

CNR No. DLCT01-003801-2015

SC No.162/2021

FIR No.134/2015

PS Lahori Gate

U/s 394/395/397/412/120-B IPC & 25 Arms Act

State Vs. Tahir Hussain & Ors.

28/04/2023

**File taken up today on the bail application u/s. 439
Cr.P.C. of the accused Rizwan Khan for grant of regular bail.**

Present: Sh. Parvesh Ranga Ld. Addl. P.P. for the State.
None for the accused.

By way of present order, this Court shall disposed of the bail application u/s. 439 Cr.P.C. of the accused Rizwan Khan for grant of regular bail.

Arguments have already been heard on the aforesaid regular bail application of the accused Rizwan Khan. Perused the material available on record.

During the course of arguments on the aforesaid bail application, it was submitted by counsel for the accused Rizwan Khan that the first regular bail application of the accused was dismissed by Ld. Predecessor of this Court vide order dated 02/02/2021 and second regular bail application of the accused was dismissed as withdrawn vide order dated 17/04/2023 passed by Hon'ble High Court of Delhi and the present bail application is the third regular bail application of the accused Rizwan Khan and no other regular bail application of the accused Rizwan Khan is pending or decided by the Hon'ble Superior Courts on merits. It was further submitted by counsel for the accused that accused was on interim bail as per HPC guidelines in the present case and in view of the directions passed by the Hon'ble Supreme Court of India, accused Rizwan Khan has already surrendered before the concerned Jail Authority on 08/04/2023. It was further submitted that during the aforesaid interim bail period, the accused has not misused the liberty granted by way of interim bail. It was further

submitted that the change of facts and circumstances of the case after the dismissal of the last regular bail application of the accused is that co-accused Arif and Tahir Hussain were granted regular bail. It was further submitted that the allegations against the accused Rizwan Khan are almost similar in nature as that of the accused Arif and Tahir Hussain and regular bail be granted to the accused Rizwan Khan on the ground of parity. It was further submitted that accused Mohd. Nazim is also on regular bail. It was further submitted that the accused has been falsely implicated in the present case and there is no incriminating evidence against the accused and investigation in the present case has already been completed and the accused is no more required for the purpose of further investigation as charge-sheet has already been filed in the present case. It was further submitted that in the present case, complainant, eye-witnesses and material public witnesses have already been examined and only the formal public witnesses, police officials and other formal/ officials witnesses remain to be examined. It was further submitted that the present matter is at the stage of prosecution evidence and the trial will take considerable time. It was further submitted that accused is in J/C since 04/09/2015. It was further submitted that regular bail be granted to the accused and the accused shall be abide by all terms and conditions imposed by this Court.

During the course of arguments, it was submitted by Addl. PP for the State that the allegations against the accused are serious in nature and accused can abscond, if the bail is granted to the accused. It was further submitted that there is sufficient incriminating material against the accused and present regular bail application of the accused Rizwan Khan be dismissed.

In the present case, charge for the offence u/s 394/395/397/412/120-B IPC & 25 Arms Act was framed against the accused Rizwan Khan.

It is well settled law that at the stage of considering bail, it would not be proper for the Court to express any opinion on the merits or demerits of the prosecution case as well as defence. The present application being an application for bail, details of evidence on record are not discussed.

It is pertinent to mention here that the first regular bail application of the accused was dismissed by Ld. Predecessor of this Court vide order dated 02/02/2021. In the present case, regular bail was granted to co-accused Arif vide order dated 08/03/2021 passed by Hon'ble High Court of Delhi. Vide order dated 13/07/2021 passed by this Court, regular bail was granted to the accused Tahir Hussain. The allegations against the accused Rizwan Khan are stated to be more or less similar as that of the accused Arif and Tahir Hussain. Accused Mohd. Nazim is also on bail in the present case.

In the present case, complainant, eye-witnesses and material public witnesses already stated to be examined. In the present case, only the formal public witnesses, police officials and formal/official witnesses remain to be examined. Accused is stated to be J/C since 04/09/2015 (except the period of interim bail as per HPC guidelines). There is nothing on the record to show that the accused has misused the liberty granted by way of interim bail as per HPC guidelines. Accused is stated to be not having involvement in any other criminal case. No useful purpose will be served by keeping the accused behind the bars. Considering the facts, circumstances, submissions made and on the ground of parity and without expressing any opinion on the merits and demerits of the present case, present regular bail application of the accused Rizwan Khan is allowed and accused Rizwan Khan is admitted to court bail on furnishing personal bond and surety bond in the sum of Rs. 30,000/- each with two sureties each of like amount to the satisfaction of the Court subject to the condition that :-

- i) Accused shall not flee from the justice;*
- ii) Accused shall not tamper with the evidence;*
- iii) Accused shall not threaten or contact in any manner to the prosecution witnesses;*
- iv) Accused shall not leave the country without permission of the Court;*
- v) Accused shall convey any change of address immediately to the SHO/IO and the Court;*
- vi) Accused shall also provide his mobile number to the Court and SHO/IO.*
- vii) Accused shall keep his such mobile 'Switch On' at all the time;*
- viii) Accused shall regularly appear before the Court on each and every date of hearing;*
- ix) Accused shall not indulge in any kind of criminal activities;*

Nothing stated herein shall tantamount to be an expression of opinion on the merits of the present case and the observations made in the present order are only for the purpose of deciding the present bail application.

Copy of this order be sent to the concerned Jail Superintendent for information and necessary action. Copy of this order be also sent to the accused through concerned Jail Superintendent. Copy of this order be given dasti to counsel for the accused, if prayed for. Order be uploaded on the website of the Delhi District Court.

(Vijay Shankar)
ASJ-05, Central District
Tis Hazari Courts, Delhi
28/04/2023(A)