

FIR No. 323/16
State Vs. Amit Nayak etc.
PS : Pahar Ganj

16.11.2017

Present: Sh. Rohan Kanhai, counsel for applicant
Himanshu.

Sh. Parvesh Kumar Ranga, Addl. PP for State.

Heard on bail application no. 228/17.

Learned counsel for accused-applicant submits that the accused -applicant Himanshu has been charged only for offence under Section 323 IPC and there is no material to connect the accused with commission of any other offence, accused-applicant be released on bail.

In support of his submission, learned counsel has referred to following decisions:-

1. **Aman Gaur v. State** I (2012) DLT (CRL.) 967.
2. **Punitha @ Bande v. State of Karnataka** I (2017) CCR 359 (Kar.).
3. **Jagannath & Anr. v. State** I (2017) CCR 216 (Kar.).
4. **Azad v. State (Govt. of NCT of Delhi)** I (2016) DLT (Crl.) 645.

5. **Rahul Tongaria v. NCT of Delhi & Anr.**
2016 [3] JCC 1992.

6. **Pawan Kumar Gupta v. State (NCT of Delhi)** 2007 I AD (Cr.) (DHC) 169.

Learned Addl. PP has opposes the bail application in view of the role played by accused-applicant while he was member of the unlawful assembly.

In this case accused-applicant has been facing trial for offence under Section 302 read with section 149 IPC (for having committed murder of Arvind @ Surender in prosecution of common object of unlawful assembly of which he and seven others were members on 02.09.2016 at about 10 pm near Bharat Juice Corner, Aram Bagh, Service Road, Paharganj); Section 307 read with Section 149 IPC (for having attempted to commit murder of Ajay); Section 326 IPC read with Section 149 (for having caused grievous\ hurt on the person of Rahul); Section 326 read with Section 149 IPC (for having caused grievous hurt on the person of Vinod) and Section 323 read with Section 149 IPC (for having caused injury on the person of Sunil Dass)

Case is pending for prosecution evidence. Statements of six witness have already been recorded. Case is coming up on 01.12.2017 for the statement of PW Sunil Dass- complainant – injured and that accused-applicant

refused to participate in the Test Identification Proceedings.

File reveals that name of the accused-applicant does not find mention in the statement of Sunil Dass which led to registration of the case. As prosecution version, accused-applicant was arrested on 05.09.2016 on the basis of secret information. It is true that as per prosecution version, accused-applicant refused to participate in Test Identification Proceedings but there is nothing on record to suggest that after said refusal by the accused-applicant, statement of any eye witness was recorded under Section 161 CrPC to the effect that the accused-applicant was one of the assailants, and specifically regarding the role placed by him. Learned Addl. PP does not oppose this factual position. Nothing incriminating was recovered at the instance of accused-applicant. In the given circumstances, accused-applicant Himanshu is allowed bail subject to furnishing personal bond and surety bond in the sum of Rs.25,000/- each.

Application is disposed of.

(Narinder Kumar)
Special Judge-2:NDPS Act(Central)
Tis Hazari Court:Delhi
16.11.2017