

CNR No.DLCT01-018221-2021

SC No. 466/2021

FIR No. 30/2021

PS Daryaganj

U/s 364-A/377/419/347/120-B IPC & 25/27 Arms Act

State Vs. Swapnil & Ors.

16/08/2022

File taken up today on 2nd bail application u/s. 439 Cr.P.C. of the accused Farman for grant of regular bail.

Present: Sh. Gyan Prakash Ray, Ld. Addl. P.P. for the State.

Inspector Ichha Ram is present and filed reply to the aforesaid bail application of the accused.

Mr. Arif Liyaquat, Ld. Counsel for the accused Farman.

One of the regular stenographers is on leave today.

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

Arguments heard on the aforesaid bail application of the accused Farman. Perused the material available on record.

During the course of arguments on the aforesaid bail application, it was submitted by counsel for the accused Farman that the first regular bail application of the accused was dismissed by Ld. Sessions Court vide order dated 08/06/2021 and the present bail application is the second regular bail application of the accused Farman before Sessions Court after filing of the charge-sheet and no regular bail application of the accused Farman is pending/decided by the Hon'ble Superior Courts. 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 the accused was not present at the spot and he was not seen in CCTV footage. It was further

submitted that the present matter is at the stage of charge and the trial will take considerable time. It was further submitted that the accused is in J/C since 01/02/2021. 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 the Court.

During the course of arguments, it was submitted by Addl. P.P. 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 the first regular bail application of the accused Farman was dismissed by Ld. Sessions Court vide order dated 08/06/2021 and in the present bail application, no fresh ground has been mentioned by the accused. It was further submitted that the victim was kidnapped for ransom at the instance of the accused Akash @ Hunny by other co-accused persons and accused Farman actively participated in the commission of the crime and cap and belt of the Delhi Civil Defence and two empty shells of cartridges were recovered from the accused Farman. It was further submitted that the victim in his statement u/s 161 Cr.P.C. has made the specific allegations against the accused. It was further submitted that FSL result and sanction under section 39 Arms Act are pending. It was further submitted that in the present case, charge is yet to be framed and complainant/victim/public witnesses are yet to be examined and if the bail is granted to the accused, he can influence, threaten or pressurize the witnesses and tamper with the evidence. It was further submitted that there is sufficient incriminating material against the accused and the present regular bail application of the accused Farman be dismissed.

It was held by the Hon'ble Supreme Court of India in case titled as **“Virupakshappa Gouda and Anr. Vs. State of Karnataka and Anr.”** {(2017) 5 SCC 406} that :

*“15. The court has to keep in mind what has been stated in **Chaman Lal v. State of U.P.** The requisite factors are: (i) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence; (ii) reasonable apprehension of tampering with the witness or*

*apprehension of threat to the complainant; and (iii) prima facie satisfaction of the court in support of the charge. In **Prasanta Kumar Sarkar v. Ashis Chatterjee**, it has been opined that while exercising the power for grant of bail, the court has to keep in mind certain circumstances and factors. We may usefully reproduce the said passage:*

“9....among other circumstances, the factors which are to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to be believe that the accused had committed the offence.

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced;

and

(viii) danger, of course, of justice being thwarted by grant of bail.”

*16. In **CBI v. V. Vijay Sai Reddy**, the Court had reiterated the principle by observing thus:- “ 34. While granting bail, the court has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”*

17. From the aforesaid principles, it is quite clear that an order of bail cannot be granted in an arbitrary or fanciful manner. In this context, we may, with profit, reproduce a

passage from *Neeru Yadav v. State of U.P.*, wherein the Court setting aside an order granting bail observed:

“16. The issue that is presented before us is whether this Court can annul the order passed by the High Court and curtail the liberty of the second respondent? We are not oblivious of the fact that the liberty is a priceless treasure for a human being. It is founded on the bedrock of constitutional right and accentuated further on human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilized society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed and immobilized. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic body polity which is wedded to rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. The society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from its members, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the Court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law.”

It was held by the Hon'ble Supreme Court of India in case titled as **“Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Anr.”** {2004 Cri. L.J. 1796 (1)} that :

“11. The law in regard to grant or refusal of bail is very well settled. The Court granting bail should exercise its discretion

in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the Court granting bail to consider among other circumstances, the following factors also before granting bail; they are,

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;*
- (b) Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
- (c) Prima facie satisfaction of the Court in support of the charge.*

12. In regard to cases where earlier bail applications have been rejected there is a further onus on the Court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the Court is of the opinion that bail has to be granted then the said Court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted.

14. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail.

20. Before concluding, we must note though an accused has a right to make successive applications for grant of bail the Court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the Court also has a duty to record what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications.....”

It was held by the Hon'ble Supreme Court of India in case titled as **"Satish Jaggi Vs. State of Chhatisgarh and Ors."** {AIR 2007 SC (Supp) 256} that :

"5. It is well settled law that in granting or non-granting of bail in non-bailable offence, the primary consideration is the nature and gravity of the offence.....

12.At the stage of granting of bail, the court can only go into the question of the prima-facie case established for granting bail. It cannot go into the question of credibility and reliability of the witnesses put up by the prosecution. The question of credibility and reliability of prosecution witnesses can only be tested during the trial."

It was held by the Hon'ble Supreme Court of India in case titled as **"Gurucharan Singh & Others Vs. State"** {AIR 1978 SC 179 (1)} that :

"29. We may repeat the two paramount considerations, viz likelihood of the accused fleeing from justice and his tampering with prosecution evidence relate to ensuring a fair trial of the case in a court of justice. It is essential that due and proper weight should be bestowed on these two factors apart from others. There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail."

In the present case, charge-sheet has been filed for the offences u/s. 364-A/377/419/347/120-B IPC & 25/27 Arms Act against the accused persons.

As per case of the prosecution, the victim was kidnapped for ransom at the instance of the accused Akash @ Hunny by other co-accused persons and accused Farman actively participated in the commission of the crime and cap and belt of the Delhi Civil Defence and two empty shells of cartridges were recovered from the accused Farman.

It is pertinent to mention here that after filing of the charge-sheet, the regular bail application of the accused Farman was dismissed vide order dated 08/06/2021 passed by Ld. Sessions Court. In the present bail application, no fresh ground has been mentioned by the accused Farman. There is no material change of

facts and circumstances after the dismissal of the regular bail application of the accused vide order dated 08/06/2021. All grounds as mentioned in the present bail application of the accused Farman were already available with the accused at the time of previous regular bail application of the accused. It is well settled law that successive bail applications can be filed on change of facts or circumstances of the case. Where the grounds taken in successive bail applications already agitated and rejected by the Court, the same cannot be ordinarily allowed to be re-agitated. If the subsequent bail application is filed on the same grounds as taken in the previous bail application, the subsequent bail application would be deemed to be seeking review of earlier order, which is not permissible under the criminal law.

Allegations against the accused are serious in nature. In the present case, FSL result and sanction under Section 39 Arms Act are stated to be pending. In the present case, charge is yet to be framed and complainant/victim/public witnesses are yet to be examined. If the accused is released on bail, there is possibility that accused may influence the witnesses or tamper with the evidence.

The contentions of counsel for the accused Farman that the accused has been falsely implicated in the present case and there is no incriminating evidence against him is not tenable at this stage as 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.

Keeping in view the facts and circumstances of the case, gravity of offence and nature of serious allegations levelled against the accused, this Court is of the considered opinion that no ground for regular bail of the accused Farman is made out. Accordingly, the present application for regular bail of the accused Farman is dismissed.

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. 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
16/08/2022 (A)