



CNR No. DLCT01-010533-2022

IA No. 07/2023

SC No. 442/2022

State Vs. Mukesh Kumar @ Lukka and Anr.

FIR No. 330/2022

PS Burari

U/s. 394/397/411/34 IPC & 25/54/59 Arms Act

BAIL APPLICATION OF APPLICANT MUKESH KUMAR
@ LUKKA

24th May, 2023

Present: Sh. Ashesh, Ld. Addl. Substitute PP for State.
Sh. Pramod Kumar, ld. Counsel for
applicant/accused Rajan.

1. Reply filed. Arguments heard.
2. This is an application seeking regular bail u/s. 439 Cr. P.C. filed on behalf of the applicant/accused Mukesh Kumar @ Lukka (hereinafter referred to as an applicant).
3. It is argued on behalf of the applicant that he is in custody since 07.04.2022. It is further argued that the earlier bail application of the applicant was dismissed on 24.08.2022. It is further argued that PW-3/complainant has been examined but he has not identified the accused persons present in the Court at the time of examination of the complainant on 22.03.2023 and the complainant has not supported the case of the prosecution and the complainant has been declared hostile. It is further argued that the applicant has been falsely implicated and the applicant has been made scapegoat. It is further argued that the applicant has no concern with the allegations as levelled by the

investigation agency against him. It is further argued that there is no apprehension of tampering of prosecution witnesses and the alleged case is completely based on circumstantial evidence. Ld. Counsel for the applicant has relied upon the judgments in case titled as *Anil Sharma Vs. State of Himachal Pradesh*, (1997) 3 Crimes 135 (HP), *Sanjay Chandra Vs. CBI*, CrI. Appeal No. 2178 to 2182 of 2011 arising out of SLP (CrI.) Nos. 5650, 5902, 6190, 6288, 6315, *Gurucharan Singh vs. State (Delhi Admn.)*, (1978) 1 SCC 118 : (AIR 1978 SC 179) and *State of U.P. v. Amarmani Tripathi*, (2005) 8 SCC 21 : (AIR 2005 SC 3490). It is prayed that the applicant be released on bail.

4. The application is opposed by the Ld. Addl. PP for State. It is submitted that the allegations against the applicant are of grave nature and the complainant was looted of his mobile phone and his money while attacking him with knife due to which he has sustained serious injuries. It is further submitted that the mobile phone and part of looted money has been recovered from the possession of the applicant. It is further submitted that the applicant may commit similar offence again, if released on bail. It is prayed that the bail application of the applicant 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, the case of the prosecution is that on 03.04.2022 at about 12.30 a.m. at Anand Vihar, Main Road, three persons hired TSR of complainant Mashrur and fare of Rs. 250/- was fixed for going to Burari from Anand Vihar. At about 1.15 a.m., when the said TSR reached at T-point, Ishu Vihar, near Shiv Builder, Mukundpur, Delhi, accused persons asked him to stop his TSR. Thereafter, accused persons asked the complainant to hand over whatever he was having. When the complainant objected, accused Mukesh Kumar stabbed him with a knife in his abdomen and other parts of his body. Thereafter, one of the accused caught him around his neck and other accused took out Rs. 2,500/- to Rs. 3,000/- and mobile phone from his pocket and fled away. Complainant at some distance away found two boys who helped him and called on 100 number.
8. During investigation, all the three accused persons were apprehended and one of them was found to be CCL. The knife used in the commission of the offence alongwith the part of looted money was recovered from the possession of accused Mukesh and the looted mobile phone alongwith part of looted money was recovered from the possession of

accused Rajan.

9. The complainant during his testimony before the Court as PW-3 failed to identify the accused persons Mukesh and Rajan as the persons who had committed robbery with him. The incident had taken place in the intervening night of 2/3.04.2022 and the accused persons were arrested on 07.04.2022 on the basis of secret information, but no TIP was conducted in the present case for the reasons best known to the investigating agency.
10. The knife allegedly recovered from the possession of the possession of the accused Mukesh was never sent to the FSL for forensic examination to connect it with the present offence.
11. The stolen mobile phone was allegedly recovered from the possession of the accused Rajan and as per the photocopy of the bill, the same belongs to one Moshin, who has not been examined in the present case, nor he was cited as a witness in this case. No seizure memo was prepared by the IO with respect to seizing the photocopy of the mobile bill.
12. The TSR Number DL 1RU 9365 was mentioned in the complaint by the complainant but the owner of such vehicle has not been examined or made a witness in the present case.
13. Considering the overall facts and circumstances, the applicant Mukesh Kumar @ Lukka is admitted to bail on furnishing P/B and S/B in a sum of Rs. 25,000/- with one

surety of the like amount subject to conditions :-

- a) The applicant/accused shall under no circumstances leave the territory of Delhi;*
- b) The applicant/accused shall inform the Court in the event of change of his address, within two weeks.*
- c) The applicant/accused shall not commit any offence in the event of there being any FIR/DD Entry/Complaint lodged against the applicant, it would be open to the State to seek cancellation of the application which application, if any, filed would be considered on its own merits.*
- d) The applicant/accused shall furnish his mobile number to concerned SHO within 7 days of his release and he shall keep it switched on and active at all times.*

- 14. The concerned Ahlmad is directed to bring to the notice of the concerned Court, if the applicant/accused fails to furnish the bail bonds within 30 days from today, for conducting a review in terms of the judgment passed by the Hon'ble Supreme Court of India in the case of ***“In Re Policy Strategy For Grant of Bail” SMWP (Criminal) No. 04/2021*** dated 31.01.2023, wherein the guidelines are laid down in this regard.
- 15. Copy of this order be given dasti to Id. Counsel for applicant/accused.
- 16. A hard as well as soft copy be also sent to the concerned Jail Superintendent immediately for information and necessary action.
- 17. Application stands disposed of in above terms.

(SUSHIL ANUJ TYAGI)
ASJ-04/Central/Delhi
24.05.2023_(VR)