

Jamuna Prasad @ Lallu Through Pairokar ... vs State Of Nct Df Delhi on 6 December, 2023

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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 3521/2023
JAMUNA PRASAD @ LALLU THROUGH PAIROKAR AND
BROTHER SH. JAWAHAR LAL ...
Through: Mr. Ravinder Narayan
Madhav Narayan, Advo

versus

STATE OF NCT DF DELHI
Through:

CORAM:
HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

% 06.12.2023

1. The present bail application has been filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973 [CrPC] seeking regular bail in FIR No.688/2014 dated 19.11.2014 registered under Sections 302/307/120B/201/34 of the Indian Penal Code [IPC] and Sections 25/27 of the Arms Act, 1959 at P.S. Delhi Cantt., Delhi.

2. As per the FIR, on 19.11.2014 at around 03:00 PM, when the complainant Shivam was sitting at his meat shop with his father, Rakesh@Kalu in Jhajhera village, his neighbour, Gaurav arrived along with 2-3 persons in a white Scorpio car. He was armed with a pistol and the remaining persons were carrying Lathis and Dandas. They attacked the complainant and his father. The accused persons were then joined by three other persons including the applicant herein who were also carrying Wooden Sticks/ Dandas with which they gave multiple blows to the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 09/12/2023 at 01:53:13 complainant and his father. The victims were rushed to the AIIMS Trauma Centre, where the father of the complainant succumbed to his injuries on 22.11.2014.

3. The applicant in the present case was arrested on 21.11.2014 and is in judicial custody since then except for the interim bail granted to him during the Covid-19 pandemic which was extended from time to time. The chargesheet in the present matter was filed on 14.05.2015 and charges were framed. The trial is presently at the stage of Prosecution Evidence.

4. Learned counsel for the applicant submits that the applicant has been languishing in jail since 2014. He submits that since the investigation in the present case is already complete, but the trial is

likely to take some time as only 23 out of 46 witnesses have been examined so far, the applicant be released on bail as the custody of the applicant is no more required, and there is no possibility of the applicant tampering with evidence or influencing the witnesses. He further submits that co-accused Sandeep has already been granted bail and that since the complainant and other witnesses except one, have turned hostile, the applicant has a good case in his favour.

5. Learned counsel for the applicant further submits that the applicant was a young man of 25 years at the time of commission of the offence, and that he has no past convictions except one i.e., FIR No.540/2014 u/s 25/54/59 of the Arms Act, 1959 at PS. Sagarpur, Delhi, where he was sentenced for the period already undergone. He submits that in any event, pendency of other criminal cases cannot be a ground to deny bail to the applicant. He further submits that the applicant was granted interim bail by this Court on 18.05.2020 which was extended from time to time, and This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 09/12/2023 at 01:53:13 that the applicant did not misuse the liberty granted to him, except that he could not surrender on time as he was falsely implicated and arrested in another FIR during the subsistence of the interim bail.

6. Notice was issued and Status Report and Nominal Roll were called for.

7. Learned APP for the State, relying upon the Status Report, opposes grant of bail to the applicant on the ground that the applicant had an active role in the commission of the offence as one danda and clothes worn by the applicant at the time of the offence were recovered at his instance and the FSL report states that some of the injuries as mentioned in the MLC were possible to be inflicted by the weapon recovered from the applicant. Learned APP further submits that the applicant is a 'Bad Character' of the area as he has been involved in over 10 other cases. He further submits that the applicant, at the time of interim bail, did not surrender on time and was instead involved in another FIR. The learned APP has also submitted that the same applicant has been declared as a 'Bad Character' of the area since long. He thus submits that bail be not granted to the applicant as there is every possibility that he may jump bail and influence or threaten the witnesses.

8. This Court has heard learned counsel for the applicant and the learned APP for the State and gone through the relevant documents on record.

9. As per the Nominal Roll of the applicant, the applicant has been in custody for over 7 years and 8 months. Though his jail conduct for the last one year has been satisfactory, but his overall jail conduct is 'Unsatisfactory' as he has been awarded punishments on three occasions This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 09/12/2023 at 01:53:14 in 2018, 2019 and lastly in 2022 for assaulting an inmate and on account of recovery of prohibited

article. Further, during the subsistence of the interim bail granted by this Court, he was arrested in another FIR bearing no.236/2021 u/s 387/336/34 IPC read with Sections 25/27 of the Arms Act, 1959 at PS.: Delhi Cantt. There is another FIR no.306/2103 u/s 147/148/149/323/324/307/120B IPC at PS.: Hari Nagar, Delhi pending against the applicant, wherein he is on bail. He has also been previously convicted in FIR No.540/2014.

10. As per records, the danda, being one of the alleged weapons of offence used in the commission of the offence has been recovered from the applicant. Further, prima facie, there is nowhere any denial of the factum of involvement of the applicant in the commission of the offence.

11. The present proceeding is arising out of the FIR wherein the applicant has not only been named but a definite role has been attributed to him. Though the outcome thereof much depends upon the outcome of the trial, however, this Court has to weigh the same with the overall conduct of the applicant. In the particular proceedings, the applicant has been facing incarceration since past more than 7 years and 8 months, however, it is the same applicant who, when granted interim bail in this FIR, was arrested as an accused in another FIR no.236/2021 u/s 387/336/34 IPC read with Sections 25/27 of the Arms Act, 1959 at PS.:

Delhi Cantt. Not only that, there was already an FIR no.306/2103 u/s 147/148/149/323/324/307/120B IPC at PS.: Hari Nagar registered against the very same applicant. So much so, it is the same applicant who was also an accused in another FIR No.540/2014 registered under Sections 25/54/59 of the Arms Act, 1959 at PS: Sagarpur, wherein he has already This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 09/12/2023 at 01:53:14 been convicted. These show that the applicant has been involved in FIRs registered under heinous offences. The learned APP has also submitted that the applicant has been declared as a 'Bad Character' of the area since long. The applicant has also been guilty of not surrendering on time.

12. Moreover, as per the Nominal Roll, though the overall jail conduct of the applicant for the last one year has been 'Satisfactory', but his overall jail conduct is 'Unsatisfactory' as he has been awarded punishments on three occasions in 2018, 2019 and lastly in 2022 for assaulting an inmate and on account of recovery of prohibited article.

13. Presently, although 23 witnesses have already been examined, however, further 23 witnesses out of the total 46 witnesses are yet to be examined. Considering the past record of the applicant as also his past conduct, this seems to be not a fit case to release the applicant on bail at this stage, especially as there are witnesses remaining to be examined and the trial is underway. There is a likelihood of the applicant tampering with the evidence and/ or influencing the remaining witnesses which will amount to derailing the whole ongoing process.

14. Broadly, the conditions for granting bail to an accused as truncated in Prasanta Kumar Sarkar vs. Ashis Chatterjee (2010) 14 SCC 496; State of Uttar Pradesh vs. Amaramani Tripathi (2005) 8 SCC 21; and Deepak Yadav vs. State of Uttar Pradesh (2022) 8 SCC 559 are 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;

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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 the grant of bail.

12. Keeping the facts and surrounding circumstances involved herein coupled with the settled position of law as of now as also taking into consideration the precautions to be taken while granting bail to any applicant involved in heinous offence(s) like the present one, this Court considers it a fit case to refuse bail to the applicant at this stage.

13. The present application is accordingly dismissed.

14. Needless to say, any observations made on the merits of the matter have made purely for the purposes of disposing of the present bail application and shall not be construed as expressions on the merits of the matter.

SAURABH BANERJEE, J DECEMBER 6, 2023/rr This is a digitally signed order.

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