
(2018) 04 DEL CK 0047
In the Delhi High Court
Case No : CRL.M.C.--1692 of 2018

DEEPA ARYA

APPELLANT

Vs

STATE (NCT OF DELHI) & ANR

RESPONDENT

Date of Decision : 10-04-2018

Acts Referred:

Citation : (2018) 04 DEL CK 0047

Hon'ble Judges : SANJEEV SACHDEVA

Bench : Single Bench

Advocate : Kirti Uppal, Vikas Pahwa, Mehmood Pracha, R.H.A. Sikander, Mohd. Danish, Amit Sharma, R.K. Saini, Sitab Ali Chaudhary, Tushar Agarwal, Prateek Gupta, Karan Khanuja, Rahul Mehra,

Final Decision : Disposed Of

Judgement

SANJEEV SACHDEVA, J. (ORAL)

1. It is noticed that the name of the petitioner has been incorrectly shown in the cause list as "Deepa Arora". The record reveals that the

petitioner's correct name is "Deepa Arya. Registry is directed to correct name of the petitioner in the record and show the same as "Deepa

Arya".

2. The petitioner impugns order dated 26.03.2018 whereby bail has been granted to respondent no. 2.

3. Notice was directed to be issued on 06.04.2018. Though the office report indicates that service report qua respondent no. 2 is awaited, it is brought

to the notice that on 06.04.2018, the concerned Sessions Judge has noticed that respondent no. 2 is absconding and not cooperating with the

investigation and Non Bailable Warrants have been issued. It may not be possible to serve respondent no. 2 with the notice. It is further observed in

the order which is impugned in the present petition i.e. order dated 26.03.2018 granting bail to respondent no. 2 has already been interdicted by the order dated 06.04.2018 and the bail granted to respondent no. 2 has been cancelled.Â In view of the above, the challenge to the impugned order in so far as it grants bail to respondent no. 2 is concerned does not survive any further.Â

4.Learned senior counsel appearing for the petitioner submits that observations have been made by the Trial Court in paragraphs 18 and 19 of the impugned order to the effect that there was no incriminating evidence against the accused with regard to three FIRs, which were not subject matter of the present proceeding, and the observations would prejudice and hamper the ongoing investigation in those FIRs.Â Â

5.The petitioner is aggrieved by observations in paragraphs 18 and 19 of the impugned order dated 26.03.2018, which read as under:Â

â??18.I have gone through the status report filed by the IO. I have also gone through the police file produced by the IO. It is stated by the IO that

there is no incriminating evidence against the present applicant with respect to the incident of burning of cars of the advocates. It is also admitted

position that SI Naresh Kumar who has not been arrested had gone for execution of NBWs issued by learned MM, Saket against the complainant. It

is also admitted position that the complainant was let of by SI Naresh Kumar who had received order of Hon'ble High Court which was

communicated to him around 04:30 p.m. on his whatsapp. The factum of complainant facing 15 criminal cases is also admitted by the IO in which

investigations are going on. It is also seen that as per submissions made before Hon'ble High Court of Delhi by Sh. Rahul Mehra, learned standing

counsel that round the clock security has been provided to the complainant.

19.Considering the fact that prima-facie, there cannot be a case of abduction when a police officer has gone rightly or wrongly for execution of

NBWs, considering that bail is rule and jail is exception and considering that there is no incriminating evidence against the accused regarding the

incident of firing as per the investigation conducted by the IOs as per statusÂ report and considering the fact that accused is in JC for last 35 days

and is not required for further custodial interrogation and considering that there is evidence with respect to the electronic gadgets i.e. CDRs and

CCTV footages which are yet to be analyzed and same are not in possession of the accused, ^?|â?|â?|â??

6.Perusal of record shows that on 19.03.2018, the Sessions Court which was dealing with the FIR No. 14/2018, Police Station: Special Cell (subject

matter of present proceedings) directed the Investigating Officer to file status with regard to three other FIRs i.e. FIR No. 15/2018, Police Station

Anand Vihar, FIR No. 04/2018, Police Station G.K.1 and FIR No. 30/2018, Police Station Hazrat Nazamuddin. The above-referred three FIRs pertain

to the incident relating to the burning of vehicles of Advocates who are either representing the petitioner or are close friends of the petitioner.Â

7.It is an admitted position that the Investigating Officer in FIR No. 14/2018 Police Station Special Cell is not the Investigating Officer of the said

three FIRs pertaining to burning of vehicles.Â

8.Record also reveals that two status reports were filed by the IO, one dated 19.03.2018 and the other dated 26.03.2018. In the status report dated

19.03.2018, it is specifically stated that the investigation of the case is in initial stages and the investigation qua burning of vehicles is still under

investigation. In the status report dated 26.03.2018, the IO has stated that the role of respondent no. 2, if any, as suspected by the effected Advocate

was being thoroughly investigated by the investigating team under the supervision of senior officers and presently the said cases were under

investigation by the respective Investigating Officers.Â

9.It is observed that as the IO of the present FIR i.e. 14/2018 Police Station: Special Cell was not the IO of the other three FIRs referred above, he

was neither qualified nor competent to comment upon the investigation, or the evidence or the material with regard to the same except as to what was

informed to him. Further, the above referred status reports do not indicate that there was any statement made in the same that there was no

incriminating evidence against respondent no. 2 with respect to the incident of burning of vehicles of Advocates.Â

10.Learned Senior Standing Counsel appearing for the State submits that since the matter is still under investigation, no report has been submitted to

the Court either in writing or orally to suggest that there is no incriminating evidence against respondent no. 2. He submits that no comment can be

made with regard to the evidence in the said above referred three FIRs as the

investigation is at a very crucial stage and is being undertaken by the Special Cell and being monitored by senior officers.Â

11.Learned Senior Standing Counsel appearing for the State submits that as per his instructions no such submission was made by the IO of the subject FIR qua the three FIRs referred to above.

12.Without going into the controversy as to whether such a statement was made or not, perusal of the record/status reports as well as the submissions of the learned Senior Standing Counsel shows that the observations in paragraph 18 and 19 referred to above qua the incriminating evidence in the three FIRs referred to above, are neither borne out from the record nor was the IO of the subject FIR was competent to comment upon the same.

The statement referred to above, as attributed to the IO of the subject FIR i.e. 14/2018, Police Station Special Cell is completely unwarranted.

Accordingly, the said observations in paragraphs 18 and 19 are expunged from the record and shall not be taken into consideration in any subsequent proceedings on either side.Â

13.In view of the above, no further orders are called for in the present petition. The petition is accordingly disposed of.Â

14.Order Dasti under signatures of the Court Master.Â Â Â