

SC No.:28277/16
FIR No.134/15
PS. Lahori Gate
State Vs Tahir Hussain & others

17/04/2018

Present: Sh. Pawan Kumar, Ld. Addl.PP for the State.
Sh. B.S. Chaudhary, Id. Counsel for accused **Rizwan**
and **Arif**.
Sh. R.B. Singh, Id. Counsel for accused **Nazim**.
Sh. A. A. Qureshi, Id. Counsel for accused **Tahir**
Hussain.
All accused produced from JC.
IO SI Pardeep Rai alongwith Ct. Vipin in person.

Fresh Vakalatnama on behalf of accused Tahir Hussain has been filed. Accused Tahir Hussain submits that his earlier counsel may be discharged. Accordingly, earlier Legal Aid Counsel Sh. Diwakar Chaudhary, who was appearing on behalf of accused Tahir Hussain, is discharged from today. Fresh Vakalatnama be taken on record.

PW19 and PW20 have been examined, cross examined and discharged.

An application seeking regular bail moved on behalf of applicant / accused Rizwan is pending for disposal. It is taken up.

Reply thereof has been filed by the IO. Same is

SC No.:28277/16
FIR No.134/15
PS. Lahori Gate
State Vs Tahir Hussain & others

#2#

perused.

Ld. Counsel has submitted that applicant / accused Rizwan has been falsely implicated in the present case; he is in judicial custody for about 2 ½ years i.e. since 01.09.2015; nothing has been recovered from the possession of the applicant / accused; case property i.e. cash of Rs.8 lac and *desi katta*, has been planted upon the applicant / accused; CCTV footage, which is relied upon by the prosecution, is not clear; public witnesses have been examined in the present case; complainant Shadab has not supported the story of the prosecution; complainant Shadab had identified applicant / accused Rizwan in the TIP proceedings but he has not identified the applicant / accused at the time of recording of his evidence in the court; in his evidence, complainant has submitted that no recovery has been effected from the possession of applicant / accused Rizwan. It is prayed accordingly.

Per contra, Ld. Addl PP for the State, assisted by the IO, has vehemently opposed the bail application submitting that an amount of Rs.8 lac and a *desi katta* has been

SC No.:28277/16
FIR No.134/15
PS. Lahori Gate
State Vs Tahir Hussain & others

#3#

recovered from the possession of applicant / accused Rizwan; brown colour tape, which was used in commission of the crime, was recovered from the house of applicant / accused Rizwan; initially, applicant / accused was absconding and was arrested after 2-3 months from registration of FIR; in the CCTV footage, presence of applicant / accused is revealed; CDR analysis of mobile location is also showing the presence of applicant / accused at the spot in question from 3:00 am to 6:00 am on the day of incident; mobile phone, which was used in commission of the crime, has been recovered at the instance of applicant / accused; complainant had identified applicant / accused Rizwan in the TIP proceedings; the offence leveled against the applicant / accused is serious and heinous in nature. Therefore, applicant / accused Rizwan may not be enlarged on bail.

Arguments heard. Record perused.

At the outset, it is mentioned that while dealing with bail application, merits of the case are not required to be discussed. However, as arguments at length on merits have been conducted therefore, any reference upon the merits of

SC No.:28277/16
FIR No.134/15
PS. Lahori Gate
State Vs Tahir Hussain & others

#4#

the case, though imperative to discuss but is mere incidental. It is reflected from the record that one public witness is yet to be examined; recovery of case property has been made from the house of the applicant / accused. At this stage, it cannot be commented upon whether such recovery is planted or not. As per the documents available on record i.e. judicial TIP, applicant / accused has been identified. The allegations leveled against the applicant / accused are serious and heinous in nature. Considering the facts and circumstances of the case, I am not inclined to grant bail to applicant / accused Rizwan. Hence, the present bail application qua applicant / accused Rizwan is dismissed and disposed off accordingly. Any opinion expressed above, shall not lay its impact upon the merits of the case. Copy of the order be given *dasti* to the Ld. Counsel for applicant / accused, as prayed for.

Now to come up for remaining **PE** on **10/05/2018**.

(PRASHANT KUMAR)
ASJ/Delhi/17/04/2018