

IA No. 04/2023
SC no. 155/2022
State Vs. Nand Kishore @ Nandu
FIR No. 319/2020
P.S: GTB Enclave
U/S: 392/397/411/468/471/120B/419 IPC
25 Arms Act.

10.10.2023

Present: Sh. Parmod Kumar, Ld. Addl. PP for State.

Today, this application u/s 439 Fr. PC seeking regular bail on behalf of applicant/accused, is fixed for clarification, if any / orders.

No clarification is required.

ORDER

1. By virtue of this order, application u/s 439 Cr. PC on behalf of applicant/accused seeking regular bail shall be disposed of.
2. Ld. Counsel for applicant/accused has submitted that applicant/accused has been falsely implicated in the present case; that applicant/accused has not been named anywhere by the complainant and there is no role attributed to the applicant/accused; that there is delay of almost 24 hours in lodging the present FIR; that co-accused Rahul Kashyap has already been granted bail; that applicant/accused is no more required for any custodial interrogation; that applicant/accused is aged about 53 years and he is suffering from various ailments. It has been further submitted that applicant/accused is ready to abide by all the conditions

imposed by the court, if he is released on bail. Thus, Ld. Counsel has prayed for grant of bail to the applicant/accused.

3. Per contra, Ld. Addl. PP for State has opposed the present application by referring to the serious nature of allegations against applicant in the FIR. It has thus been prayed that bail application may be dismissed.
4. I have heard respective submissions addressed on behalf of either side and perused the material on record.
5. In brief, the case of the prosecution is that the father of complainant was doing the work of junk dealing having a shop at Nafees Road. On 10.10.2020, at about 10.30/11 am, one person came to his shop and enquired from him about the shop of Saleem Junk Dealer and introduced himself as Raju and he further informed that he used to work at Metro construction site and intended to sell junk at a lower rate. Complainant's father agreed to purchase old copper wire and asked him to show the goods. Next day, complainant made a call to said Raju and he asked the complainant for meeting near Ali Village Metro Depot. Thereafter, Raju gave him some samples of copper wire and pipes. Further, on 12.10.2020, complainant was called by Raju at M.S. Park Flyover and accordingly complainant as well as his father, uncle kabir and brothers Amir, Shakil & Shadab reached there, where Raju met them on a motorcycle. Thereafter, Raju took them to bank for getting prepared the draft. Thereafter, complainant took Rs.5 lakhs from his father and went with said Raju on his motorcycle for preparing the

bank draft at Punjab National Bank and when they reached at Shahdara Flyover, said Raju stopped his motorcycle and asked the complainant to alight from his motorcycle and to give him Rs. 5 lakhs while showing pistol and threatened to kill him in case he does not give him amount, he got frightened and gave him Rs.5 lakhs and thereafter, Raju ran away on his motorcycle. Thereafter complainant made a call at 100 number. As per first call made by complainant i.e DD No.46A, the incident of robbery of Rs. 5 lakh by one boy on a motorcycle after showing the pistol, which the caller brought for purchasing junk (kabad) is mentioned. As per chargesheet, complainant had given his statement next day as after the incident he got frightened. A DD No.46A itself discloses about the crux of the incident. A country-made pistol with live cartridge, motorcycle used in the commission of offence and one empty envelop, out of two envelopes in which complainant carried the cash amount, were recovered at the instance of co-accused. As per allegations, the mobile Sim used in the commission of offence on the basis of forged Aadhar Card was got issued by applicant/accused, which was given to co-accused Santosh.

6. Before proceeding further, it may be noted that it has been laid down from the earliest time that the object of Bail is to secure the appearance of the accused person at his trial by reasonable amount of Bail. The object of Bail is neither punitive nor preventive. Deprivation of liberty must be considered a punishment unless it is required to ensure that an accused person will stand his trial when called upon. The

courts owe more than verbal respect to the cardinal principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and found guilty.

7. At the outset, it is worthwhile to mention that the role attributed to the applicant/accused is that he has got issued SIM card of the mobile used in the commission of offence on the basis of forged Aadhar Card and was part of conspiracy. The charge-sheet in present case was filed and thereafter charge against applicant / accused was framed for the offences under Section 392/120-B/419/468/471 IPC along with other co-accused persons including the charge of criminal conspiracy. It is worth mentioning that normally a criminal conspiracy is hatched in secrecy and often in a case where criminal conspiracy is involved, the role of an accused has to be inferred from the facts and circumstances surrounding a particular case as direct evidence of conspiracy is elusive. Pertinently, no overt role in commission of robbery has been ascribed to the applicant/accused. Further, the applicant/accused has not been named in the FIR and his involvement has come to the notice only by way of disclosure statements. Further, as per disclosure statement, applicant/accused was given his due share i.e. Rs.10,000/- (written as 10 Rs. Therein), which is a minuscule amount when seen vis-a-vis the total amount allegedly robbed i.e. Rs.5 lakhs. This seems to be indicative of his limited role in the present case. Also, recovery of said Aadhaar Card has already been made, but the amount has not been recovered. Moreover, the allegations of conspiracy to

commit robbery along with co-accused persons are a matter of trial. Moreover, applicant/accused has been in JC since 15.10.2020 i.e. almost three years, so no useful purpose would be served by keeping the applicant/accused in custody any further, more so, as trial is likely to take considerable time to conclude. Reference in this regard may be made to decisions of Hon'ble Supreme Court in **Kalyan Chandra Sarkar Vs. Rajesh Ranjan (2004) 7 SCC 528; State of UP Vs. Amarmani Tripathi (2005) 8 SCC 21; State of Kerala Vs. Raneef, (2011) 1 SCC 784** and **Sanjay Chandra Vs. Central Bureau of Investigation, (2012) 1 SCC 40**, wherein it is well settled that at pre-conviction stage, there is presumption of innocence. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be passed. The detention is not supposed to be punitive or preventive. Seriousness of the allegation or the availability of material in support thereof are not the only considerations for declining bail. Delay in commencement and conclusion of trial is a factor to be taken into account and the accused cannot be kept in custody for indefinite period if trial is not likely to be concluded within reasonable time. Last but not the least, apprehension, if any of prosecution may be allayed by imposing strict conditions.

8. Therefore, considering the facts and circumstances in totality, applicant/accused is admitted to bail on furnishing bail bond in the sum of Rs. **25,000/-** with one local surety of like amount to the satisfaction of this court/Duty MM subject to the conditions that:-

- 1. Accused shall not intimidate or influence the complainant or other public witnesses in any manner whatsoever, nor shall visit the close vicinity of the residence of complainant.*
- 2. Accused shall appear in the court on each and every date of hearing.*
- 3. Accused shall not tamper with the evidence nor shall indulge in any illegal activities nor shall commit any similar offence during the bail period.*
- 4. Accused and his surety shall intimate this Court immediately of any change in their addresses and shall also furnish their mobile numbers to the IO/SHO concerned.*

It is clarified that in case the applicant/ accused is found to be violating any of the above conditions, then the same shall be a ground for cancellation of bail.

Application is disposed of accordingly.

(Vineet Kumar)
ASJ-02/E-Court (Shahdara)
KKD/Delhi/10.10.2023