

Hearing through Video Conferencing by Cisco Webex Meeting App

State Vs Charanjeet @ Dabbu
FIR No. 37/2019
PS: Dayal Pur
U/s 302/120-B/34 IPC

31.07.2020

Present: Sh. Manish, Ld. Counsel for the applicant/accused.
Sh. Ashok Kumar, Ld. Addl. PP for the State.
Inspector Hukam Singh from PS Dayal Pur.

Submissions on the application heard.

1. In the present case fir was registered on the statement of one Sanjay. He stated that he was asked by Sh. Subash Rawat, with whom he is employed at the salary of Rs. 12,000/-, at 8:47 pm telephonically on 31-01-2019 to come to B block Yamuna Vihar, Brijpuri stating that he will go with him in his car to his home and from there car is to be parked in parking. He stated that it was daily routine to go with him to his house and thereafter to park the vehicle in the parking and to keep its key with him and on the next morning leave the vehicle in front of house of Subhash and go to work after handing over its key to him. It is stated that he reached at about 9 PM to Subash and boarded the car which was being driven by Subash and when they reached near a meat shop at Mustafabad Brijpuri Road three boys riding on a scooty started playing along with the car towards the right side and that the boy sitting in middle Chote @ Afzal, who is residing in the area of Nur Ilahi took out pistol and fired upon Subash and the bullet hit him. Subhas speed up the car and both the boys sitting behind continued to fire, the car struck with a pole in front of street number 8, Brijpuri Road and the

said boys continued firing and two boys riding on a motorcycle which was coming from back were having pistols. He stated that as the car stopped, he alighted and ran making noise and started to gather the public. As people started gathering, the boys riding on the sporty fled waving their pistols. He stated that one person Robin who was knowing Subhash came there after hearing noise and he helped in laying Subash on the rear seat of car and he reversed the car by driving to go to GTB hospital and when the car reached near the BSES Office Gokalpuri it broke down and injured was shifted to GTB hospital by one auto where he was declared brought dead.

2. The applicant was arrested in the case on 19/04/2020 and is in custody. The applicant is praying for bail with the submissions that he was lifted from his house by the police officials in the afternoon of 18/04/2020 and was shown arrested near Signature Bridge on 19/04/2020 at around 8:30 PM on the information of secret informer. It is submitted that charge-sheet has been filed in the case and that applicant is innocent person and no legal evidence whatsoever is on record which can implicate him. It is submitted that as per version of the complainant who is only eyewitness of the incident only two vehicles were involved on which five persons were sitting and this itself exonerate the applicant and shows his false implication as he has been shown in an Eco Sport car. It is submitted that the said witness has not uttered a single word about the involvement of any other vehicle except one motorcycle and one scooty in the incident.

3. It is submitted that the live cartridges and empty bullets, shells recovered from the spot, car and the body of the deceased do not match with the planted pistol on the applicant as the planted pistol and the bullets are of different bore.

4. It is submitted that after filing of the charge-sheet applicant moved an application for bringing on record the CDR along with location of mobile number of applicant and the mobile number of the then SHO from 18/04/2019 to 20/04/2019 which reflects that four calls have been made

from the mobile number of the applicant on 18/04/2019 and three calls have been made from his mobile on 19/04/2019 from police station Dayalpur. It is submitted that it shows his false implication as to why the accused who is allegedly running away from the police will go to the police station a day prior to his arrest. It is submitted that the location of the mobile phone of the SHO also does not support the story of the prosecution case with respect to the arrest of applicant from Signature Bridge by SHO himself as his call detail report reflect that he was in some other area.

5. It is submitted that the call detail report of two mobile numbers of the applicant available on record also does not come to the help of case of prosecution as the record does not reflect the presence of applicant even near to the place of incident and any conversation which has taken place between him and other co-accused on the day of incident.

6. It is submitted that in the reports filed, there is no whisper of registration of alleged car or its owner in which applicant has been shown. It is submitted that even the CCTV footage procured by the prosecution does not reflect the presence of either the car or of the applicant. It is submitted that no TIP has been conducted in the present case to ascertain the identity of the assailant as applicant. It is submitted that there is disclosure statement of co-accused only available against the applicant which is inadmissible under the law.

7. It is submitted that since the arrest of the applicant he has been granted interim bail on one occasion and he has not misused the same. It is submitted that the trial will take a long time to reach at logical conclusion until that time keeping the applicant behind the bar is against the basic principle of criminal jurisprudence. It is submitted that the applicant is languishing behind the bar since last more than 15 months and there is no likelihood of resumption of normal court work in near future due to Covid 19. It is submitted that the applicant is a peace loving and law-abiding citizen having deep roots in the society and there is no likelihood of his absconding

and fleeing from the justice. It is submitted that applicant undertakes not to misuse the liberty of bail in any manner if granted to him and shall abide all the directions and conditions imposed upon him.

8. The bail application is opposed by the learned APP with the submissions that applicant is a notorious criminal and he has previous involvement in 46 cases as per reply filed to the bail application. It is further submitted that he even tried to get the interim bail by procuring medical documents of his wife from Dr Gajender Nayyar against whom case has been registered at the directions of Hon'ble High Court of Delhi for issuing false medical documents to help the accused to get bail.

9. It is submitted that the applicant is involved in the conspiracy of the murder and it is settled law that the direct evidence of a conspiracy is not possible to brought on record. It is submitted that only after full trial his involvement in the conspiracy will be proved. It is submitted that the case of the prosecution cannot be made suffer for the negligence of the investigating officer for not investigating the matter about the ownership of eco-car. It is submitted that the ballistic report is awaited which will establish that applicant was present at the site and fired upon Subhas with his pistol. It is submitted that there is no difference in the bore of the pistol recovered from the applicant and the empties recovered from the spot as .32 and 7.65 mm are same measurement of caliber of firearm as written in two units.

10. It is further submitted that the expert has provided the footage in a pen drive after recovering it from one of the DVR installed near the spot and it is the IO who has not analysed the footage so far and brought on file the contents. It is submitted that for the negligence of IO the case cannot be doubted.

11. I have gone through the reports filed so far in the court. It is well settled principle of law that at the time of bail mini trial is not permissible. I have observed certain flaws in the investigations as raised by the learned counsel for applicant and learned APP. I do not find it appropriate to discuss

the same at this stage. No doubt the disclosure statement of co-accused is not admissible but in the present case the ballistic report as well as the details of the CCTV footage are vital piece of evidence which may throw light on the case and may clarify about the manner in which the incident was caused and the involvement of the accused in the same.

12. The case record shows that number of times the Court has asked the police to expedite the process of getting the expert report from the FSL and on 26/02/2020 this Court ordered to bring the facts into the notice of DCP North-East asking him to ensure the collection of the reports and to file the same in the Court so that matter may be proceeded further. Since then the Court is not functioning physically due to lockdown and it may be considered that the FSL officials were also not functioning but now FSL is working in its full strength after opening of the lockdown. No ballistic report has been filed in the court so far nor any report is placed before the court showing the steps taken to get it expeditiously.

13. As per report filed on 26/02/2020 in the Court, hard disk drive was forensically cloned and footage of dated 31/01/2019 from 8:30 PM to 9:30 PM which were retrieved from the exhibit are enclosed herewith in one pen drive. No report is available on file about the contents of the said footage and whether the accused sent to face the trial are visible in the said footage or not. The contents of the pen drive were to be analysed by the investigating officer and report in this regard was to be filed before the court.

14. No doubt the applicant is in custody since a long and is entitled for speedy investigation and trial but considering his earlier involvements I am of view that the Court can wait further for a short time for the expert reports and should not pass the bail orders in haste.

15. I deem it appropriate to bring the facts into the notice of Commissioner of Police to take into the notice of manner in which the investigation has been carried out and the orders of the Court are not complied with and to take steps to get the ballistic report expeditiously and

to place on file the report about the CCTV footage. Let the copy of the orders passed by the Court in this regard so far, be sent to the office of learned Commissioner of police through SHO.

16. The application at the stage is dismissed with liberty to the applicant to file a fresh application if the said reports are not filed within a period of two weeks.

(SUNIL CHAUDHARY)
Special Judge (NDPS)/ASJ
North East, Delhi 31.07.2020