

State Vs. Deepak @ Milkha
CNR No. DLCT01-006641-2023
SC No. 297/2023
FIR No. 74/23
P.S. Sadar Bazar

03.08.2024

Present : Mr. Ankit Aggarwal, Ld. Addl. PP (substitute) for the State.
Mr. J. S. Mishra, Ld. Chief Legal Aid Defence Counsel for the accused, namely, Deepak @ Milkha.

ORDER

1. This is the second bail application, moved on behalf of applicant, namely, Deepak @ Milkha ('***applicant*** for short), in terms of provisions under Section 439 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*)/Section 483 of Bhartiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as 'BNSS'*), seeking regular bail. Pertinently, the first bail application of the applicant was dismissed by the Ld. Predecessor Judge *vide* order dated 27.05.2023.

2. Learned Counsel for the applicant outrightly submitted that the applicant is innocent and has been falsely implicated in the present case by the police officials of concerned Police Station. In this regard, Ld. Counsel further submitted that the applicant has nothing to do with the alleged offence, with which he has been charged with. Ld. Counsel further submitted that the investigation *qua* the applicant has already concluded and the applicant is no more required for any further custodial interrogation and no fruitful purpose would be served by keeping the applicant in judicial custody any further. Ld. Counsel further submitted that the applicant has been languishing in judicial custody ever since 27.02.2023, without there being any chances

of trial getting concluded, anytime in near future. Ld. Counsel further submitted that the applicant is a man of around 32 years belonging to the underprivileged family and having a family to support. Lastly, it was submitted by the Ld. Counsel that applicant is ready to abide by the terms imposed by this Court while granting bail, including cooperating with the investigating authorities for further investigation, as and when summoned/requisitioned. In support of the said contentions, reliance has been placed upon the decisions in *Shri Phool Kumar v. Delhi Administration (1975) 1 SCC 797*; *Paramjeet Singh v. State of Punjab, CRM-M 50243/2021*; *ShafinJahan v. Ashokan K. M. 2018 (16) SCC 368*; and *Satender Kumar Antil v. CBI (2022) 10 SCC 51*.

3. *Per contra* Ld. Addl. PP (substitute) for the State vehemently opposed the present application on the ground that the applicant was actively involved in the commission of offence in the instant case, being grave in nature. Further, as per Ld. Addl. PP for the State, the allegations levelled against the applicant are quite serious in nature. Ld. Addl. PP for the State further submitted that the case is at the stage of prosecution evidence and statement of the complainant/PW-1 Rinku has not concluded yet and in case bail is granted to the applicant, there are chances of the applicant inducing, threatening and/or coercing the witnesses, besides damaging material evidence. Further, as per the Ld. Addl. PP for the State, there is a reasonable likelihood of flight risk of the applicant, besides there has been no change in circumstance since the applicant's dismissal of last bail application.

4. The arguments of Ld. Counsel for the applicant as well as that of Ld. Addl. PP for the State have been heard as well as case record(s), thoroughly perused.

5. The quandary that surrounds the determination of bail is replete with multitudinous factors, involving establishment of a balanced approach between the conflicting interests. While on one hand, such an adjudgment involves safeguarding the right to liberty of an individual, while preventing harassment, humiliation, and unjustified detention of the accused, on the other hand, it entails ensuring free, fair and full investigation. Undeniably, liberty of an individual is valuable right, however, it is trite law¹ that such a protection cannot be absolute and there may be instances where the collective interest of the community may predominate the right² of personal liberty of an individual. Ergo, it is quite understandable that while exercising the discretion to grant or refuse bail the Court will have to take into account various considerations³, such as; *“the nature and seriousness of the offence; the circumstances in which the offence was committed; the character of the evidence; the circumstances which are peculiar to the accused; a reasonable apprehension of witnesses being influenced and evidence being tampered with; the larger interest of the public or the State; the position and status of the accused with reference to the victim and the witness; the likelihood of the accused fleeing from justice; the likelihood of the accused repeating the offence; the history of the case as well as the stage of investigation, etc...”*

Further, strikingly, it is a settled law⁴ that where there are

¹ *Masroor v. State of U.P.*, (2009) 14 SCC 286

² *Shahzad Hasan Khan v. Ishtiaq Hasan Khan*, (1987) 2 SCC 684

³ *Anil Mahajan v. Commissioner of Customs*, 2000 SCC OnLine Del 119; and *Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496

⁴ *Anil Mahajan v. Commissioner of Customs*, 84 (2000) DLT 854

sufficient reasons to have reasonable apprehension that the accused would flee from justice and/or tamper with prosecution evidence, such an accused can be refused bail. Apposite to further note that though, the courts are required to give reasons at the stage of determination of bail, however, a detailed examination of evidence and elaborate documentation of the merits of the case is not required¹ at such a stage. Further, court(s) cannot go into the question of credibility and reliability of the witnesses/evidence put up by the prosecution, which can only be tested during the trial².

6. At the same time, this Court observes that the principles of *res judicata* do not apply to bail application meaning thereby successive bail application can be filed. However, under such circumstances it is incumbent on the court(s) entertaining such subsequent bail applications, “*to record³ what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications.*” Clearly, the only thing to be considered by the court(s) at such a stage is that there must be material, and not cosmetic change in circumstances⁴ convincing the court(s) to grant any indulgence in favour of the applicant. Apposite to further mention here that it has been persistently avowed by various courts⁵ that mere filing of chargesheet would not amount to material change in circumstances for the purpose of bail.

7. Therefore, being cognizant of the principles hereinunder noted, this Court outrightly observes that the primary

¹ *Jagjeet Singh v. Ashish Mishra*, (2022) 9 SCC 321

² *Satish Jaggi v. State of Chhattisgarh*, (2007) 11 SCC 195

³ *Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528

⁴ *Anil Kumar Bansal v. State*, 2011 SCC OnLine Del 2647

⁵ *Virupakshappa Gouda v. State of Karnataka*, (2017) 5 SCC 406; *Sunil Gupta v. State of Madhya Pradesh Misc. CrI. Case No. 40317/2021, dated 13.08.2021 (Hon'ble Madhya Pradesh High Court)* and *Prem Singh v. State of Punjab*, 2020 SCC OnLine P&H 1341

contention of the Ld. Counsel for the applicant is that he has been wrongly roped into the present proceedings. However, in this regard it is outrightly asserted that a detailed scrutiny of the evidence or evaluation of their truth/veracity cannot be undertaken at the stage of bail, so as to prejudice either the prosecution's or the defence's case. Suffice it is for the present purpose to note that from a perusal of the documents placed on record, in particular, from the statements of the witnesses, the applicant's complicity and active role in the commission of offence *prima facie* stands established, in so far as the applicant, along with the co-accused persons, namely Gouri and Kukdu (both absconding) is asserted to have robbed the complainant of four bundles containing 17 ladies suit from moving rickshaw while brandishing a deadly weapon/paper cutter at the time of committing such robbery. Further, two bundles, containing 6 ladies suit are also asserted to have been recovered at the instance of the applicant, being a part of the robbed articles. Needless to mention that the applicant was duly identified by the complainant/PW-1 as one of the perpetrator of the offence, before this Court in his examination in chief. Needless to further mention, Ld. Counsel has failed to demonstrate any material change in circumstances ever since.

8. Consequently, in conspectus of the above and further keeping in view the nature and gravity of the offence, severity of the punishment which may be awarded upon conviction; the fact of applicant is involved in a crime of heinous nature as well as applicant's involvement in other cases of similar crime; the role and complicity of the applicant as well as the *prima facie* incriminating evidence brought on record against

him; manner of commission of offence; reasonable apprehension regarding the applicant's fleeing from justice and/or influencing prosecution witnesses, proceedings still being at a nascent stage, *i.e.*, at the stage of prosecution evidence and the evidence of public witnesses including that of the complainant/PW-1 is yet to be concluded; and further considering the impact of the offence on the society, this Court does not deem it fit to grant bail to the applicant at this stage. Needless to mention, Ld. Counsel for the applicant has failed to demonstrate any material change in circumstance, since the dismissal of applicant's last bail application on 27.05.2023. Apposite to further to observe that though, this Court holds highest regard for the decision(s) relied upon by the Ld. Counsel for the applicant, however, none of the said decision(s) would come to the aid of the applicant in the manner as averred, as the facts and circumstances of the present case are clearly distinguishable. Needless to reiterate in this regard, the question of grant or refusal of bail depends upon a determination of several factors, which ultimately depends upon the specific/unique facts and circumstances of each case before Court.

9. Accordingly, the present application under Section 439 Cr.P.C. for regular bail *qua* the applicant Deepak @ Milkha is ***dismissed***.

10. It is clarified herein that the observations made in the present order are only limited for the purpose of deciding the present application of the applicant herein and would have no bearing on the factual matrix of the present case.

11. A copy of the present order be given ***dasti*** to the Ld. Counsel for the applicant, namely, Deepak @ Milkha. Further, a

**copy of this order be sent to the concerned Jail Superintendent
with the direction to hand over a copy of order to the applicant.**

(Abhishek Goyal)
ASJ-03, Central District,
Tis Hazari Courts, Delhi
03.08.2024