

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 31st JANUARY, 2022

IN THE MATTER OF:

+ **BAIL APPLN. 4171/2021**

GURNAM SINGH

..... Petitioner

Through: Mr. Mohit Mathur, Sr. Advocate with
Mr. Sandeep Tyagi and Mr. Sameer
Chandra, Advocates.

versus

THE STATE NCT OF DELHI

..... Respondent

Through: Ms. Meenakshi Chauhan, APP for the
State with SI Sandeep Yadav, PS
Staff South West District

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This application under Section 439 Cr.P.C. read with Section 482 Cr.P.C. has been filed seeking grant of bail in FIR No. 108/2021 registered at Police Station Delhi Cantt. under Sections 392/395/397/120-B/412/188/269/34 of the Indian Penal Code, 1860 (*hereinafter*, "IPC") & 25/27 of the Arms Act, 1959.

2. The facts, in brief, leading up to this petition are as follows:

- a) It is stated that the Complainant had a flight to Dubai on 22.04.2021 at 4:40 AM for which he left his house at 21.04.2021 at about 11:00 PM by an Ola cab and went to Bangla Sahib Gurudwara, Connaught Place. It is stated that

there he met his friend, Paras, who took the Complainant on his scooter, along with the Complainant's belongings, and dropped him near Dhaula Kuan petrol pump around 12:45 AM. It is stated that Paras called his friend, Pratap, and told him to come with his car to Dhaula Kuan petrol pump as the Complainant was standing there with his belongings. It is stated that Pratap, and after some time, Pratap's acquaintance, Surjit, came to the spot in their respective cars, and Surjit's friend, Nayyar Qureshi, also accompanied him. It is stated that the Complainant had kept his belongings in the dickey of the car which also contained one hand bag and trolley belonging to Pratap. It is stated that the Complainant sat in the backseat of the car, with Surjit on the driver's seat and Pratap in the front passenger seat.

- b) It is stated that as Pratap was giving the Complainant the plane ticket and some money, one boy came, opened the door of the car, sprinkled chilli-like powder in the eyes of the Complainant. It is stated that thereafter, the Complainant saw 2-3 boys were removing the belongings from the dickey of the car and keeping them in the adjacent Ritz car, and that then they fled towards Gurgaon. It is stated that as it was night time, no one came to help the Complainant and his acquaintances. It is stated that the Complainant's belongings which were taken included two mobile phones, one pair of slippers, three pairs of shoes and total of 15,000 Dirhams, and other things.
- c) It is stated that the ASI on duty went to the spot and found the

Complainant in a perplexed state, and on checking the CCTV footage of the spot as well as after recording the statement of the Complainant, noted that commission of offences under Sections 392/188/269/34 IPC had been made out.

- d) The Petitioner herein was arrested on 30.05.2021, and regular bail application of the Petitioner herein was dismissed by the Ld. Trial Court on 15.09.2021. Chargesheet has been filed under Sections 392/188/269/34/395/397/120-B/412 IPC and Sections 25/27 of the Arms Act, 1959. The Petitioner has now approached this Court for grant of regular bail

3. Mr. Mohit Mathur, learned Senior Counsel appearing on behalf of the Petitioner, has submitted that not only was the instant FIR lodged after an unexplained delay of 19 hours, but that it also fails to disclose the identity of the Petitioner herein. He has submitted that it was only on the statement of the co-accused Amrik Singh that the Petitioner herein was arrested. Mr. Mathur has further brought attention to the fact that the 4000 Riyal which was allegedly recovered from the house of the Petitioner had been planted surreptitiously.

4. It has also been submitted by the learned Senior Counsel that the Petitioner has been falsely implicated in the instant matter and that the FIR itself discloses false facts. He has stated that the FIR initially mentioned that 15,000 Dirhams had been robbed from the Complainant and that this was improved at a later point of time by stating that it was Riyal and not Dirhams which had been robbed. He has further stated that there exists no proof to showcase that the Complainant was carrying 15,000 Riyal at the time of the alleged robbery.

5. Mr. Mohit Mathur, learned Senior Counsel for the Petitioner, has submitted that the Petitioner was arrested 30.05.2021 and has been in judicial custody since 03.06.2021, and that he has joined the investigation. Further, the trial is likely to take a long while. Being a permanent resident of Delhi and with roots in society, the learned Senior Counsel has submitted that there is not probability of the Petitioner absconding and, therefore, as per the law laid down by the Supreme Court with regard to granting of bail in serious offences, the Petitioner herein should be enlarged on bail.

6. *Per contra*, Ms. Meenakshi Chauhan, learned APP for the State, has vehemently opposed the instant bail application on the grounds that the Petitioner has played a crucial role in the commission of the offences alleged in the instant FIR. She has submitted that the Petitioner was in constant touch with the key conspirator, Sajjan Singh, and that there is great likelihood that if the Petitioner is released on bail, he will abscond and not appear during trial. She has further argued that there is also the possibility of the Petitioner tampering with the evidence and influencing/threatening the Complainant and other prosecution witnesses. She has also brought to the fore the information that the Petitioner's bail applications were dismissed by the Ld. Trial Court on multiple occasions, i.e. on 02.07.2021, 05.08.2021, 15.09.2021 and 26.10.2021.

7. Heard Mr. Mohit Mathur, learned Senior Counsel for the Petitioner, Ms. Meenakshi Chauhan, learned APP for the State, and perused the material on record.

8. A perusal of the chargesheet on record indicates that with the aid of the CCTV footage of the place of the alleged incident, the identity of one of the accused namely, Gurmukh Singh, was established by eyewitness Pratap

Singh @ Monu and he was seen flagging a pistol towards the Complainant and his acquaintances. A detailed version of the statement of Pratap Singh @ Monu also reveals that the driver of the alleged Ritz car was one Amrik Singh @ Rinku who was apprehended and from whose possession, one robbed mobile phone and 500 Riyal were recovered.

9. The chargesheet states that during the interrogation, accused Amrik Singh @ Rinku revealed that he knew one Gurnam Singh (the Petitioner herein) for the past 7-8 years and that the Petitioner would procure visas for people for sending them on trips to foreign countries. It states that the Petitioner had informed his maternal uncle, Sajjan Singh, who was contesting for Gurudwara Committee elections, that the Petitioner and Pratap Singh @ Monu were dispatching a large amount of Riyal currency along with the belongings of a tourist and that this tourist could easily be robbed. Thereafter, the Petitioner, Sajjan Singh and four acquaintances of Sajjan Singh, i.e. Gurmukh Singh, Taponi and two other unknown persons, executed the plan to commit the robbery with Sajjan Singh provided arms to the accused to rob the victims after spreading chilli powder over the eyes of the Complainant.

10. It is further stated in the chargesheet that Sajjan Singh gave the Petitioner herein 06 Riyal currency of 500 denomination each and this was discovered from the instance of the Petitioner in pursuance of the disclosure statement of co-accused Amrik Singh @ Rinku. The Ritz car was also recovered and the statement of Amrik Singh @ Rinku led to the arrest of the Petitioner herein. The chargesheet also reveals that the analysis of the CDR records of the accused persons indicate that the Petitioner was found with the accused persons at the same place i.e. Chandra Vihar, Nilothi, Delhi, before

the incident around 8 PM, and that he was in constant touch with the main conspirator Sajjan Singh and co-accused Amrik Singh @ Rinku.

11. The Supreme Court has time and again laid down the parameters that must be taken into account by a Court while considering an application seeking grant of bail. In the case of Ram Govind Upadhyay v. Sudarshin Singh, (2002) 3 SCC 598, the Supreme Court has observed that the following factors must guide the exercise of the power to grant bail:

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a

conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

12. Similarly, in Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496, the Supreme Court held as under:

“9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- i. whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- ii. nature and gravity of the accusation;*

- iii. *severity of the punishment in the event of conviction;*
- iv. *danger of the accused absconding or fleeing, if released on bail;*
- v. *character, behaviour, means, position and standing of the accused;*
- vi. *likelihood of the offence being repeated;*
- vii. *reasonable apprehension of the witnesses being influenced; and*
- viii. *danger, of course, of justice being thwarted by grant of bail.*

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal.”

In Mahipal v. Rajesh Kumar, (2020) 2 SCC 118, the Supreme Court observed that no straitjacket formula exists for courts to assess an application for grant or rejection of bail, and that the same involves the balancing of numerous factors. It stated:

“12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had

committed the offence and on a balance of the considerations involved, the continued custody of the accused subserves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.”

13. The material on record in the instant case discloses that the Petitioner played a crucial role in the commission of the alleged offence as he provided information regarding the victim/Complainant that allowed the co-accused to proceed with the plan to rob the Complainant. The Petitioner was not only involved in the planning of the offence, but also took an active part in the execution of the offence as he was present at the spot. The chargesheet also reveals that the Petitioner was in constant touch with the mastermind of the crime, Sajjan Singh, and that a part of the robbed money was recovered from the instance of the Petitioner. Furthermore, the CDR of the Petitioner also indicates that the Petitioner was with the co-accused before the commission of the alleged offences. Investigation has revealed that the petitioner used to procure visas for people and dispatch them to foreign countries. The modus operandi of the petitioner and the other accused persons indicates that the petitioner is a part of an organized gang who knew about the persons who were to be sent outside the country. They were aware of the destination of the victims and the foreign currency which was being carried by them. The modus operandi indicates that probably the victims themselves did not know about the nature of currency they were to carry. The discrepancy in the initial statement of the complainant that he was carrying Dirhams which was later found that he was carrying Riyals is not being considered at this

juncture.

14. The offences for which the Petitioner has been charge-sheeted are serious in nature and entail a punishment extending up to life imprisonment, if convicted. The alleged crime was *prima facie* methodically planned and executed, and it appears that the Petitioner, if released on bail, is likely to repeat the offence. Moreover, weapons which the Petitioner allegedly carried during the commission of the alleged offences were recovered from the instance of the co-accused of the Petitioner. Further, the Petitioner is also related to the key conspirator, Sajjan Singh, who was standing for Gurudwara Committee elections and it can be deduced that the Petitioner assumes a position of power in society, and the possibility of the Petitioner tampering with evidence or threatening the Complainant as well as the prosecution witnesses cannot be ruled out.

15. In light of the above, this Court does not deem it fit to grant bail to the Petitioner herein at this juncture.

16. With the above observations, the instant bail application is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J.

JANUARY 31, 2022

Rahul