

12.03.2020

File taken up on the application u/s. 439 CrPC for grant of bail on behalf of applicant/accused Imran.

Present: Sh. Dharam Chand, Ld. Sub. Addl. PP for the State.  
LAC Sh. K.N. Sharma, Advocate for applicant/accused Imran.

Arguments on the bail application already heard.

In the present case applicant/accused Imran has been put on trial for the offence u/s. 392/397/411/34 IPC with the allegations that he with co-accused and in furtherance of their common intention robbed the complainant Rahul Goyal and took away his mobile phone and purse and also robbed one Naimuddin and took away his mobile phone and purse and also used a katta while committing the said robbery.

The prosecution has examined eight witnesses in support of the charge and applicant/accused is seeking bail with submissions that complainant who is examined as PW-1 did not identify the applicant/accused in his testimony and he when was cross-examined by Ld. Addl. PP, gave a different version and identified the applicant as one of the accused. It is submitted that the second victim who is examined as PW-2 also stated different things in his chief examination and the cross-examination conducted by the prosecution. It is submitted that witnesses examined as PW-4 and PW-8 who are also cross-examined by the prosecution have not supported the case. It is submitted that all the public witnesses have been examined and no other witness who can identify the accused or tell about the incident is named in the list of witnesses. It is submitted that the alleged incident took in then night of 26/27.12.2016 and the applicant was arrested on 08.04.2017 and police has alleged that he was found in possession of a mobile phone. It is submitted that it is not possible that a reasonable man will have in his possession a robbed article for such a long time. It is submitted that the complainant has failed to produce any bill of the alleged

recovered mobile phone and the applicant is ready to produce reliable and sufficient surety and undertakes to abide all terms and conditions which will be imposed upon him for release on bail.

Ld. Addl. PP for the State has opposed the bail application submitting that the earlier bail application of the applicant has been dismissed on 13.03.2019 after considering the testimony of witnesses recorded till that time. It is submitted that the witnesses examined in the present case after dismissal of the first application i.e. PW-4 and PW-8 are not the eyewitness as at the time of incident, they had gone ahead and when they returned after hearing the noise, the accused had fled away from the spot. It is submitted that the applicant is also involved in other cases.

The effect of the testimony of PW-1 and PW-2 have been dealt by the Ld. Predecessor of this court while dealing with the earlier bail application thus, re-appreciation of the testimonies again for this application is not permissible and considering the facts where no other ground except the period of custody, have accrued in favour of the applicant raising suspicion on the case of prosecution as such the bail application is dismissed. Copy of this order be given dasti as prayed.

(SUNIL CHAUDHARY)  
Special Judge (NDPS)/ASJ/  
NE/KKD/Delhi/12.03.2020