

Bail Application No. 101/18
FIR No. 666/16
State Vs. Md. Kasim & Ors.
PS : Sarai Rohilla

16.03.2018

Present : Counsel for applicant Shahadat Hussain.
Addl. PP for State.

This order is to dispose of bail application No. 101/18 filed on behalf of Shahadat Hussain.

This is the second bail application. Ld. APP submits that no fresh ground is made out for release of the accused / applicant on bail, the earlier bail application having been dismissed on 4.8.2017.

Ld. Counsel for the accused / applicant submits that the earlier bail application No. 191/17 was dismissed vide order dated 4.8.2017 before framing of charge.

Order dated 4.8.2017 would reveal that firstly charge was ordered to be framed against the accused persons and only thereafter, the bail application of Shahadat Hussain was disposed of.

Ld. Counsel for the accused / applicant submits that this is a case of recovery of 8 Saudi Riyals, a part of the property stolen by the accused / applicant but the said

recovery is also doubtful and as such the accused / applicant be allowed bail.

Firstly, this is not a case against the accused / applicant only on the basis of recovery of 8 Saudi Riyals and rather the case of prosecution is that accused / applicant and three others entered into criminal conspiracy to commit dacoity at the house of complainant.

Secondly, he is also set to have committed lurking house trespass by entering the house of complainant on 28.10.2016.

Thirdly, charge for offence under Section 395 IPC has already been framed against the accused / applicant and three others for having committed dacoity of jewellery, Rs. 2 lacs, a mobile phone and some Saudi Riyals.

On 18.12.2016, 8 Saudi Riyals are stated to have been recovered from the house of accused / applicant.

Ld. Counsel for the accused / applicant has referred to statement of complainant (PW2) wherein she stated that Ghulam Mohammad, accused is the offender who removed cash and Saudi Riyals and she did not state as PW2 that the accused / applicant had removed riyals.

Even if the complainant stated so, having regard to the factum of recovery of a part of the stolen property from the accused / applicant and the complainant having

identified him as one of the offenders, the person who participated in the present crime. Complainant is being subjected to cross examination. She remains to be cross examined on behalf of three accused.

In the given situation, decision in **Salwinder Singh Vs. State of Punjab, 2017 (4) RCR (Criminal) 681** does not come to the aid of accused / applicant as therein evidence of the complainant and the material witnesses had been conducted.

Ld. Counsel for the accused / applicant has contended that accused was not named in the FIR and as such he be allowed bail. In support of this submission, the counsel has referred to decision in **Naveen @ Babbu Vs. State of Haryana, CRM-M No. 33009 /2016 (O&M)** by Hon'ble Punjab & Haryana High Court on 03.10.2016.

Even though accused / applicant was not named in the FIR, keeping in view that he was named by two co-accused Ghulam Mohammad and Kasim soon after the occurrence in their disclosure statements, decision of Naveen's case (supra) also does not come to the aid of accused / applicant.

It has also been contended by the counsel that according to PW2, at the time of occurrence, the offenders had their faces covered with handkerchiefs and only their

eyes were visible and as such, it cannot be said that accused / applicant was one of the offenders.

In her statement as PW2, complainant stated that four boys entered her house by covering their faces except eye portion, using handkerchiefs. At the same time, she identified Shahadat Hussain, accused who was present in court, as the person who was armed with a knife and removed other belongings from the almirah and also a mobile phone which was being charged. She denied that police ever showed to her any of the four offenders at the police station. She further denied false implication of Shahadat Hussain, accused / applicant.

In the facts and circumstances, decision in **Suleman Vs. State of Punjab, CrI. Misc. No. M-34218/16 (O&M)** by the Hon'ble Punjab & Haryana High Court on 17.2.2017 does not help the accused / applicant.

Decision in **Rajinder Singh @ Amni Vs. State of Punjab in CRM-M No. 43100/16 (O&M)** by the Hon'ble Punjab & Haryana High Court on 8.5.2017 also does not come to the help of accused / applicant as the said case was based on extra judicial confession made by the accused, before a person, who was a stock witness.

As a result, keeping in view the grave accusation levelled against the accused and the material available on

record, court does not find any ground to release the accused / applicant on bail.

Bail application is dismissed.

(Narinder Kumar)
Special Judge-2:NDPS Act(Central)
Tis Hazari Court:Delhi
16.03.2018