

SC No. 59318/16
FIR No. 55/16
P.S. Crime Brach
State Vs. Manoj @ Moherkheri etc.

05.11.2018

Present: Ms. Neeta Gupta, Ld. Additional PP for the State.
Accused Parvesh Grewal produced from Rohini Jail.
Accused Anil @ Ganja absent
Accused Ishwar @ Pandit produced from Rohtak Jail.
Accused Dhirpal @ Kanta produced from Tihar Jail.
Accused Jitender Dixit produced from Tihar Jail.
Accused Arun @ Kala not produced from Hissar Jail.
Accused Sumit @ Sam not produced from Tihar Jail
Accused Rohit @ Rahul not produced from Jhajjar Jail.
Accused Naresh produced from Hissar Jail.
Manoj @ Moherkheri produced from Jhajjar Jail.
Sh. Pradeep Rana counsel for accused Parvesh, Sumit,
Manoj @ Moherkheri and Arun.
SI Birender Singh on behalf of SHO.

Accused Sumit @ Sam was released on interim bail till
14.10.18. Report has already been received regarding his surrender from
Jail Superintendent.

NBWs issued against accused Anil @ Ganja has been
received back unexecuted with the report that he is absconding.

Sh. Karan Shah and Sh. Vikas Kumar Gulia sureties for
accused Anil @ Ganja are present. They seek three weeks time for
deposit of surety amount. They are directed to positively deposit surety
amount on 01.12.18.

In view of the report on NBWs, I am satisfied that accused Anil @ Ganja is intentionally absconding. Issue process u/s 82/83 Cr.P.C against him with directions to SHO to get the same executed through an officer not below the rank of SI and summons to Process Server for recording his statement on 18.12.18.

An application moved on behalf of accused Arun @ Kala u/s 439 Cr.P.C for grant of interim bail for a period of two months is also pending disposal. SI Birender Singh has filed the reply to bail application of accused Arun @ Kala.

Arguments heard.

During the course of argument, Id counsel for applicant/accused submits that there are certain typographical errors in the application. He seeks permission to withdraw the application with liberty to file a fresh one. His statement has been obtained on the front page of bail application.

In view of statement of Id counsel for applicant/accused, present bail application of accused Arun @ Kala is dismissed as withdrawn with liberty as prayed for.

Another application u/ 439 Cr.P.C for regular bail moved on behalf of accused Parvesh Grewal is also pending for disposal. Reply already fixed.

Arguments Addressed. Ld counsel for applicant/accused has

SC No. 59318/16

FIR No. 55/16

P.S. Crime Brach

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mainly argued that provisions of MCOCA are not attracted against the applicant/accused Parvesn Grewal since as per the charge sheet accused is involved in only one case. It is argued that in view of provision under section 2 (d) of MCOCA the prerequisite condition for proceeding under the said Act is that more than one charge sheet should have been filed against the accused before a competent authority within prescribed period of 10 years and that the Court should have taken the cognizance of such offence.

Bail application has been opposed by Ld Additional P.P on the ground that the charge is yet to be framed and granting of bail to the accused at this stage would indirectly amount to discharge of applicant/accused.

Perusal of charge-sheet reveals that provisions of MCOCA have been invoked against the accused only on basis of the charge-sheet against him in case FIR No. 47/11 u/s 364A/386/120B/34 IPC, P.S Dhaula Kuwan, South District. The charge-sheet does not reflect any other case filed against the applicant/accused Parvesh Grewal. Thus, prima facie at this stage I find that the conditions u/s 2(d) of MCOCA are

not fulfilled qua the applicant/accused Parvesh Grewal. So far as the contention of Ld Additional P.P is concerned, I rely on the bail order passed by Hon'ble High Court of Bombay, in Criminal Bail Application No. 512/13, dated 06.05.13, titled as Shamil Saquib Nachan Vs. The State of Maharashtra wherein it is held that judging the existence of the prima facie case at the stage of bail, would not be the same as judging the existence of a prima facie case for proceeding against an accused by framing a Charge.

It may also be mentioned that since one of the accused has absconded and proceedings u/s 82/83 Cr.P.C have been initiated against him, it might take more time for order on charge. Applicant/accused Parvesh Grewal is in JC since 19.08.16.

In view of the facts and circumstances, applicant/accused is admitted on bail on furnishing bail bond for a sum of Rs. 50,000/- alongwith two sureties in the like amount subject to the following conditions:-

- 1) That he shall not indulge into similar offence or any other offence in the event of release on bail;
- 2) That he shall not tamper with evidence in any manner or influence the witnesses directly or indirectly.
- 3) That in case of change of his residential address, he shall intimate the Court about the same.

SC No. 59318/16
FIR No. 55/16
P.S. Crime Brach
State Vs. Manoj @ Moherkheri etc.

Nothing herein shall tantamount to expression of opinion on merits of the case either at the time of framing of charge or at the time of final disposal.

Bail application stands disposed off accordingly. Copy of order be sent to Jail Superintendent for supplying the same to the applicant/accused.

Issue production warrants against accused Arun @ Kala through Jail Superintendent Hissar Jail, against accused Sumit @ Sam through Jail Superintendent Tihar Jail and against accused Rohit @ Rahul through Jail Superintendent Jhajjar Jail for 18.12.18.

(Sukhvinder Kaur)
Addl. Sessions Judge: 04 (North)
Rohini Courts: Delhi: 05.11.2018