas Khan successfully identified the Applicant as one of the persons who had committed the offence of robbery.

5.4. He states that charges in the present matter have been framed on 30.11.2024 under Sections 395/412/120B/506/201 IPC and the witness i.e., complainant has been summoned for his examination on 25.02.2025. He further states that material witness including three (3) eye-witnesses (i.e., Abbas Khan, Vivek and Krishan Kumar) are yet to be examined.

5.5. He states that supplementary chargesheet qua accused Amit and Nikhil has been filed before the Trial Court. He states however, the accused Raj Kumar is still evading his arrest and is absconding.

5.6. He states that the Applicant herein is also an accused in CR No. 105/2016, SC No. 42/2018 under Sections 454/380/411/413/114 of the IPC at PS Isanpur, Ahmedabad, Gujarat and is currently on bail in the said matter. He



states that the offence which is the subject matter of the present FIR, was committed by the Applicant while he was on bail in the FIR No. 105/2016 registered in Ahmedabad.

5.7. He states that the Applicant was granted interim bail thrice in this FIR and on all the three (3) occasions the Applicant has surrendered late on all the three (3) occasions.

5.8. He states that the Applicant herein is a resident of Gujarat and if enlarged on bail there are chances that Applicant might flee away and/or tamper with the evidence.

5.9. He has handed over a short note of the list of dates and events in support of the aforesaid submissions.

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 Chatterjee¹**, **State of Uttar Pradesh v. Amarmani Tripathi²**, and **Deepak Yadav v. State of Uttar Pradesh³** 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;

¹ (2010) 14 SCC 496.

² (2005) 8 SCC 21.

³ (2022) 8 SCC 559.



- (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.

8.1. Recently, the Supreme Court in the case of **X v. State of Rajasthan**⁴ has held that in cases involving serious offences Court should not be lenient in granting bail as the same impacts the trial. The relevant para of the said judgment reads as under:

“14. Ordinarily in serious offences like rape, murder, dacoity, etc., once the trial commences and the prosecution starts examining its witnesses, the Court be it the Trial Court or the High Court should be loath in entertaining the bail application of the accused.

15. Over a period of time, we have noticed two things, i.e., (i) either bail is granted after the charge is framed and just before the victim is to be examined by the prosecution before the trial court, or (ii) bail is granted once the recording of the oral evidence of the victim is complete by looking into some discrepancies here or there in the deposition and thereby testing the credibility of the victim.

16. We are of the view that the aforesaid is not a correct practice that the Courts below should adopt. Once the trial commences, it should be allowed to reach to its final conclusion which may either result in the conviction of the accused or acquittal of the accused. The moment the High Court exercises its discretion in favour of the accused and orders release of the accused on bail by looking into the deposition of the victim, it will have its own impact on the pending trial when it comes to appreciating the oral evidence of the victim. It is only in the event if the trial gets unduly delayed and that too for no fault on the part of the accused, the Court may be justified in ordering his release on bail on the ground that right of the accused to have a speedy trial has been infringed.”

(Emphasis supplied)

⁴ 2024 SCC OnLine SC 3539.



9. In the present case the investigation as per the prosecution has revealed that the Applicant herein has played significant/active role in the commission of the offence of robbery. Further at Applicant's instance allegedly substantial recovery of robbed money, the RC of the Car used in the commission of the offence has also been made. Moreover, the Applicant herein was positively identified by the eye witness during the TIP proceedings.

9.1. The Nominal Roll records that the Petitioner was also arrested in FIR No. 105/2016 registered at P.S. Isanpur, Ahmedabad, Gujarat and was on bail when the incident which is subject matter of the present FIR occurred. The Nominal Roll further records that the Applicant has consistently delayed surrendering after being granted interim bail in the present proceedings.

9.2. The chargesheet already stands filed, charges have been framed against the Applicant and the trial is at a crucial stage since the testimony of the Complainant/eye witness is scheduled to be recorded on 25.02.2025, which will be followed by other eye-witnesses. The Supreme Court in **X v. State of Rajasthan** (supra) has frowned upon granting bail to the accused at this stage of trial. The ratio of the said judgment is squarely applicable to the facts of this case.

10. In the overall conspectus of the factual matrix, the 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.

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



12. 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.

13. 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.

MANMEET PRITAM SINGH ARORA, J

JANUARY 30, 2025/sk/msh

Click here to check corrigendum, if any