



CNR No. DLCT01-000975-2023

IA No. 01/2023

SC No. 50/2023

State Vs. Mehandi Hasan and Ors.

FIR No. 167/2022

PS Rajinder Nagar

U/s. 397/395/201/34 IPC & 25/27/54/59 Arms Act

REGULAR BAIL APPLICATION OF APPLICANT MOHD.
MUSTKEEN

02nd June, 2023

Present: Sh. Mohd. Iqrar, Ld. Addl. PP for state.
Sh. Tarun Kumar Makhija, ld. Counsel for
applicant/accused Mohd. Mustkeen.
IO SI Dharmendra Sharma in person.

1. Reply filed. Arguments heard.
2. This is an application filed on behalf of the applicant/accused Mohd. Mustkeen (hereinafter referred to as applicant) for grant of regular bail.
3. It is argued that the applicant is in J.C. since 14.06.2022. It is further argued that the applicant has been falsely implicated in the present case. It is further argued that the applicant is a young man of aged about 24 years and running a small dhaba for earning his livelihood. It is further argued that the applicant has nothing to do with the alleged offence and has been made a scapegoat. It is further argued that nothing incriminating has been recovered from the applicant nor at his instance. It is further argued that the co-accused Md. Kashif @ Badshah and Mohd. Tauseef have already been granted bail in this case. It is further argued that the

investigation has been completed, charge-sheet has already been filed and the applicant is no more required for the purpose of custodial interrogation. Ld. Counsel for applicant has relied upon the judgment in case *Muthuswami Vs. State of Madras*, 1951 SCC 1020 : 1951 SCC OnLine SC 62 to support his arguments. It is prayed that the applicant be released on bail.

4. Application has been opposed by the Id. Addl. PP for State on the ground that the allegations against the applicant are grave in nature. It is further submitted that the applicant has previous involvement in similar nature of crime. It is further submitted that co-accused persons in the present case are still at large and applicant may alert them, if released on bail. It is further submitted that the applicant is not the permanent resident of Delhi and he may jump the bail. It is further submitted that the applicant may threaten the complainant and his family. It is prayed that bail application of the applicant may be dismissed.
5. As far as the question of grant of bail under Section 437 Cr. P.C. and 439 Cr. P.C. is concerned, the law in this regard has been settled by the Hon'ble Supreme Court of India in various judgments and has laid down various considerations for grant or refusal of bail to an accused in non bailable offences like:
 - (i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
 - (ii) Gravity and seriousness of offence and punishment which the conviction will entail;
 - (iii) Nature of accusation and evidence therefor;

- (iv) Reasonable possibility of securing presence of the accused at trial and likelihood of him absconding or fleeing if released on bail;
- (v) Possibility of the offence being repeated;
- (vi) Conduct, character and behaviour of accused;
- (vii) Reasonable apprehension of the witnesses being tampered with;
- (viii) Means position and standing of the accused in the society;
- (ix) Danger, of course, of justice being thwarted by grant of bail;
- (x) Balance between the rights of the accused and the larger interest of the Society/State;
- (xi) Any other factor relevant and peculiar to the accused;
- (xii) While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, but if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused.

6. In the landmark judgment of ***Gurcharan Singh and Others Vs. State (AIR 1978 SC 170)***, it was held that there is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the Courts. It was further held that there cannot be any inexorable formula in the matter of granting bail and the facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. It was further held that such question depends upon a variety of circumstances, cumulative effect of which must enter into the judicial verdict. Such judgment mentioned the nature and seriousness of nature, and circumstances in which offences are committed apart from character of evidence as some of the relevant factors in deciding whether to grant bail or not.

7. Briefly stated, the present FIR was registered on the statement of complainant Nitin Dhawan that on 08.06.2022 at around 10.25 p.m., when he was standing downstairs his house alongwith his friends, five persons came in white colour Chevrolet Cruise car and four persons came out and all were armed with pistols, who cocked the pistols and pointed towards him and looted of his golden bracelet (kada 100 gms), gold chain (25gms) and one ring (5-7 gms). At the time of leaving, they also kicked him on his abdomen. Thereafter, they fled away in the car towards New Delhi.
8. During investigation, on the basis of CCTV, the vehicle used in the dacoity was identified which was found to be stolen from Ghaziabad, U.P. The applicant alongwith his co-accused Mehndi Hasan were arrested alongwith the aforesaid vehicle and they were also found in possession of arm and ammunitions. Both of them refused to participate in TIP proceedings. As per prosecution, the clothes which were worn by the applicant at the time of commission of offence were recovered from the applicant as he was wearing the same clothes at the time of arrest and the same are visible in the CCTV footage. The other suspects namely Kukar and Aakash has still not been arrested by the investigating agency.
9. The charge u/s. 395/397/323/34 IPC and 27 Arms Act has already been framed against the applicant and the complainant is yet to be examined. The allegations against the applicant are of grave nature involving dacoity and all of the dacoits have not yet been arrested. The safety and

security of the eye witness is also a concern which needs consideration.

10. Considering the overall facts and circumstances, this Court is not inclined to grant bail to the applicant Mohd. Mustkeen.
11. Application filed by the applicant Mohd. Mustkeen for grant of bail is hereby dismissed.
12. Copy of this order be given dasti to Id. Counsel for applicant/accused.
13. A hard as well as soft copy be also sent to the concerned Jail Superintendent immediately for information and necessary action.
14. Application stands disposed of in above terms.

(SUSHIL ANUJ TYAGI)
ASJ-04/Central/Delhi
02.06.2023_(VR)