

Dinesh Kumar @ Jony vs State on 4 September, 2023

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 3329/2022

DINESH KUMAR @ JONY
Through:

STATE

Through

CORAM:
HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

% 04.09.2023

1. The present application has been filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973, seeking regular bail in FIR No.191/2019 dated 02.06.2019 under Sections 302/307/120B/34 IPC and Sections 25/27 of the Arms Act, 1959 at PS: Karol Bagh, Delhi.

2. As per the FIR, information vide DD no.6A was received at PS Karol Bagh on 02.06.2019 that the injured/complainant Bharat was taken to Sir Ganga Ram Hospital. The FIR was registered on his statement that on 01.06.2019 at around 11:00 P.M., while he was sitting with his friend Bhagwan Dass at his shop, two persons arrived on a scooty, the pillion rider fired 3-4 shots at him with a pistol and then they fled from the spot. The complainant however succumbed to his injuries on 09.06.2019.

3. The two accused persons Akash Kumar and Aakash@Sanju were arrested on 05.06.2019, who named the present applicant in their 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 16/09/2023 at 16:29:26 disclosure statements, stating that the applicant had helped them in procuring the pistol and also disclosed that they worked in the gang of one Mahesh Kumar@ Mannu. The said Mahesh Kumar@ Mannu, who was arrested on 07.06.2019 not only named the applicant in his disclosure statement but also stated that he was in contact with the other co-accused persons through the applicant. Chargesheet was filed on 02.09.2019, which did not name the applicant as he was declared a Proclaimed Offender [PO] on 07.12.2019. He was thereafter arrested in the present case on 26.06.2021 and is in custody since then. The supplementary chargesheet against the applicant was filed on 21.09.2021 and charges have been framed in April, 2023. Currently, the matter is at the stage of prosecution evidence.

4. Learned counsel for the applicant submits that the applicant has been in custody for almost 2 years and that he is not named in the FIR and has only been involved on the basis of the disclosure statements made by the co-accused, which are inadmissible in law. He further states that no recovery has been made from him and that he was not present at the place of the incident at the relevant time. Thus, there is nothing incriminating against the applicant which links him to the offence committed. Learned counsel for the applicant further submits that though on the basis of alleged CDRs and his alleged meetings with the co-accused Mahesh Kumar@ Mannu, it is alleged that it was the applicant who conspired with him to commit the said offence, however, there is a long gap of over 8 months in the date of the alleged meeting with Mahesh Kumar@ Mannu, who was already in custody, and the date of the alleged offence. He further states that in any event, the CDRs do not establish any linkage This is a digitally signed order.

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5. Learned counsel for the applicant further submits that out of 50 witnesses only 5 have been examined so far. Thus, the trial is going to take considerable time. Learned counsel for the applicant submits that the applicant be not left languishing behind bars for such time due to the pendency of the trial. He has further drawn attention of this Court to the statements of the 5 witnesses placed on record, of which 2 eye-witnesses (PW-2 and PW-3) have turned hostile against the co-accused who had named the applicant herein, to submit that there is no corroborative evidence against the applicant. Relying upon P. Chidambaram vs. CBI 2019 SCC OnLine SC 1380, he further submits that since investigation is already complete, there is no possibility of the applicant tampering with evidence or influencing the witnesses. Lastly, learned counsel for the applicant submits that the applicant has been released on interim bail on 2 occasions, and on both such occasions he has not misused the liberty granted to him and has duly surrendered on time.

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 the grant of bail to the applicant, on the ground that the applicant played an active role in the commission of the alleged offence as he was the main This is a digitally signed order.

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26.06.2021 by the Special Cell, after the lapse of almost 2 years. She further states that the applicant does not have clean antecedents as there are 2 other cases pending against the applicant. She thus states that bail be not granted to the applicant as there is a possibility that he might abscond again and also tamper with evidence and influence the witnesses as majority of them remain to be examined.

8. The Nominal Roll of the applicant reveals that he has been in custody for almost 2 years and that he was granted interim bail on two occasions, from 01.09.2022 to 29.09.2022 and from 10.04.2023-16.05.2023. It is further stated that the applicant was previously convicted in FIR no.244/2005 under Sections 392/397/34 IPC and was sentenced to rigorous imprisonment for seven years with fine. At present, there are 2 other FIRs pending against the applicant, FIR 507/2021 under Section 324 IPC and FIR 440/2013 under Sections 509/506/457/34 IPC, wherein he is on bail. His overall jail conduct is satisfactory.

9. This Court has heard the learned counsel for the applicant and the learned APP for the State and has perused the documents on record.

10. As recognised, settled and followed by the various judicial pronouncements, the Court while granting bail to an accused, is to contemplate and consider-[i] the nature and gravity of the offenses/ charges coupled with the severity of punishment in case of conviction;

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11. In the considered opinion of this Court, by and large the nature of offences/ charges involved being grave and serious and/ or pendency of other/ several criminal cases against an accused are/cannot be the only basis for rejection of bail to an accused and the Court has to take a holistic view of the facts and circumstances [Re.: Prabhakar Tiwari vs. State of Uttar Pradesh (2020) 11 SCC 648]. In view thereof, in the present case also, though the offences against the applicant are serious in nature, however, that itself cannot be a ground for refusal for grant of bail to him.

12. A perusal of the documents on record in the present case shows that the applicant was neither at the place of incident, nor there is any recovery of weapon from him. Additionally, the applicant was

also not named in the FIR and has only been involved on the disclosure statements of the co-accused, which have not been supported by any corroborative evidence against the applicant. Even otherwise, the said disclosure statements are of This is a digitally signed order.

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13. In the considered opinion of this Court, once the investigation is complete and the charge-sheet has also been filed and the trial has already commenced, there is no fruitful purpose of letting the accused be behind bars as in all likelihood, the conclusion of the trial in the present FIR is likely to take long and no useful purpose would be served if the applicant is made to await the outcome thereof.

14. In any event, as per trite law, no person is presumed guilty until proven otherwise. At this stage, this Court does not find anything which can weigh on the mind of this Court to deny the bail as sought for by the applicant herein.

15. Accordingly, the application is allowed and the applicant is directed to be released on regular bail in FIR No.191/2019 dated 02.06.2019 under Sections 302/307/120B/34 IPC and Sections 25/27 of the Arms Act, 1959 at PS: Karol Bagh, Delhi on his furnishing a personal bond in the sum of Rs.1,00,000/- (Rs. One Lakh) along with two sureties of the like amount 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 16/09/2023 at 16:29:26 by family member/friend having no criminal case pending against them, subject to the satisfaction of the learned Trial Court, and further subject to the following conditions:

- i. Applicant shall not leave the National Capital Territory of Delhi without prior permission of this Court and shall ordinarily reside at the address as per prison records. If he wishes to change his residential address he shall immediately intimate about the same to the Jail Superintendent by way of an affidavit.
- ii. Applicant shall surrender his passport to the Investigating Officer, within three days. If he does not possess the same, he shall file an affidavit before the Investigating Officer to that effect within the stipulated time.

iii. Applicant shall appear before the Court as and when the matter is taken up for hearing.

iv. Applicant shall join investigation as and when called by the Investigating Officer concerned. He shall not obstruct or hamper with the police investigation and shall not play mischief with the evidence collected or yet to be collected by the Police. v. Applicant shall provide all his mobile numbers to the Investigating Officer concerned which shall be kept in working condition at all times and shall not be switch off or change the mobile number without prior intimation to the Investigating Officer concerned. The mobile location be kept on at all times. vi. Applicant shall report to the Investigating Officer at P.S.:

Karol Bagh, Delhi once every month in the first week of the month unless leave of every such absence is obtained from the learned This is a digitally signed order.

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vii. Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the victim/ complainant or any member of the victim's/ complainant's family or tamper with the evidence of the case or try to dissuade them from disclosing such facts to the Court or to any police officials.

16. Needless to mention, observations, if any, made on the merits of the matter are purely for the purposes of adjudicating the present application and shall not be construed as expressions on merits of the matter.

17. Copy of the present order be sent to the concerned Jail Superintendent for information and compliance thereof.

18. The bail application is disposed of in the above terms.

SAURABH BANERJEE, J.

SEPTEMBER 4, 2023/So This is a digitally signed order.

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