
(2015) 04 DEL CK 0323

In the Delhi High Court

Case No : Bail Application No. 799 of 2015

Arun Choudhary

APPELLANT

Vs

The State NCT of Delhi

RESPONDENT

Date of Decision : 27-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 82

Citation : (2015) 2 JCC 1239

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Sunil K. Mittal, Kshitij Mittal and Sunil Kalra, for the Appellant;
Lovkesh Sawhney, APP and Pawan Singh, SI, Advocates for the Respondent

Final Decision : Allowed

Judgement

Vipin Sanghi, J.

Crl. M.A. No. 6188/2015

1. Exemption allowed, subject to all just exceptions. The application stands disposed of.

BAIL APPLN. 799/2015

2. Issue notice. Noticed is accepted by learned APP as well as the learned counsel for the complainant Mr. Sunil Kalra. He states that he shall be filing his Vakalatnama during the course of the day.

3. I have heard learned counsel.

4. The case of the prosecution, as taken note of by the learned ASJ in the order dated 20.04.2015, is as follows:

"Allegations are that on 06.06.14 at about 3.30 PM, complainant was abducted by some persons including one Deepu. Complainant was put in one Mahindra car and threatened at the point of pistol. Vehicle was being driven by one Furkan @

Guddu. Complainant was taken to one cabin in the office of Greater Noida Authority where applicant/accused Arun Chaudhary was already present. His father Nafees Chaudhary also came there. All the three of them i.e. Deepu, Arun Chaudhary and Nafees Chaudhary obtained complainant's signatures and thumb impression by threatening to kill him and members of his family. His photographs were also taken which were affixed on some documents and he was taken to one office where some staff was already present. Complainant was made to sign in one register. Complainant was brought back in the same vehicle and left at Ganda nallah. Threats were extended again while the accused persons were leaving. Complainant alleged that Deepu @ Naveen Chaudhary, Nafees Chaudhary and Arun Chaudhary earlier" also had asked him to transfer his property in their favour and for this purpose threats were extended to him."

5. Mr. Mittal submits that when the petitioner had moved Bail Application No. 7011 before the learned ASJ, initially on 02.08.2014, the learned ASJ directed that the to shall give three days advance notice to the petitioner in case he wants to arrest him. The notice was given on 30.09.2014.

6. The petitioner then moved Bail Application No. 9496 before the learned ASJ, which was considered on 10.10.2014. While passing the order dated 10.10.2014, the learned ASJ had taken notice of the fact that the petitioner is not the person, who had purchased the property from the complainant and the petitioner was not even a witness to the sale deed. The petitioner had not used any weapon even as per the allegations contained in the FIR. Therefore, no weapon was to be recovered from the petitioner. The co-accused, who had allegedly used the weapon had not been arrested.

7. In the course of the order, the learned ASJ had also taken note of the fact that in the file of the to, there was a written communication from one Sh. Jitender Pal Singh working as Prabhari Upnibandhak, "Sadar, Gautam Budhnagar dated 20.06.2014, in which he had stated that the complainant had presented a sale deed before him and at that time the complainant was completely of sound mind and normal. He had also stated that during the proceedings, the complainant did not complain about any pressure, or forceful execution of the documents.

8. The learned ASJ had, therefore, concluded that the petitioner should join the investigation. However, there was no need for any custodial interrogation at that stage and the same was not borne out from the file of the IO. The prosecution sought to place reliance upon certain photographs taken at the Sub-Registrar's office to claim the presence of the petitioner at the said office. The FSL result regarding appearance of the petitioner in the photograph was still awaited. Thus, the Trial Court granted protection against arrest to the petitioner, subject to the condition that he joins investigation as and when directed by the IO concerned.

9. Mr. Mittal submits that the report of the FSL was not obtained even till 16.04.2015. The case was again listed before the learned ASJ on 16.04.2015. On this occasion, the learned ASJ rejected the bail application of the petitioner vide

order dated 20.04.2015.

10. Mr. Mittal submits that a perusal of the order dated 20.04.2015 would show that the learned ASJ had mixed up the facts of the present case with that of the co-accused Navin Choudhary @ Deepu, and has been guided by the same. In the said order, she has taken note of the order dated 14.08.2014, which pertains to the co-accused Navin Choudhary @ Deepu, since the petitioner's bail application was not listed on 14.08.2014. The learned ASJ has also taken note of the fact that several NB Ws were issued and the same remain unserved and that proceedings under Section 82 Cr.P.C. had also been taken against the co-accused Navin Choudhary @ Deepu.

11. Mr. Sawhney, on instructions, states that the petitioner has joined the investigation as and when called for after passing of the order dated 10.10.2014.

12. It is apparent that while passing the order dated 20.04.2015, the learned ASJ has been unduly influenced by the facts relating to the case of the co-accused Navin Choudhary @ Deepu. Even learned counsel for the complainant has not been able to dispute the fact that the petitioner had not purchased the property from the complainant, and he was not even a witness to the sale deed. Even as per the allegations in the FIR, the petitioner had not used any weapon and, therefore, the petitioner is not supposed to get the weapon recovered. Merely because it was alleged that the petitioner may be in touch with the co-accused Navin Choudhary @ Deepu, who is absconding, is no ground to take him into custody. It has not been shown as to why the petitioner's interrogation is considered necessary. Accordingly, this application is allowed. It is directed that in case of his arrest, the petitioner shall be released on bail upon his furnishing a personal bond with one surety in the sum of Rs. 25,000/- to the satisfaction of the 10 concerned. The petitioner shall not get in touch with either the complainant, or any of the prosecution witnesses, or seek to influence them in any manner.