

State Vs. Swapnil & Ors. (Applicant Vijay Kumar)

CNR No.: DLCT01-018221-2021

SC No. 748/2021

FIR No. 30/21

PS Darya Ganj

13.01.2025

Present : Mr. Amit Dabas, Ld. Addl. PP for the State.
Mr. Gaurav Bindal, Ld. Counsel for the applicant,
namely, Vijay Kumar.

ORDER

1. This is the second bail application filed under Section 483 of Bhartiya Nagrik Suraksha Sanhita, 2023 (*hereinafter referred to as 'BNSS'*)/Section 439 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*) on behalf of accused, namely, Vijay Kumar (*'applicant/accused'* for short), seeking regular bail. Pertinently, the first bail application of the applicant was dismissed by Ld. Roster Judge, *i.e.* court of Ld. FSTSC (RC), Central District, Tis Hazari Courts, Delhi *vide* order dated 09.07.2021.

2. Learned Counsel for the applicant vehemently contended 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 applicant has been in judicial custody ever since 01.02.2021 and he has already undergone a period of three years and ten months in judicial custody, without there being any chances of conclusion of trial in the near future. It was further submitted that all the material public witnesses in the instant case have already been examined and they have not supported the

case of the prosecution and now only the formal witnesses are left to be examined and no useful purpose would be served in keeping the applicant in continued detention, considering that the trial is likely to take considerable time. Further, as per the Ld. Counsel, there are no chances of applicant tampering with the prosecution case or fleeing from justice, besides the applicant has clean antecedents. Ld. Counsel further submitted that the applicant is the sole bread earner of his family and his continuous incarceration has put his family under grave hardship. It was further submitted that the applicant was granted interim bail by the Hon'ble High Court of Delhi and he has not misused the relief so granted to him. Lastly, it was submitted by the Ld. Counsel that the applicant is ready to abide all the terms and conditions imposed by this Court while granting bail, including co-operating with the investigating authorities and making himself available for investigation/further investigation, as and when called for. Conclusively, Ld. counsel for the applicant prayed that the present application be allowed, and he may be released on bail. In support of the said contentions, reliance has been placed upon the decision in *Sonu @ Sam v. State of NCT of Delhi, Bail Appl. No. 4027/2024, dated 22.03.2024, (HC)*.

3. *Per contra*, Ld. Addl. PP 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 a grave offence. Ld. Addl. PP for the State, in this regard, further submitted that that applicant played an active role in the commission of a grave offence as well as the manner in which the offence was committed is also quite gruesome. It was further submitted that in case bail is granted to the applicant,

there is a reasonable likelihood of flight risk of the applicant considering the nature and gravity of the offence. Further, as per Ld. Addl. PP for the State, one purse containing Rs. 6,130/- and *Aadhar* card of the victim was recovered from the possession of the applicant and further Whats App conversation between the accused Swapnil and accused/applicant Vijay Kumar regarding ransom have also been recovered from the mobile phones of the said accused persons. Lastly, it was submitted by Ld. Addl. PP for the State that there has been no change of circumstances since the dismissal of the applicant's last bail application and further that hostility of witness cannot be a ground for bail.

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

5. At the outset, this Court iterates the settled law¹ that determination of bail entails the establishment of an equilibrium between the personal liberty of an individual, on one hand, and securing fair trial as well as ensuring the presence of accused during the trial, on the other. Undoubtedly, liberty of an individual is valuable right, however, it is trite law² that such a protection cannot be absolute and there may be instances where the collective interest of the community may predominate the right³ of personal liberty of an individual. Ergo, it is quite understandable that several factors are required to be considered while granting or refusing bail⁴. Concomitantly, though, there is no prescribed strait jacket formula regarding such relevant

¹ *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694

² *Masroor v. State of U.P.*, (2009) 14 SCC 286

³ *Shahzad Hasan Khan v. Ishtiaq Hasan Khan*, (1987) 2 SCC 684

⁴ *Gurcharan Singh v. State (Delhi Admn.)*, (1978) 1 SCC 118

factors, however, it is a settled law⁵ that where there are sufficient reasons to have reasonable apprehension that the accused would flee from justice or tamper with prosecution evidence, such an accused can be refused bail, in order to ensure a fair trial of the case. Apposite to further note that though, the courts are required to give reasons at the stage of determination of bail, however, at that stage, a detailed examination of evidence and elaborate documentation of the merits of the case is not required⁶. Simultaneously, at such a stage, 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 trial⁷. Apposite to note in this regard that while considering the present application, this Court cannot be oblivious to the impact of grant thereof on the witnesses or the complainant. In fact, in this regard the superior courts⁸ have persistently cautioned that the impact of grant on bail on the witnesses, yet to be examined and/or victim is required to be duly considered by court(s), at the stage of such determination.

6. Therefore, being mindful of the principles hereinunder noted, this Court outrightly observes that the primary 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

⁵ *Anil Mahajan v. Commissioner of Customs*, 84 (2000) DLT 854

⁶ *Jagjeet Singh v. Ashish Mishra*, (2022) 9 SCC 321

⁷ *Satish Jaggi v. State of Chhattisgarh*, (2007) 11 SCC 195

⁸ *Sudha Singh v. State of U.P.*, (2021) 4 SCC 781

purpose to note that from a perusal of the documents placed on record, it is observed that there are serious allegations against the applicant. Further, the applicant along with the co-accused persons is stated to have abducted and threatened the victim for ransom. Further, as per the prosecution, in the said process, one of the co-accused persons, namely, Swapnil is alleged to have committed carnal intercourse against the order of nature against the victim. Notably, the prosecution has alleged that upon applicant's arrest, one purse containing Rs. 6,130/- and Aadhar card of the victim was recovered from his possession. Correspondingly, it is asserted that in the Whats App correspondences between Swapnil and applicant Vijay Kumar, it is observed that there are conversation pertaining to ransom.

7. In so far as the contention of the Ld. Counsel for the applicant pertaining to the hostility of prosecution witnesses is concerned, this Court unambiguously observes that it is a settled law⁹ mere hostility of the witnesses can not be the sole ground(s) for granting bail, as otherwise contended by the Ld. Counsel for the applicant. Reference is made to the decision of the Hon'ble Allahabad High Court in ***Krishna Kant v. State of U.P., Criminal Misc. Bail Application No. 33329/2020, dated 16.12.2022***, wherein the Hon'ble Court, noted as under;

“... The main ground urged by the learned counsel for the applicant is that two witnesses of last seen have turned hostile and the applicant is in jail for more than three years. Even if, all the witnesses are examined, the possibility of the case ending in conviction of the applicant is very remote and, therefore, the applicant may be enlarged on bail. On the other hand, submission of learned AGA is that

⁹ *Arun Kumar v. State (NCT of Delhi)*, 2023 SCC OnLine Del 3134; and *Krishna Kant v. State of U.P., Criminal Misc. Bail Application No. 33329/2020, dated 16.12.2022 (Hon'ble Allahabad High Court)*

though two of the witnesses of last seen have turned hostile and the informant (P.W-3) has also not supported the case of the prosecution, the trial court would be at liberty to take a view whether to convict the accused or not based on the other evidence given by other witnesses during trial. Hostility of the witnesses cannot be a new ground for granting bail to accused applicant. If any opinion is taken on the basis of the evidence given by the hostile witnesses, it amounts to evaluating the evidence by this Court, which is impermissible while deciding the bail application under Section 439 Cr.P.C. It is well settled principle that trial court can record conviction based on the evidence of the Investigating Officer also. Therefore, the ground urged now cannot be considered for granting bail to accused applicant”
(Emphasis supplied)

8. Further, the Hon’ble High Court of Delhi in ***Arun Kumar v. State (NCT of Delhi), 2023 SCC OnLine Del 3134***, remarked in an akin context, as under;

“10. Now as far as the question that the sole eye witness has turned hostile, may not in my opinion, is the sole ground for discarding the entire prosecution case as it is a settled proposition of law that the testimony of the hostile witness is not to be discarded in toto.

11. In the instant case, it is the admitted fact on record that deceased Neelam was leaving with her mother i.e., PW Bimla Devi in the same house where according to the prosecution she was stabbed to death. As per the prosecution, injured Neelam was taken to the hospital by Bimla Devi. The perusal of the MLC shows that injured Neelam (since deceased) was brought to the hospital by Bimla Devi who gave history of physical assault by sharp object and according to PW Bimla Devi, who initially gave statement to the police that Neelam was stabbed by the petitioner and his co-accused brother but later on she did not support her version. So, as of now, detailed analysis of testimony of PW-Bimla Devi would not be in the fitness of things as the same might prejudice the case of either of the parties. But one cannot lose sight of the fact that when according to PW Bimla Devi she was not present at the time of the incident, then how could she tell the treating doctor that physical assault was given by a sharp object, unless and until, she had seen the incident but

I will stop at that and will not further comment on the merits of the case. There is also no forceful entry in the house where the incident took place. The allegations against the petitioner are grave and serious in nature, therefore, in these circumstances, no ground for bail is made out, the bail application is, therefore, dismissed.

(Emphasis supplied)

9. Consequently, in conspectus of the above and further keeping in view the nature and gravity of the offence; the fact of applicant is involved in a crime of heinous nature; the role and complicity of the applicant as well as the *prima facie* incriminating material against him; manner of commission of offence; reasonable apprehension regarding the applicant's fleeing from justice, considering the seriousness of offence; and further considering the impact of the offence on the society at large, this Court does not deem it fit to grant bail to the applicant at this stage. At this stage, this Court deems it further pertinent to observe that though it hold highest regard for the decision relied upon by the Ld. Counsel for the applicant, in support of his contention, however, the same would not come to the aid of the applicant, in the manner as proposed, as the facts and circumstances of the present case are clearly distinguishable. Needless to mention, 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 the Court.

10. Accordingly, the present application under Section 483 BNSS, for regular bail *qua* the applicant Vijay Kumar is ***dismissed***.

11. It is clarified herein that the observations made in the present order are only limited for the purpose of deciding the

present application of and would have no bearing on the factual matrix of the present case.

12. A copy of the present order be given *dasti* to the Ld. Counsel for the applicant, namely, Vijay Kumar. 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
13.01.2025