

19.03.2020

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

Present: Sh. Ashok Kumar, Ld. Addl. PP for the State.
Sh. C. S. Tyagi, Advocate for applicant/accused Waseem.

Arguments on the bail application heard on behalf of Ld. Addl. PP for the State.

In the present case applicant/accused Waseem has been put on trial for the offence u/s. 392/397/34 IPC and u/s. 411 IPC with the allegations that he with the co-accused 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 deadly weapon 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 as per the alleged prosecuted story, incident occurred on 26.12.2016 at 3:00 am but the complaint was registered on 27.12.2016 at 4:20 pm after delay of 25 hours without any satisfactory answer. It is further stated that as per the alleged story of prosecution, co-accused Saddam was arrested on 28.12.2016 in this case and name of applicant was planted by the police on his disclosure which is not admissible. It is further submitted that the applicant was taken into police custody after his arrest and deliberately application for his TIP was moved after showing him to the witnesses and the identification of the applicant by the witnesses during the trial is meaningless. It is submitted that the witnesses examined by the prosecution have narrated different story / version at different stage of the case and their story is not reliable. It is submitted that as per prosecution story, the mobile phone make Samsung S-4 of black colour was robbed and as per seizure memo mobile GT 19505 is shown recovered and the prosecution never followed

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the law in respect of the search and seizure. It is claimed that applicant/accused is sole bread earner of his family and he is in judicial custody since 15.02.2017 and almost all the public / material witnesses have been examined and there is no chance of tempering the witnesses and no fruitful purpose will be served by keeping the applicant/accused behind the bar. Ld. Counsel for applicant/accused relied upon the case of **Harichanran Kurami Vs. State of Bihar, AIR 1964; Shaikh Umar Ahmed Shaikh & Anr. Vs. State of Maharashtra, AIR 1998 Supreme Court 1922; Suraj Mal Vs. The State of Delhi Administration 1979, CRL.L.J.1087 and Ashok Narang Vs. State, 2012(1) JCC 482.**

On the other hand, Ld. Addl. PP has opposed the bail application stating that both the witnesses examined in the trial have supported the charge and the alleged contradictions have duly been explained by the witnesses when they were cross-examined by the prosecution. It is submitted that applicant/accused is involved in other cases and that the robbed mobile phone was recovered from the house of the applicant/accused on his instance and there is no discrepancy in the model of the mobile phone as S-4 is the popular name of the model of the phone where as GT-19505 is the technical model number given by the company to the phone. It is submitted that there is no instance brought by the accused during the cross-examination of witnesses that the applicant/accused was shown to them in the police station prior to the application of TIP and that the witnesses have duly identified the applicant/accused during the trial. It is submitted that the applicant/accused is not entitled for the bail and there is no delay in intimation to the police which was given at 100 number immediately after the incident. It is stated that the case law relied upon by the counsel for the applicant/accused is not applicable to the facts of the present case as the findings are given in those cases by the Hon'ble courts after completion of the trials.

I have perused the case file. The testimonies of PW-1 and PW-2 are showing the involvement of applicant/accused in the commission of the

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offence and the same cannot be put on the test of reliability without completion of trial in examination of other witnesses. The facts of the present case are distinguished of the facts of the cases which are relied upon by the counsel for the applicant/accused as in the present case trial is yet to be completed.

At this stage, I find no ground to raise suspicion on the case of prosecution and considering the facts of the case, nature of the offence for which charge is framed against the applicant/accused and his involvement in other cases, the bail application is dismissed. Copy of this order be given dasti as prayed.

(SUNIL CHAUDHARY)
Special Judge (NDPS)/ASJ/
NE/KKD/Delhi/19.03.2020