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(2020) 02 DEL CK 0316

In the Delhi High Court

Case No : Bail Application No. 2004 Of 2018

Mohd.Rashid APPELLANT

Vs

State Of Nct Of Delhi RESPONDENT

Date of Decision : 28-02-2020

Acts Referred:

Indian Penal Code, 1860 — Section 120B
Code Of Criminal Procedure, 1973 — Section 41(1), 173, 439
Evidence Act, 1872 — Section 25
Unlawful Activities (Prevention) Act, 1967 — Section 18, 20, 45D

Citation : (2020) 02 DEL CK 0316

Hon'ble Judges : Brijesh Sethi, J

Bench : Single Bench

Advocate : Mehmood Parcha, Neelam Sharma

Final Decision : Dismissed

Judgement

Brijesh Sethi, J

1. Vide this order, I shall dispose of a bail application filed on behalf of the petitioner Mohd. Rashid under section 439 Cr.P.C. in FIR No. 55/2013 u/s.

120B IPC & u/s. 18/20 UA(P) Act, PS special Cell.

2. Ld. Counsel for the petitioner has prayed for bail on the ground that petitioner is innocent and has been falsely implicated. Petitioner was arrested

by the police on 16.12.2013 and since then, he is in judicial custody. The allegations levelled against the petitioner are not only ill founded but also

improbable and technically impossible and there is absolutely nothing incriminating against the petitioner in the entire charge sheet. He has never been

involved in any illegal, anti-national or anti-social activity and he has been mechanically charged to be a member of a banned terrorist organization. It is submitted that prosecution is trying to concoct a story to falsely implicate the petitioner on the basis of disclosure statement made by petitioner which

is not admissible as per Section 25 of The Indian Evidence Act. No call whatsoever was ever made by the petitioner to anyone outside India using the

SIM cards alleged to have been recovered from the petitioner. It is further submitted that no evidence has been placed in the entire charge-sheet to

charge the petitioner with either criminal conspiracy or under Section 18 & 20 of the Unlawful Activities (Prevention) Act, 1967.

3. It is further submitted that the statement of prosecution witnesses i.e. PW-3 Mr. Liyakat Ali, PW-13 Mr. Javed Khan, PW-14 Mr. Shabbir and

PW-15 insp. Jagdish PrasadÂ make it evident that the officials of Delhi Police special Cell are trying to concoct a false story against the petitioner. It

is further submitted that co-accused Mohd Sajid has been granted bail vide order dated 20.12.2018 and on the ground of parity, petitioner be also

released on bail.

4. Ld. APP for the state has opposed the bail application on the ground that allegations against the petitioner are serious in nature. Petitioner is a

member of banned organization LeT and there is clear evidence by way of deposition of prosecution witnesses that petitioner played an active role in

unlawful activities. It is further submitted that Section 45D of UP(A) Act contemplates that accused persons shall ot be released on bail or on his own

bond if the court, on a perusal of the case diary or the report made under Section 173 Cr.P.C. is of the opinion that there are reasonable grounds for

believing that the accusation against such person is prima facie. Ld. APP in this regard has also relied upon â??National Investigation Agency v.

Zahoor Ahmad Shah Watali, Crl. A. no. 578/2019â?, decided on 02.04.2019. He has, therefore prayed for dismissal of the anticipatory bail application.

5. I have considered the rival submissions. It is the case of the prosecution that a secret information was received from the central Intelligence

Agency that a Pakistani SIM bearing no. +923214460675 (being used by a LeT Handler) is being contacted by a mobile phone of Rajasthan bearing

number 8094518399 and there was suspicious conversation between them indicating a conspiracy to carry out a terrorist act. On scanning of IMEIs of

mobile handsets on which the aforesaid mobile number 8094518399 was used, three more SIMs bearing numbers 8094515837, 8502902618 &

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8502902589 were also found operated. It was also found that a mobile number 9992664785 (Idea Haryana) being used by Md. Aris had also

contacted the above mentioned Pakistan mobile number on 14.10.2013. It was also found during investigation that all the above numbers were

obtained on fictitious IDs. During investigation, Md. Aris revealed that one Shahid s/o Deen Mohamad R/o village-Bazeedpur, PS Nagina, Distt. Nuh,

Mewat, Haryana who works as an Imam in a Mosque of Ariâ??s village had borrowed the SIM from Aris on the pretext that his SIM is having

some problem and he needed a SIM. He also assured Aris to return it soon. Arif further revealed that despite his asking, Shahid failed to return his

SIM and after lapse of substantial time, he returned it but as soon as he installed the aforesaid SIM, he got a call from Special Cell.

6. It is further submitted that on 07.12.2013, Shahid was arrested who disclosed that he had met Rashid in march/ April, 2013 who was working as an

Imam in a Mosque in village Ghagas, Haryana. Rashid told him that he is a member of LeT (Lashkar-e-Toiba) which is at the task of taking revenge

from those who are doing atrocities against muslims and he is on the way of Jihad. Shahid expressed his willingness to join him in this task. Rashid also

disclosed him that his organisation is planning to give effect to a terrorist act in Delhi and the neighbouring states and for that purpose and to keep in

touch with other terrorist, he needed a SIM registered in the name of any unknown person.

7. It is further submitted that Rashid was arrested by SHO/PS Nuh, Mewat under Section 41.1 Cr.P.C. and subsequently, he was arrested in the

present case on 16.12.2013. During interrogation, he disclosed that subsequent to the Gopalgarh riots, he was seething to take revenge from the non

muslims. He also revealed that he came in contact with one Abdul Subhan at Nagina, Haryana in the year 2011 itself and further disclosed that he

was having knowledge that a large quantity of arms and explosive were recovered from Abdul Subhan. Thereafter, he joined hands with Abdul

Subhan and proceeded on the way of Jihad. Both of them started working on a plan of giving effect to some terrorist act in Delhi and the neighbouring

states. They travelled to Muzaffarnagar so as to add more muslims and to raise funds. The act of Rashid was established, as phone number

8396054052 (used by Abdul Subhan) and the phone no. 9050510026 (used by Rashid) were on roaming and they both had been travelling together as

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their CDR locations remained same throughout their visit to U.P. on the relevant date/time. As per the CDR of mobile no. 99926664785 being used by

Md. Aris, on 13.10.2013, it had routed to village-Kulhedi (Village of witness Liyaqat) Uttar Predesh, via Delhi and then to Mewat via Delhi on

14.10.2013. While roaming in Delhi, this number was also used to talk to Javed Baluchi on the Pakistani number +923214460675. Statement of

witnesses Liyakar and Zameerul makes it clear that there was close association of Rashid with Abdul Subhan.

8. It is further submitted that petitioner had also got recovered two mobile phones and three SIM card numbers i.e. 8094518399 (Voda Raj.),

8502902618 (Idea Raj.), and8502902589 (Idea Raj) from Ghagas Hills, Nagina, Mewat. These three SIM cards were the same SIM cards which

were run on the same IMEI phone number as provided in the input by Central Intelligence Agency. Out of these three recovered SIM cards, one

mobile number 8094518399 was used by Rashid to talk to Javed Baluchi on 19.11.2013. Another mobile number 8094515837 was purchased on

28.11.2013 on fictitious identity. Mobile number 8398027101 with handset having IMEI no. 3515450475591614 recovered from accused Shahid was in

frequent contact with petitioner Rashidâ??s mobile number 8930899979 from 30.10.2019 to 06.12.2013. This number was also used in the same

IMEI/handset in which 8094518399 and 8094515837 were used by accused Rashid to talk to Javed Baluchi. To ascertain the suspicious conversation,

Rashid was directed to give his voice sample but he refused to give sample of his voice for comparison. The intercepted calls between Arshad &

Javed Balluchi and Rashid and Javed Balluchi were sent to CFSL for comparison and it is on record that the person who was taking with Arshad &

Rashid is the same person i.e. Javed Baluchi.

9. It is next submitted that during trial Aris and Liyakat have already been examined as PW-11 and 3 and they have remained consistent and

unimpeachable throughout. Their testimonies in addition to other evidence, establishes the chain and association of the accused persons with each

other and also their active participation in the unlawful activities. CDR analysis and other evidence conclusively reflect that Rashid was an active

member of LeT.

10. Perusal of entire record, thus, reveals that petitioner along with accused

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Abdul Subhan had hatched a criminal conspiracy to commit terrorist

activities in Delhi and NCR. He also raised funds in the name of jihad. Petitioner also got recovered two mobile phones and three SIM cards bearing

no. 8094518399 (Voda Raj.), 8502902618 (Idea Raj.), and 8502902589 (Idea Raj) from Ghagas Hills, Nagina, Mewat. The number 9992664785

recovered from Aris was also used by petitioner to contact with Javed Baluchi over Pakistan. It is further submitted that mobile number 8398027101

with hand set having IMEI number 3515450475591614 was recovered from accused shahid. This number was in frequent contact with accused

Rashidâ??s mobile number 8930899979 from 30.10.2013 to 06.12.2013. This number was also used in the same IMEI/handset in which 8094518399

and 8094515837 were used by accused Rashid to talk to Javed Baluchi. The intercepted calls between Arshid and Javed Balluchi and Rahid and

Javed Balluchi were sent to CFSL for comparison and it is on record that the person who was taking with Arshad and Rashid is the same person i.e.

Javed Balluchi. It is a settled law that at the stage of bail, the evidence need not be analyzed and examined in detail. The trial court will no doubt

appreciate the evidence and will take into account all the submissions/ contentions of the Ld. Counsel for the petitioner. At this stage, it is not

permissible to the court to conduct a mini trial. However, material on record links the petitioner Rashid with the alleged unlawful activities.

11. In view of the above material appearing on record, this court, therefore, finds no merit in the submission of Ld. Counsel for the petitioner that since

co-accused Shahid was granted bail, petitioner is also entitled to get bail on the ground of parity. In the case of Shahid, he was granted bail as his role

was limited to the extent of arranging unidentified SIM Cards and mobile handsets to the co-accused persons. There was nothing on record to suggest

that accused Shahid was in touch with Abdul Subhan, Arshad or Javed Baluchi. On the other hand there is material on record to suggest that

petitioner has played an active role in commission of alleged offence and therefore, benefit of parity cannot be extended to the petitioner. Moreover,

no straitjacket formula can be laid down for grant of bail. Each case has its own peculiar facts and circumstances.

12. In view of allegations appearing on record, and keeping in mind the role of the petitioner in the commission of alleged offence, no grounds for bail

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are made out at this stage. The bail application is therefore, dismissed and stands disposed of accordingly.

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