
(2023) 08 DEL CK 0119
In the Delhi High Court
Case No : Bail Application No. 2604 Of 2023
Mohd Kamil VsState Of Nct Of Delhi

Date of Decision : 16-08-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 120B, 489, 489B, 489C

Citation : (2023) 08 DEL CK 0119

Hon'ble Judges : Dinesh Kumar Sharma, J

Bench : Single Bench

Advocate : Piyush Sachdev, Amit Sahnii

Final Decision : Disposed Of

Judgement

Dinesh Kumar Sharma, J

CRL.M.A. 20860/2023

Exemption is allowed subject to all just exceptions.

Application stands disposed of.

BAIL APPLN. 2604/2023

1. The present bail application has been filed under Section 439 Cr. PC seeking regular bail in case FIR No. 58/2018 dated 10.05.2018 registered at PS Special Cell, under Section 489B/489C/120B.

2. Briefly Stated the case of the prosecution is that on 10.05.2018, a raid was conducted on receiving secret information, wherein Kamil the present accused was apprehended with a huge consignment of Fake Indian Currency Notes (FICN) from Seelampur Bus Stop Delhi.. On searching him, several packets were found having 200 notes of Indian Currency in the denomination of 2000 Rs with a total of 400 notes of Rs 2000 with total value of Rs 8 Lakhs.

3. Learned counsel for the petitioner submits that the petitioner is in custody since 10.05.2018. It has submitted that out of 11 prosecution witnesses 9

witnesses including public witnesses have been examined. Learned counsel submits that even the public witness has not supported the case of the prosecution and witness was declared hostile.

4. Learned counsel submits that the learned Trial Court has pre-dominantly dismissed the bail application on the ground that punishment for the offence under Section 489 IPC is up to the life, whereas there is no material on record to attribute Section 489 C. Learned Trial Court also took into account the fact that a huge recovery of Fake Indian Currency Notes (FICN) worth Rs.8,00,000/- was made from the accused. Learned Counsel submits that in view of the period of incarceration, the accused may be admitted to bail.

5. Issue notice.

6. Learned APP for the State accepts notice.

7. Learned APP has vehemently opposed the bail application. Learned APP submits that even as per the status report, filed before the learned Trial Court dated 05.04.2023, the present petitioner was earlier convicted in case FIR No. 28/2023 PS Special Cell, New Delhi in which case also he was found a recovery of FINC worth of Rs.4,00,000/-. Learned APP has also submitted that if the petitioner is released on bail he may not attend the trial. It has also been submitted that co-accused Martuz and Kaiyum are still at large.

8. I have considered the submissions. Section 489 B IPC provides as under:

"Using as genuine, forged or counterfeit currency-notes or bank-notes.—Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with 2[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

9. The bare perusal of Section 489B IPC makes it clear that this provision will be attributed when forged or counterfeit currency notes or bank notes have been used as genuine. In order to fulfill the ingredients of this Section, there has to be some transactions alleged. The status report filed by the investigation agency before the learned Trial Court simply states that upon secret information, the petitioner was found in possession of FICN amounting to Rs.8,00,000/- from his possession. There is not even a single word/whisper about which could attribute Section 489 B IPC. However, it is made clear that this Court has not gone into the other evidence being/being led by the prosecution. Therefore, this is only a prima facie view and the learned Trial Court will decide the applicability of Section 489 B IPC on the basis of the entire material on record. However, in view of the large incarceration and the facts that substantial witnesses have already been examined, the petitioner is admitted to Court bail on furnishing a personal bond of Rs.25,000/- with one surety of the like amount to the

satisfaction of the trial court, subject to the following conditions:

- a) the petitioner shall not travel abroad without the permission of the Court,
- b) the petitioner shall not leave the NCR till the trial is concluded.
- c) the petitioner shall also surrender his passport before the learned Trial Court within two days.
- d) the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
- e) the petitioner shall provide his mobile number(s) to the Police Officer In Charge of the case and keep it operational at all times;
- f) In case of a change of residential address and/or mobile number, the petitioner shall intimate the same to the Police Officer In Charge of the case / Court concerned by way of an affidavit.

10. In view of the above, the present bail application stands disposed of.

11. The Copy of the order be sent to the concerned Jail Superintendent.