

(2016) 09 DEL CK 0108

DELHI HIGH COURT

Case No: Bail Application No. 1564 of 2016.

Pradeep Dabas - Petitioner
@HASH State

APPELLANT

Vs

RESPONDENT

Date of Decision: Sept. 5, 2016

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 439

Citation: (2016) 4 JCC 2355

Hon'ble Judges: P.S. Teji, J.

Bench: Single Bench

Advocate: Mr. Ashish Deep Verma, Ms. Sonam Dixit, Mr. Ujjwal Puri and Mr. Abhay Kumar, Advocates, for the Petitioner; Ms. Manjeet Arya, Additional Public Prosecutor for the State with Sub-Inspector Jitender Joshi, Police Station Aman Vihar, New Delhi, for the State

Final Decision: Dismissed

Judgement

P.S. Teji, J. - Petitioner seeks bail in an offence registered as FIR No. 136/13 under Section 364-A/307/34 of Indian Penal Code (hereinafter referred to as the IPC) at Police Station Aman Vihar, Delhi by filing the present bail application under Section 439 of Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr.P.C.).

2. The present case was registered in compliance of judgment dated 13.03.2013 passed by learned Additional Sessions Judge, Rohini, Delhi. It was alleged in the complaint made by the victim Vikram Mathur that on 30.10.2012 he was present in his office along with his maid Vinitha Jha, Sonia and Mange Ram, when the petitioner along with other 10 accused persons entered in his office duly armed with the weapons at about 3.50 PM. Ransom of Rs. 60 lacs was demanded from the complainant and when the complainant shown his inability to deliver, the accused persons abducted him. The maid Vinitha informed telephonically to brother of the

complainant. PCR at 100 was called. After sometime, he came back and stated that he was taken in front of Sunny Properties and Builders Office, 30 Foota Road, Bhagya Vihar, Delhi, from where he somehow managed to escape. Though the accused persons followed him and even fired upon him, but fortunately he did not receive any injury. The CCTV installed in the office of the complainant in which the incident was recorded. Thereafter, the present case was registered and investigations commenced.

3. During the course of investigation, statement of Mange Ram, Vinita, Vikram Mathur, Daulat Ram were rerecorded. CCTV Footage of the offence was taken into possession. The petitioner was arrested on 23.05.2013, who disclosed the name of other co-accused Sumit, Vikram and other friends of Sandeep @ Matru. Co-accused Vikram @ Vikka was arrested on 04.07.2013, who disclosed the other co-accused and also identified the place of occurrence. The main accused Rambir was also arrested on 07.07.2013 at the instance of Devender @ Shooter. Recovery of one Doga (double barrel gun) was recovered from the main accused Rambir. After completion of investigation the charge sheet was filed on 21.08.2013. Exhibits were sent to FSL for expert opinion and thereafter supplementary charge sheet was filed in the case.

4. Learned counsel for the petitioner contended that he is in custody since the date of his arrest i.e. 23.05.2013 and the investigation of the case has been completed; charge sheet has been filed; 18 out of 21 prosecution witnesses, including all the material witnesses have been examined and the present case is merely an afterthought just to trap the petitioner in this case. Even the complainant has been examined in which relevant factors have come forward which contradicts and negates the case of the prosecution so far as the petitioner is concerned. Learned counsel for the petitioner further submitted that the bail application filed before the learned Additional Sessions Judge has been rejected vide order dated 08.07.2016, despite there are material contradictions in the prosecution case.

5. It is the further contention of the petitioner that nothing incriminating against the petitioner is come out during the recording of the evidences. More so, the case of the petitioner rests on the same footings as of the other 5 out of 8 co-accused persons, who have been granted bail in the present case, therefore the petitioner ought to be granted bail on the ground of parity. It is further submitted that even in the CCTV footage only the main accused Rambir has been identified. Lastly, it is contended that the petitioner is of 70 years of age and needs the medical assistance, therefore, the petitioner be granted bail in the present case.

6. Learned Additional Public Prosecutor appearing on behalf of the State vehemently opposed the contention of counsel for the petitioner and submitted that the petitioner cannot seek parity with the other co-accused who have been granted bail in this case, as the co-accused, who have been granted bail were not identified by the public witnesses. Even the CD and photographs, it is clearly evident that the petitioner along with other accused had abducted the complainant from his office.

More so, the trial of the case is at fag end and 18 out of 21 prosecution witnesses have been examined and trial is likely to conclude very soon, therefore the petitioner ought not be granted bail in this case.

7. I have heard the submissions of learned counsel appearing on behalf of the petitioner as well as the submissions of learned Additional Public Prosecutor for the State and also gone through the material placed on record.

8. After careful scrutiny of the case, this Court observes that petitioner is in custody since 23.05.2013 and is charged with the offence punishable under Section 364-A/307 IPC ; charge sheet has been filed ; 18 out of 21 prosecution witnesses have been examined; and the trial is at fag end. This Court further notes the contentions of the petitioner in which certain contradictions between the depositions of the prosecution witnesses and prosecution case have been cited.

9. In **Prasanta Kumar Sarkar v. Ashis Chatterjee (2010) 14 SCC 496**, the Hon"ble Supreme Court dealt with the basic principles laid down in catena of judgments on the point of granting bail. The Court proceeded to enumerate the factors :

9.... among other circumstances, the factors [which are] to be borne in mind while considering an application for bail are :

(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, behaviour, 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 course, of justice being thwarted by grant of bail.

10. So far as the contents, grounds, circumstances, explanations and reasoning given by the petitioner in the present petition are concerned, this Court observes that all such circumstances are the subject matter of the trial and the same shall be decided by leading cogent evidence. However, for the purpose of deciding the present bail application, this Court need not go to the merits of the case at this stage. What this Court needs to consider is as to whether or not the petitioner has been able to make out any prima facie case for grant of bail to the petitioner.

11. The contention raised by learned counsel for the petitioner that since the case of the petitioner rests on similar footing as that of the co-accused, who has been granted bail in this case, therefore he is also entitled to bail. In this regard, this

Court is of the considered opinion that before granting or refusing bail, the court must satisfy itself after considering the material placed on record and further developments in the investigations or otherwise and other peculiar circumstances of each case, which show that there are sufficient grounds for releasing the applicant on bail. If on examination of any case, it transpires that the case of the applicant before the court is identically similar to the accused on facts and circumstances, who has been bailed out, then the desirability of consistency will require that such an accused should be also released on bail. In the present facts of the case, the other five co-accused persons were granted bail only because the material witnesses failed to identify them and spell out their roles, however with regard to the petitioner herein, the CCTV footage of office of the complainant, clearly confirms that the petitioner was present at the spot. Therefore, the petitioner cannot seek parity with the other co-accused persons.

12. This Court has also gone through the impugned order dated 08.07.2016 passed by learned Additional Sessions Judge wherein it is specifically mentioned that 17 out of 21 witnesses have already been examined and the trial of the case is at fag end and the remaining witnesses are likely to be examined in two dates fixed by the learned Additional Sessions Judge.

13. In view of the aforesaid observations and in the facts and circumstances of the present case, this Court is not inclined to grant bail to the petitioner-Pradeep Dabas at this stage. Accordingly, the bail application filed by the petitioner is hereby dismissed.

14. Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated herein above in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

15. In the light of the aforesaid, the bail application filed by the petitioner is dismissed.