

IA No. 05/2023
ID NO. 306/2021
FIR NO. NO. 96/2020
STATE VS. ISRAR @ ISRAR TOMAR
PS GTB ENCLAVE
U/S. 365/394/395/397/
412/120-B/34 IPC

06.02.2023

Present: Sh. Anil Kumar, Ld. Addl. PP for State.
Sh. R.K. Kochar, Ld. Counsel for applicant/accused.

This is application for grant of bail of applicant/accused Israr, under Section 439 of Cr.P.C. stating that applicant has been falsely implicated as he was not present at the spot at the time of alleged incident. It is further stated that applicant was arrested in FIR No. 67/2000 (sic 2020), U/s. 465 IPC and 68/2020, U/s. 3/25 Arms Act and in FIR No. 67/2000 (sic 2020), the robbed car in the present case was recovered, however, he is on bail in both the FIRs.

Ld. Counsel has submitted that the complainant has identified both the accused persons in TIP after five months of the alleged incident. He further submitted that on 11.03.2021, complainant Satbir Singh @ Ram Babu made a statement that four boys have entered in car and kidnapped him and beaten him, thereafter, police registered case under Section 365/394/34 IPC and after arrest of applicant, police recorded his disclosure statement and on that basis Section 395/397/412/120-B IPC was added.

Ld. Counsel has further submitted that applicant is not a habitual offender and police officials has falsely booked the applicant

in both cases. Ld. Counsel submitted that complainant during his cross examination on 19.01.2023 deposed that Israr Tomar was not involved in the incident of beating and robbery and further stated that Israr has not committed any offence with him.

Ld. Counsel has submitted that bail be granted to applicant on the ground of parity as both co accused Kamil and Dilshad has already been granted bail and the role of applicant is lesser than co accused persons. It is further submitted that last bail application of applicant was dismissed on 29.10.2021, thereafter, the applicant approached the Hon'ble High Court where also bail application of applicant was dismissed vide order dated 11.04.2022 stating that complainant is yet to be examined, however, now complainant has already been examined. He further submitted that applicant is ready to abide terms and conditions of bail, if he may be granted bail.

Reply to the bail application has been filed wherein it is stated that on 11.03.2020, complainant went to Chhattarpur by car for covering marriage ceremony, thereafter, he was supposed to attend another marriage ceremony near Saleem Masjid, Dilshad Garden, however, at about 1.30 am, he was taking rest in car and his son left with party for coverage, meanwhile, four persons came and entered forcibly in car through window, thereafter, one started driving and put some sharp object on his neck and robbed Rs.10-11 thousand, one mobile phone, three video cameras, one drone camera, ATM Cards and other documents. During investigation, it was learnt from UP that accused Israr Tomar was apprehended alongwith robbed car in

suspicious circumstances on 14.03.2020 and was arrested and he was formally arrested by IO in present case on 04.08.2020 and the robbed car had been recovered from his possession. Thereafter, location of the mobile phone of applicant was traced and location of the accused was at the spot from where the complainant had been abducted. Moreover, applicant and co accused Kamil were identified by the complainant during TIP proceedings.

Sh. R.K. Kochar, Ld. counsel for applicant/accused has filed certain orders passed by Hon'ble High Court of Delhi titled as Faheem Vs. State dated 04.03.2020, Sonu Vs. State of NCT of Delhi dated 30.05.2016, Virender Singh Kanwar Vs. State of NCT of Delhi dated 24.05.2018, Kailash Chand Jain Vs. State of NCT of Delhi 10.04.2018 and Sudeep Kumar Vs. State dated 25.11.2019 whereby bail has been granted to accused persons on the ground of parity. The court has gone through the contents of the above orders, however, the facts of the above said cases are different from the fact of the present case, thus, are not applicable in the present case.

The court is mindful of the fact that as a general rule it is the bail and not the jail, which is the right of the accused. However, the right of the accused must be balanced with the general interest of the society and the fairness of the investigation. The possibility of witness tempering and the apprehension of threat to witnesses are the factors which cannot be ignored.

The Id. Counsel for accused has strongly argued that during cross examination, the complainant had stated that accused not committed any offence with him, however, perusal of the file shows

that the complainant had in his examination in chief clearly deposed against the applicant/accused. Witness had identified co accused Kamil and had also identified Dilshad as well as the present applicant/accused. Complainant has clearly stated that he was kept on roaming in his car in different areas for about 1 or 1 ½ hours and thereafter, accused persons called another car and within 10-15 minutes a Swift Car arrived which was driven by third accused person and the complainant had identified the driver of Swift Car as Israr Tomar. He has stated that he was shifted to Swift Car driven by accused Israr Tomar and thereafter, he was dropped at forest area of Tronica City. The chief examination of complainant was recorded on 01.06.2022. The court does not at this stage deem it appropriate to comment as to what transpired between 01.06.2022 and 19.01.2023, when the complainant was cross examined and when complainant further deposed during cross examination that accused Israr Tomar has not committed any offence with him. The fact remains that in his chief examination, he identified the accused to be one of the person who was involved in conspiracy. The location of the mobile phone of accused has been found at the spot from where the complainant was kidnapped. As far as delay in TIP of the accused is concerned, the IO has stated in chargesheet that application for issuance of production warrants of accused was moved on 09.04.2020 but due to the lockdown in the year 2020, the accused could not be produced before the court for long time. The applicant/accused had also taken the Swift Car of his brother in law Wasim and the said Swift Car was registered as Taxi with OLA. The witness Wasim is yet to be examined in the

present case and there is every chance that if released on bail, the present applicant would influence the witness Witness who is also his brother in law. Moreover, if bail is granted due to the fact that during cross examination, the complainant has absolved accused it would encourage the practice of influencing and pressurizing the witnesses/victims of crime. This fact cannot be ignored that in the chief examination, the complainant has given clear role of the applicant/accused to have come along with Swift Car at the spot on the calling of the other co accused persons and complainant has shifted to the said Swift Car and was later on left in the forest area.

In the present case, the role of the applicant is that he had made a conspiracy along with co accused Israr, Kamil, Bhima and Irfan who were still not arrested and had abducted Satbir Singh @ Ram Babu along with car bearing no. DL 2CW 9162 and wrongfully confine him. The applicant was arrested by UP police and on interrogation UP police found the robbed car from his possession. Moreover, the location of mobile phone of applicant has been traced at the spot from where the complainant had been abducted. Further, the applicant as well as co accused Kamil were identified during the TIP proceedings. Though, the ld. counsel has sought bail on the ground of parity, however, detailed appreciation of the facts is not warranted at this stage of deciding the bail application. The remaining public witnesses are yet to be examined and there is every possibility that if granted bail, then the accused may influence the witnesses.

Keeping in mind the totality of the facts and the circumstances, I deem it appropriate to dismiss the bail application, as the same is not warranted in the interest of justice. Application accordingly stands disposed off.

Copy of the order be given dasti.

(KIRAN BANSAL)
ASJ-04, Shahdara/KKD Courts,
Delhi/06.02.2023