

Ishrail Ali vs The State Govt Nct Of Delhi on 6 September, 2023

Author: Swarana Kanta Sharma

Bench: Swarana Kanta Sharma

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 06

BAIL APPLN. 3004/2023

ISHRAIL ALI

Through:

.....
Mr. Jatin Teotia, Mr.
Kumar, Mr. Avdesh Kum
Advocates

versus

THE STATE GOVT NCT OF DELHI

Through:

.... R
Mr. Satish Kumar, APP
State with Inspector
Kumar, PSI Dipesh Mal
Samaypur Badli

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA
JUDGMENT

SWARANA KANTA SHARMA, J (ORAL) CRL.M.A. 24178/2023 (exemption)

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

3. The instant application under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of applicant seeking grant of regular bail in case FIR bearing no. 0468/2023, registered at Police Station Samaipur Badli, Delhi for the offences punishable under Sections 392/397/34 of the Indian Penal Code, 1860 ('IPC').

4. Issue notice. Mr. Satish Kumar, learned APP accepts notice on behalf of State.

5. Briefly stated, the facts of the present case are that on 20.05.2023, an FIR under Sections 392/397/34 of IPC was registered on the basis of a complaint filed by the complainant on the allegations that when he had parked his truck/canter near GTK road, Delhi, at about 08:30 AM, the complainant had suddenly woken up while he was sleeping in the canter's cabin with his helper Rahul who had opened the windows of the truck/canter due to heat. Thereafter, when he looked out of the window, he had found that he had found that two unknown persons had climbed into the canter's cabin from both sides and one of them was holding a pistol in his hand and was wearing a

mask who had started beating his helper Rahul. The other two persons had searched the cabin of the canter and had robbed Rs. 4 lakhs which was kept in a bag.

6. Learned counsel for the applicant argues that applicant has been falsely implicated in the present case and he is in judicial custody since 23.05.2023. It is argued that in this case, the pistol which was allegedly shown to the complainant was a toy pistol, and therefore, a case under Arms Act has not been registered against any of the accused persons. It is further argued that no case under Sections 392/397 of IPC is made out since no actual weapon was used in the present case. It is also stated that there is nothing on record to connect the accused with the alleged offence, therefore, the applicant be granted regular bail.

7. Learned APP for the State, on the other hand, argues that the accused has played active role in commission of the offence and recovery of the robbed money was affected from the present accused/applicant. It is also stated that accused persons had committed robbery, therefore, regular bail of the applicant be rejected at this stage.

8. This Court has heard arguments advanced by both the parties and has perused the material on record.

9. In the present case, this Court is of the opinion that the investigation has revealed that after the incident, on analysis of the CCTV footage of a camera near the place of offence, the investigating officer had found that a silver coloured Alto car No. DL 8CR ***6 in which the accused persons had fled could be seen. The complainant, on being shown the CCTV footage, had identified that the car which was seen in the footage was the same which had been used by the accused persons at the time of alleged incident. The investigation has further revealed that the owner of the car has given his statement to the police that the car in question had been taken by the accused Ishrail Ali i.e. the present accused/applicant and Rashid. It was also revealed during the investigation that the present accused/applicant was holding a toy pistol and he had shown the same to the complainant to put him under fear of death.

10. It was also argued by the learned counsel for accused/applicant that since a toy pistol was used by the applicant, the same does not even constitute a prima face case under Sections 392/397 of IPC, and hence he be enlarged on bail. In this regard, this Court notes that the mere fact that a toy pistol was used instead of a real pistol cannot absolve the accused of offence under Section 397 of IPC, since the essential of the provision as laid down by Hon ble Apex Court in case of Ram Ratan v. State of Madhya Pradesh 2021 SCC OnLine SC 1279 is that the mere display of a weapon, or any action that induces fear or apprehension in the victim can invoke Section 397 of IPC. The relevant portion of the judgment reads as under:

"17. From the position of law as enunciated by this Court and noted above, firstly, it is clear that the use of the weapon to constitute the offence under Section 397 IPC does not require that the 'offender' should actually fire from the firearm or actually stab if it is a knife or a dagger but the mere exhibition of the same, brandishing or holding it openly to threaten and create fear or apprehension in the mind of the victim is

sufficient. The other aspect is that if the charge of committing the offence is alleged against all the accused and only one among the „offenders“ had used the firearm or deadly weapon, only such of the „offender“ who has used the firearm or deadly weapon alone would be liable to be charged under Section 397 IPC.

18. Though the above would be the effect and scope of Section 397 IPC as a standalone provision, the application of the same will arise in the totality of the allegation and the consequent charge that will be framed and the accused would be tried for such charge. In such circumstance, in the teeth of the offence under Section 397 IPC being applicable to the offender alone, the vicariability of the same will also have to be noted if the charge against the accused under Sections 34, 149 IPC and such other provisions of law, which may become relevant, is also invoked along with Section 397 IPC. In such event, it will have to be looked at differently in the totality of the facts, evidence and circumstances involved in that case and the provisions invoked in that particular case to frame a charge against the accused. In the instant case, the charge under Section 34 IPC was not framed against the appellant nor was such an allegation raised and proved against the appellant. Hence, benefit of the interpretation raised on the scope of Section 397 IPC to hold the aggressor alone as being guilty, will be available to the appellant if there is no specific allegation against him."

(Emphasis Supplied)

11. During investigation, a sum of Rs. 80,000/- was also recovered at the instance of the present accused/applicant. Therefore, at this stage, there is material on record which reflects the active role played by the accused/applicant in the commission of offence and recovery has been affected from him. The trial of the case is yet to commence.

12. Thus, considering the overall facts and circumstances of the case, this Court is not inclined to grant regular bail to the present accused/applicant.

13. Accordingly, the present bail application stands dismissed.

14. It is, however, clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on merits of the case.

15. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J SEPTEMBER 6, 2023/zp