

CNR No. DLNT01-006175-2023
SC No. 335/2023
State Vs. Deepak Kumar @ Dharmender etc
PS Mahendra Park
U/s 393/394/397/34 IPC & 25/27 Arms Act
FIR No. 391/2023

28.11.2023

Present : Mr. Girish Giri, Ld. Addl. PP for the State.

Accused Deepak Kumar @ Dharmender in JC.

Accused Raja in JC with counsel Mr. Yogesh
Pandey.

IO SI Vipin Shokeen is present and has orally stated that FSL result and requisite sanction u/s 39 Arms Act has yet not been received. Notice be issued to the SHO concerned to expedite the same, latest by the next date of hearing.

An application u/s 439 CrPC since moved on behalf of the applicant / accused Raja, is also listed for hearing today. Reply to the said application has been filed today by the IO.

Heard and perused the record. The case of the prosecution is that on 16.03.2023 at about 7 PM, three unknown persons restrained the complainant Faiyaz and tried to rob him of his bag containing cash, cheque book and other documents, and on his resistance, they took out pistols. One of the said three persons even fired a gun shot at the complainant, due to which he sustained injuries on his right leg. The police reached at the spot and the person, who had fired the gun shot at the complainant, was apprehended at the spot itself, and on interrogation, his name was disclosed as Deepak @ Dharmender, while his other two

associates ran away.

Subsequently, on the basis of the disclosure statement made by the accused Deepak @ Dharmender, the applicant / accused Raja was apprehended, who also made a disclosure statement regarding his involvement in the instant matter as well as in other matters, which were yet under investigation.

The applicant / accused Raja was kept in a muffled face and his TIP proceedings were conducted on 31.03.2023, during the course of which, the complainant Faiyaz correctly identified the applicant / accused Raja, as one of the accused persons, who had attacked him and had attempted to rob him.

Ld. Counsel for the applicant / accused has argued that the CCTV footage has also been collected by the IO, from the spot, but the applicant / accused Raja is not spotted anywhere in the said footage. Moreover, it is argued that the applicant / accused has also been arrested in another case bearing FIR No. 390/2023, PS Mahendra Park, wherein a similar type of incident has been reported, of the same day but at 5.00 PM. It is argued that it is not possible that the accused persons including the applicant / accused, would be so daring that to attempt two such incidents, within a span of two hours on the same day, keeping in view that the local police would have become alert. It is stated that the applicant / accused Raja has been falsely implicated in this case. Bail for applicant / accused Raja is prayed for.

On the other hand, Ld. Addl. PP for the State has stated that the contentions raised by the Ld. Counsel for the

applicant / accused may hold good only during the course of trial, during cross-examination and subsequently while addressing the final arguments. However, relevant it is, at this stage, that the applicant / accused Raja has been identified by the complainant Faiyaz, to be one of the perpetrators of the crime, who participated in the incident, wherein an attempt to rob him was made collectively by three persons, one of whom i.e. Deepak @ Dharmender was arrested at the spot, while the applicant / accused Raja and co-accused Shivam managed to escape. Complainant does not have any previous enmity or motive to falsely implicate the accused persons, in the present case.

It is stated that there is ample evidence against the applicant / accused Raja, which connects him to the crime and especially when the matter is at its threshold and there is every likelihood of the applicant / accused tampering with the prosecution evidence, it is prayed that the applicant / accused Raja may not be enlarged on bail.

I have considered the rival contentions raised, and have perused the record.

Whether the face of the applicant / accused Raja was captured in CCTV installed near the spot of occurrence and its implications, remains a question which can be pondered over at the final stage of the trial. However, non-capturing of the face of the applicant / accused Raja in CCTV is not an ante-dote to the identification of the applicant / accused Raja, by the complainant Faiyaz correctly, during TIP proceedings.

The complainant has been injured during the attempt

of a robbery, which was made collectively by the three accused persons, including the applicant / accused, and one of the accused persons, who shot at the complainant, had been apprehended and arrested at the spot itself. The identification of the complainant during TIP, especially when the applicant / accused was unknown to the complainant prior to the incident, and there being no motive alleged, is an evidence which is paramount and of premium quality, which cannot be ignored. There is every likelihood of the prosecution evidence being tampered with and witnesses being pressurized by the applicant / accused, if he is enlarged on bail in this case, especially when the formal charges are yet to be framed and trial yet to commence.

Further more, as per previous involvement report of the applicant / accused Raja, he is involved in 14 other criminal cases of similar nature.

In view thereof, at this stage, seeing the gravity of the offence committed, I am not inclined to grant bail to the applicant / accused Raja. Accordingly, the instant bail application is dismissed.

A copy of this order be sent to the Superintendent Jail concerned.

Matter be listed for filing of FSL result, sanction u/s 39 Arms Act and arguments on charge on 22.12.2023.

(SEEMA MAINI)
Principal District & Sessions Judge
North District/Rohini Courts/Delhi
28.11.2023