

SC No. 231/16

FIR No. 382/16

PS: Gokal Puri

State Vs. Sunil @ Pehalwan & Anr.

04.06.2019

Present: Ms. Sushma Badhwar, Ld. Addl. PP for the State.
Accused Sunil @ Pehalwan produced from JC.
Sh. Arvind Kumar Bansal, Advocate for accused Sandeep.
Sh. Rajesh Kaushik, Advocate for accused Sunil @ Pehalwan.

An exemption application moved on behalf of accused Sandeep Kumar. Same is allowed for today in view of the reasons mentioned therein subject to the condition that his identity if any shall not be disputed and prosecution witnesses shall be cross-examined on his behalf.

MHC(M) has informed that he has brought car no. DL-5CK-6796 which is lying in the court premises, with the help of crane.

PW-12 Arun Kumar in whose testimony the said vehicle is to be shown, is also present. He alongwith accused Sunil @ Pahalwan and respective counsels of both the accused have been sent alongwith MHC(M) to see the said vehicle. After 10 minutes or so, they have returned back.

PW-12 Arun Kumar further examined, cross-examined and discharged. Photographs of the car placed on record by the MHC(M). Counsel for both the accused persons have made joint statement that said car may not be produced during further trial and they shall not dispute its identity if so required.

PW-21 Ms. Preeti Agarwal also examined and discharged.

At this stage, Sh. Jitendra Sethi, Advocate who has also appearing during post lunch session, has pointed out that bail application of accused Sunil @ Pahalwan is also listed for hearing today.

IO Insp. Rambir Singh is also present before the court.

Arguments on bail application heard. Record perused.

It is argued on behalf of applicant/accused that he is innocent and is falsely implicated in this case; he is in custody since 08.07.2016 and all the material public witnesses I.e PW-3 Ram Lakhan (victim himself), PW-4 Sh. Rajan

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Gupta (alleged eyewitness), PW-5 Sh. Narayan Singh (alleged eyewitness), PW-8 Ms. Sonam Gupta (widow of deceased) and PW-9 Mohd. Faizan already examined during trial, have not identified applicant/accused to be assailant. He also argued that in CCTV footage, applicant/accused Sunil @ Pahalwan is not visible at all. He further pointed out that PW-6 Amit Pratap Singh and PW-7 Naresh Aggarwal who are witnesses with regard to seizure of CCTV footage of alleged incident, have also not supported that prosecution case during trial. He also argued that even in the Ballistic result with regard to pistol allegedly recovered from applicant/accused, it has been opined that individual striation marks present on exhibit bullets were not similar with the individual striation marks present on test bullets and also that firing pin marks and breech face marks present on exhibit empty cartridge cases marked EC-1 to EC-7 were not similar firing pin marks and breech face marks present on test fired cartridges marked TC-1 to TC-5 fired through pistol marked F-1. He further submitted that co-accused Sandeep has already been granted bail in this case on similar grounds. In support of aforesaid submissions, reliance has also been placed on the judgments reported at (2012) 1 SCC (CRI) 681, 2017 IV AD (DELHI) 215 and 144 (2007) DLT 819.

Per contra, the bail application is strongly opposed by Ld. Addl. PP, on the ground that the allegations are serious in nature and trial is still going on in this case. Therefore, bail application may be dismissed. IO has submitted that two more public witnesses namely Banwari Lal and Javed are yet to be examined during trial.

Counsel for applicant/accused has drawn attention of this court to proceedings dt. 23.08.2018, wherein it is mentioned that summons issued to aforesaid two public witnesses through DCP, had been received back unserved and no summons be sent to them. It is also observed in the bail order dt. 17.09.2018 qua co-accused Sandeep Kumar that public witness Javed did not appear in the witness box and he is untraceable.

During the course of arguments, IO has informed that face of present applicant/accused is not visible in the CCTV footage. Undisputedly, none of the abovementioned public witnesses has identified applicant/accused during trial. Ballistic result is also not against the applicant/accused with regard to pistol allegedly recovered from him. On these facts and circumstances, co-accused Sandeep has already been granted bail by my Id. Predecessor on 17.09.2018.

After taking into consideration the overall facts and circumstances of the case and in view of discussion made hereinabove, case for grant of bail is made out. Accordingly, bail application is allowed and applicant/accused Sunil @ Pahalwan is admitted to bail subject to furnishing a personal bail bond in the sum of Rs. 20,000/- with one surety in the like amount to the satisfaction of Ld. MM/ Link MM/ Duty MM and subject to the following conditions:-

1. That he shall not come into contact with or try to influence any of the witnesses connected with the case either directly or indirectly;
2. That he shall not directly or indirectly make any inducement, threat or promise to any person so as to dissuade him/her from disclosing the facts before the court and he shall not tamper with the evidence in any manner;
3. That he shall regularly appear before the court on each and every date of hearing and shall not misuse the concession of bail granted to him; and
4. That he shall not change his address without prior intimation to the court and he shall not indulge himself into any such offence during the period of his bail.

The bail application stands disposed off in the aforesaid terms.

Copy of this order be sent to concerned Jail Superintendent for being delivered to the applicant/accused.

Put up on 03.09.2019 and 04.09.2019 for remaining PE.

IO is bound down for both the dates.

(VIDYA PRAKASH)
Addl. Sessions Judge/
NE/KKD/Delhi/04.06.2019