

Hearing through Video Conferencing by Cisco Webex Meeting App

IA No. 05/2020

Waseem Vs. State

In re:

SC No. 44777/2015

FIR No. 548/2013

PS: Seelam Pur

U/s: 302/307/120-B/34 IPC &

Sec. 25/27 Arms Act

24.12.2020

Present: Sh. Ritesh Bahri, Ld. Counsel for the applicant.
Sh. Ashok Kumar, Ld. Addl. PP for the State.

Submissions on the bail application heard.

It is submitted that the applicant was arrested on 24.07.2015 and is in custody since then and time of more than four years and four months have passed. It is submitted that the applicant was arrested only on the disclosure statement of other accused and he is no more required for any custodial interrogation and deserves to be released on bail. It is submitted that prosecution has already examined 26 witnesses out of 27 witnesses and the trial is at fag end. It is submitted that despite police custody, no recovery was affected pursuant to the disclosure statement of the applicant. It is submitted that complainant who is examined as PW-1 in the court has deposed that the incident occurred at night and there was not street light and the applicant/accused present in the court did not commit any crime. It is

submitted that another witness who is examined as PW-2 is no more as such his testimony cannot be relied upon. It is submitted that other witness PW-4 Fahim has never stated the name of the person who was having pistol and whose bullet hit Jishan. It is submitted that PW-5 has also not supported the prosecution case and has stated that on the date of alleged incident there was darkness and there was no street light and he was not in a position to identify the accused. It is submitted that another witness namely Safdar has given a delayed statement to the police and he had not named any of the accused in his statement u/s. 161 CrPC. It is submitted that it is settled law that meticulous examinations of evidence is not required during the course of bail process. It is submitted that the applicant deserves to be released on bail as no recovery has been affected from him and that he cannot be kept behind bar during the period of trial as punishment. It is submitted that co-accused Jamal and Mohd. Zameel have already enlarged on bail by the court and the applicant also deserves for same concession on the ground of parity. The Ld. Counsel is placing reliance on the cases of Ashok vs. State 2008 JCC (2) 487, Ved Prakash vs. State 2007 JCC (1) 1564, Manjeet Singh vs. State 2009 (2) JCC 977, Aman Gaur vs. State 2012 (1) JCC 415, Raneef vs. State of Kerela 2011 (1) SCC 784, H. B. Chaturvedi vs. CBI Bail Application 572/2010, R. Vasudevan Vs. CBI in Bail Application No. 2381/2009, Iqbal vs State Bail Application 3097/2020 and Nanha vs State of UP 1993 Cr. LJ 938 in support of his application.

On the other hand, the bail is opposed by Ld. Addl. PP with the submissions that the witnesses examined as PW-2, PW-4, PW-12,

PW-13 and PW-14 during the trial have supported the case of the prosecution and that PW-1 and PW-5 initially supported the case of the prosecution but when their cross-examination was conducted after a long time, they took U-turn from their earlier statement as they have been won over by the accused persons. It is submitted that the applicant is a hard-core criminal and if is released on bail, he may evade the trial also and may commit crime.

It is the settled proposition of law that at the time of dealing with the bail application, mini trial is not permissible and court is not required to go into depth while appreciating the evidence against the applicant. In the present case, the effect of contradictions in the testimony of witnesses and the effect of taking U-turn on the aspect of identity of the assailants in the cross-examination of complainant and PW-5 is to be dealt with upon completion of the trial. All the injured/eyewitnesses except one have been examined in the court. The court may impose the conditions upon the accused to ensure the fair trial and protecting the remaining witnesses.

It is held by the Hon'ble High Court of Delh in case of H.B. Chaturvedi vs CBI Bail Application 572/2010 that *"Bail, it has been held in a catena of decisions, is not to be withheld as a punishment. Even assuming that the accused is prima facie guilty of a grave offence, bail cannot be refused in an indirect process of punishing the accused person before he is convicted. Furthermore, there is no justification for classifying offences into different categories such as economic offences and for refusing bail on the ground that the offence involved belongs to*

a particular category. It cannot, therefore, be said that bail should invariably be refused in cases involving serious economic offences.”

Considering the submissions in the light of record available in the file, period of custody and that there is no likelihood of early trial due to pandemic situation, I am of the view that case is made out to admit the applicant Waseem on bail. However, it is made clear that if the applicant is found involved in approaching the witnesses of the case directly or indirectly then his bail will be cancelled and he will not be considered during the trial to be released on bail. The applicant be released from the custody on furnishing bail bond in a sum of Rs. 50,000/- along with one surety in the like amount. Copy of order be sent to the parties.

(SUNIL CHAUDHARY)
Special Judge (NDPS)/ASJ
North East / Delhi 24.12.2020