
(2021) 11 DEL CK 0173

In the Delhi High Court

Case No : Bail Application No. 1828 Of 2021, Criminal Miscellaneous Application
No. 12740 Of 2021

Naveen Kasana

APPELLANT

Vs

State Nct Of Delhi

RESPONDENT

Date of Decision : 29-11-2021

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 195A, 302, 307, 392, 394, 395, 397, 412

Arms Act, 1959 — Section 25, 27

Code Of Criminal Procedure, 1973 — Section 161

Citation : (2021) 11 DEL CK 0173

Hon'ble Judges : Subramonium Prasad, J

Bench : Single Bench

Advocate : Kanhaiya Singhal, Meenakshi Chauhan

Final Decision : Dismissed

Judgement

Subramonium Prasad, J

1. The petitioner seeks regular bail in FIR No.272/2018 registered at Police Station Jagat Puri for offences under Sections 395/397/120B/412/34 IPC and Sections 25/27 of the Arms Act.

2. Facts, in brief, leading to the instant petition are as under:

a) One Umesh Bansal S/o Sh. Rameshwar Prasad Bansal R/o H.No. B-802, Apex the floors Sector 18 Vasundhara, Ghaziabad, UP gave a complaint stating that he runs a cloth trading business having its office at H.No. A-30 1st Floor, Gali No.3, Old Arjun Nagar, Jagatpuri, Delhi. It is stated that on 17.09.2018 he along with his worker namely, Ram Sewak S/o Ram Prasad R/o H.No. A-81/B, Gali No 4, Rajveer Colony, Ghadoli Extention, Delhi, had gone to Shalimar Bagh to receive payment of Rs 2,70,000/-. It is stated that they kept the money in one bag and left on their scooty. It is stated that the complainant was riding the scooty and

Ram Sewak was sitting at the back. It is stated that at around 3:50 PM they reached the shop. It is stated that when they reached in front of their shop, two persons, aged about 25-30 years, came there on a black coloured Splendour motor cycle. It is stated that the person sitting at the back of the motor cycle came towards the complainant and tried to snatch the bag containing money. It is stated that the person riding the motor cycle took out a pistol and fired at the complainant and Ram Sewak and snatched the bag. It is stated that after snatching the bag, the person riding pillion, also fired a shot from his pistol which hit the left thigh of Ram Sewak. It is stated that the accused took one more bag from the scooty and fled from the place and the complainant could not note down the number of the motor cycle. It is stated that Ram Sewak was taken to Dr. Hedgewar Hospital. Police was informed about the incident. Police came to the hospital and received the MLC of Ram Sewak being, MLC No 3478/18. On this complaint FIR No.272/2018 was registered at Police Station Jagat Puri for offences under Sections 394/397/34 IPC and Sections 25/27 of the Arms Act. Police came to the spot and four empty cartridges and four bullet leads were recovered and seized.

b) Statement of the complainant was recorded under Section 161 Cr.P.C wherein he stated that due to anxiety and the incident he had forgotten to tell about Rs.5,00,000/- which he had kept in the Scooty. He, therefore, stated that a total of Rs.7,70,000/- had been stolen by the accused persons.

c) During investigation CCTV footages were obtained and analysed. On the basis of the CCTV footage, CDR of one Sahib@Prabhjot S/o Tajender Singh was analyzed and it was found that he was in constant touch with one Sakshi W/o Ravinder. CDR of Sakshi's phone number was analyzed and it was found that she was in constant touch with one Indal S/o Brijlal. Location of both the numbers was found to be near the place of incident. Indal and Ravinder were arrested and their statements were recorded. In their disclosure statement they stated that Anil@Annu, Sahib@Prabhjot, Ravinder@Babloo, Shakil@Arvind and the petitioner herein were involved in the commission of offence.

d) The petitioner herein was running in Judicial Custody at Dasna Jail, Ghaziabad. He was formally arrested on 06.10.2018. Section 395 IPC was added in the FIR. TIP proceedings were conducted and the petitioner was identified by the injured and the eye-witness. The petitioner was not identified by the complainant, however, it is pertinent to note that the complainant lodged a complaint, being FIR No.298/2018 for offences under Section 195A IPC at Police Station Jagatpuri, against the petitioner herein stating that the petitioner and his associates have threatened him not to identify the petitioner during TIP proceedings.

e) Out of the total amount of Rs.7,70,000/-, Rs.3,20,000/- was recovered from the flat of the petitioner. A pistol with five live cartridges and a Hero Honda Splendour Motorcycle, which was used in commission of offence was also recovered on the instance of the petitioner.

f) Opinion on the MLC of the injured was obtained from Dr. Hedgewar Hospital where the doctor opined the nature of injury as simple.

g) Charge-sheet has been filed. Petitioner has been shown as the main conspirator who fired at the complainant and the injured and robbed his money.

h) The petitioner approached this Court for grant of interim bail on the ground of ill health of his wife and this Court vide order dated 06.02.2020 granted interim bail to the petitioner.

i) The petitioner approached the Trial Court by filing an application for grant of regular bail. The learned Trial Court vide order dated 04.05.2021 rejected the said bail application.

j) Due to deteriorating health of his wife, the petitioner filed an application for grant of interim bail before the learned Trial Court which was rejected vide order dated 18.05.2021.

k) The petitioner has thereafter filed the instant petition.

3. The petitioner filed an application being CRL.M.(B) 780/2021 in the instant bail application seeking interim bail on the ground that the wife of the petitioner is in advance stage of pregnancy and the due date of delivery is in the first week of August, 2021. Medical documents were verified by the learned APP and this Court vide order dated 23.07.2021 granted interim bail to the petitioner from 29.07.2021 to 12.08.2021. On 12.08.2021 the petitioner moved an application for extension of bail and the interim bail of the petitioner was extended till 16.08.2021 and was later on extended till 25.10.2021 and subsequently till 23.11.2021 and the petitioner was directed to be present in Court.

4. Mr. Kanhaiya Singhal, learned counsel appearing for the petitioner, states that there are discrepancies in the amount that is alleged to have been robbed from the complainant. He states that in the FIR it is stated that the complainant and Ram Sewak had gone to Shalimar Bagh to receive payment of Rs 2,70,000/-. It is stated that they had kept the money in one black coloured bag which was put in the front of the scooty and the same bag was allegedly snatched by the petitioner herein and the co-accused. He states that in the disclosure statement dated 06.10.2018, the petitioner has been made to state that in the bag there was a sum of Rs.5,00,000/- and he got Rs.1,50,000/- as his share. The learned counsel for the petitioner states that in the second disclosure statement dated 13.10.2018, the petitioner was made to state that there were Rs.7,70,000/- in the bag out of which he got Rs.3,30,000/- as his share. He further states that the petitioner has not been identified by the complainant. A chart has been filed by the petitioner stating that even though as on 13.07.2021, the petitioner is shown to be involved in 18 cases and other than the present case there is only one more case punishable under Section 302 IPC. The learned counsel for the petitioner further states that out of 18 cases, the petitioner is now facing trial only in five cases and he has either been discharged or acquitted in the rest of

the cases. He states that the petitioner is in custody for more than two years now and the charge-sheet has been filed and, therefore, the petitioner be released on bail. He further states that bail has been granted to four co-accused persons. He, therefore, states that the petitioner is entitled to bail on the ground of parity. He further states that the petitioner's wife has delivered a baby in the month of August and, therefore, bail be granted to the petitioner so that he can look after the new born. He states that the petitioner was released on interim bail by this Court vide order dated 06.02.2020 and he has not abused the bail granted to him.

5. Per contra, Ms. Meenakshi Chauhan, learned APP for the State, vehemently contends that the petitioner is involved in a day-light robbery wherein they have fired on the complainant and the pillion rider, Ram Sewak, and have robbed a substantial amount of money. She states that the discrepancy in the disclosure statement of the petitioner does not lead to any inference that the case of the prosecution is false. She states that in the FIR it is mentioned that a sum of Rs.2,70,000/- was kept in the bag, however, in the supplementary statement, which was given on the very next date of registration of FIR, the complainant had stated that due to anxiety and the incident he had forgotten to tell about Rs.5,00,000/- which he had kept in the Scooty. She states that four empty cartridges and four bullet leads were recovered from the spot and were seized. She states that the CDRs show that the accused were in touch with each other. She further states that Rs.3,20,000/- was recovered from the flat of the petitioner and a pistol with five live cartridges and a Hero Honda Splendour Motorcycle, which was used in commission of offence, was recovered at the instance of the petitioner. She further states that the petitioner has been correctly identified by the injured/Ram Sewak and the eye-witness. She states that the complainant could not identify the petitioner and the reason for not identifying the petitioner is very clear from the fact that on the very same day he received a threat from the petitioner not to identify him during TIP and the complainant had lodged an FIR for the same, being FIR No.298/2018 for offences under Section 195A IPC at Police Station Jagatpuri, against the petitioner herein stating that the petitioner and his associates have threatened him not to identify the petitioner during TIP proceedings. The learned APP for the State also places reliance on the FSL report which states that "The individual characteristics of firing pin marks and breech face marks present on evidence cartridge cases marked as 'TC1' to 'TC3' were examined and compare under the comparison Microscope Model Leica DMC and were found identical". She, therefore, states that the petitioner ought not be granted bail.

6. Heard Mr. Kanhaiya Singhal, learned counsel appearing for the petitioner, Ms. Meenakshi Chauhan, learned APP for the State, and perused the material on record.

7. Even as per the chart given by the petitioner, the petitioner is involved in 18 cases out of which other than the present case he is still facing trial in the

following cases:

S.No.

FIR No.

Police Station

Under Sections

1.

2801/2009

Shahibabad

302 IPC

2.

454/2014

Sadar Bazar

392/397/34

IPC and 25 Arms Act

3.

236/2015

Sadar Bazar

3 MCOC Act

4.

3/2015

Crime Branch

25/54/59 Arms Act

8. The petitioner is, therefore, involved in cases punishable under Sections 302, 392, 397 IPC and MCOC Act (Maharashtra Control of Organised Crime Act). The petitioner has been correctly identified by the injured/Ram Sewak and the eye-witness. Even though the complainant did not identify the petitioner but this can be attributed to the threat received by the complainant for which he had lodged a separate FIR, being FIR No.298/2018 for offences under Section 195A IPC at Police Station Jagatpuri. The FSL report is against the petitioner.

9. The factors which have to be kept in mind while considering an application for bail are:

a. whether there is any prima facie or reasonable ground to believe that the

accused had committed the offence;

b. nature and gravity of the accusation;

c. severity of the punishment in the event of conviction;

d. danger of the accused absconding or fleeing, if released on bail;

e. character, behaviour, means, position and standing of the accused;

f. likelihood of the offence being repeated;

g. reasonable apprehension of the witnesses being influenced; and

h. danger, of course, of justice being thwarted by grant of bail.

10. This Court has taken into account the fact that the petitioner has been granted interim bail by this Court on 23.07.2021 and the fact that the petitioner's wife had delivered a child in August, 2021 and also the fact that four co-accused persons have been granted bail in the present case but keeping in mind the fact that the petitioner is involved in serious offences like robbery, MCOC Act and offences punishable under Sections 302, 392, 397 IPC and the fact that the complainant was threatened by the petitioner on the day of TIP and the fact that the petitioner is alleged of an offence punishable under Section 307 IPC, and there is all likelihood of the petitioner threatening the injured/Ram Sewak, the eye-witness and the complainant, this Court is not inclined to grant bail to the petitioner in the instant case at this stage.

11. The petitioner is present in the Court today. He seeks a week's time to surrender. The petitioner is directed to surrender on or before 06.12.2021 before the concerned Jail.

12. With these observations, the petition is dismissed along with the pending application(s), if any.