

FIR No. 666/16
PS : Sarai Rohilla
State v. Mohd. Kasim etc.

18.05.2017

Present: Sh.Wasi-Ur-Rehman, Addl. PP for the State.
Sh.F.Haque, Counsel for accused-applicant Mohd.
Kasim.

Ld. Counsel for the accused-applicant submits that this is a case where the accused-applicant has been falsely implicated and as such, is entitled to bail. In support of his submission, Ld. Counsel has referred to the statement made by Farhena Irfat-complainant, which led to registration of this case and also to the supplementary statement wherein she deposed as to the identification of the assailants on seeing CCTV footage. Ld. Counsel submits that when the complainant stated in the supplementary statement that the assailants, who committed dacoity, were having muffled faces, she could not identify them, but in her statement made to the police, which led to registration of the case, she identified Mohd. Kasim and Gulam Mohd.as accused, which is improbable.

Further, it has been submitted that prosecution version that the accused-applicant and his companions were found in possession of country made pistol and live cartridges, is not believable as Ayaz Ahmed, who is alleged to have apprehended the accused-applicant and Gulam Mohd.while

taking away the safe, could not apprehend the two accused while they were armed with loaded fire arms. It has also been pointed out that during investigation, no safe was seized by the police which further creates doubt in the version of the prosecution.

Occurrence is alleged to have taken place on 28.10.16 at about 7:00 pm at H.No.313/84B, Street NO.6, Tulsi Nagar, Inderlok, Delhi, wherein four boys are stated to have entered the said house and put tape on the mouth of Kehkashan (one of the co-accused) and thereafter, they put tape on the mouth of complainant Farhena Irfat. Those boys were armed with guns and knives. Those boys proclaimed that the inmates be shot at and stabbed. Then those boys caused her beatings using hands, and butts of the weapons. They removed her jewellery, which she was wearing. They also removed some jewellery, 2 lacs rupees and some Saudi Riyal from an almiraha and charger of a mobile phone. They are also alleged to have removed safe from the said house.

As per prosecution version, Ayaz Ahmed, brother of the complainant with the help of persons from public caught hold of two boys but the other two made their good to escape. The two boys, who were apprehended at the spot were Mohd. Kasim (applicant) and Gulam Mohd.

Undisputedly, the safe was not seized. There is evidence on record to suggest that since there was no item

contained in the safe, the same was not seized. Had no such safe been taken away, the complainant and Ayaz Ahmed would not have stated so in their statements

It is true that in her statement Farhena Irfat named Mohd. Kasim and Gulam Mohd-accused as two of the offenders involved in the dacoity, in her supplementary statement dated 12.1.07, she stated that at the time of occurrence the assailants were having their faces muffled with clothes and that she had identified them in view of their physical description and their speech. However, she clearly stated in her statement leading to registration of this case, the name of the accused-applicant and Gulam Mohd.as the accused persons apprehended by her brother Ayaz Ahmed and persons from the public, which cannot be doubted at this stage,simply because Investigating Officer did not record statement of any such person from the public who helped Ayez Ahmed to apprehend two accused including the accused-applicant. Even if, the two accused were found in possession of fire arm and cartridges, for the present, the version of the prosecution cannot be said to be improbable simply on the ground that the two accused could not be apprehended when they were so armed. It appears that Ayez Ahmed and persons from public gathered courage and succeeded in apprehending the accused-applicant and his companion and they were also thrashed by the public.

MLC of the complainant reveals that she was

medically examined on 29.10.15 at about 12:15 a.m. She complained of headache and pain on the right cheek and upper lip. Even if, no external injury was noticed by the doctor, it cannot be said at this stage that she was not subjected to robbery/dacoity or beatings as alleged by her in her first statement.

In view of the above discussion, court does not find any ground to enlarge the accused-applicant on bail. Same is hereby dismissed.

(Narinder Kumar)
Special Judge NDPS – 02 (Central)
Tis Hazari Courts, Delhi/18.05.2017