

State Vs. Saad S/o Raja

CNR No.: DLCT01-013471-2023

SC No. 525/2023

FIR No. 579/2023

P.S Kotwali

20.09.2024

Present: Mr. Amit Dabas, Ld. Addl. PP for the State.
Mr. Shahroz Bakshi, Ld. Counsel for the accused,
namely, Saad S/o Raja.

ORDER

1. The present application has been moved on behalf of applicant, namely, Saad S/o Raja (*hereinafter referred to as the 'applicant/accused'*), in terms of the provisions under Section 439 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*)/Section 483 of Bhartiya Nagrik Suraksha Sanhita, 2023 (*hereinafter referred to as 'BNSS'*), seeking regular bail.

2. Learned Counsel for the applicant submitted that the applicant is innocent and has been falsely implicated in the present case by the concerned police officials. In this regard, Ld. Counsel further submitted that the applicant has nothing to do with the commission of alleged offence, with which he has been charged with. Ld. Counsel further submitted that there is no incriminating evidence against the applicant to connect him with the commission of alleged offence. It was further submitted that the name of the applicant was nowhere reflected in the First Information Report. Further, as per Ld. Counsel, investigation in the present case has already concluded and that the applicant is no longer required for any further custodial interrogation. Ld. Counsel further submitted that the applicant has been languishing

in judicial custody ever since 08.07.2024, without there being any chances of trial getting concluded, anytime in near future. Lastly, it was submitted by the Ld. Counsel that the applicant is ready to abide by the terms imposed by this Court while granting bail, including cooperating with the investigating authorities for further investigation, as and when summoned/ requisitioned.

3. *Per contra* Ld. Addl. PP for the State vehemently opposed the present application on the ground that the applicant was involved in crime, basis the disclosure statement of the co-accused persons and that there is strong apprehension that applicant had already disposed off the weapon of offence as well as trail of cash. Further, as per the Ld. Addl. PP for the State, the applicant had absconded and had been declared a proclaimed offender by the concerned Court. Ld. Addl. PP for the State further submitted that there is a reasonable likelihood of flight risk of the applicant, considering that the applicant had been declared a proclaimed offender *vide* order dated 07.11.2023 by the Ld. MM-08, Central, Tis Hazari Courts, Delhi, making the present application liable to be rejected to the outset.

4. The arguments of the Ld. Counsel for applicant and that of Ld. Addl. PP for the State, heard as well as case record(s) have been thoroughly perused.

5. At the outset, this court deems it appropriate to iterate some of hallowed principles governing bail jurisprudence, which have been persistently affirmed by various courts. In fact, one of the common threads that binds and governs the determination on a prayer for bail is that '*bail is a rule and jail is an exception*'. At the same time, another equally noteworthy principle that determines the field of bail is that an accused

persons cannot be kept in custody as a measure of punishment without trial. In fact, courts in a catena of decisions¹ have repeatedly avowed that bail cannot be withheld as a (mode of) punishment, object of bail being to secure the appearance of the accused person at his trial by reasonable amount, and the same being neither punitive nor preventative in nature.

6. Therefore, mindful of the aforementioned principles, this Court deems it appropriate to consider the arguments raised on behalf of the applicant as well as State in the instant case. Relevantly, one of the primary contentions of the Ld. Addl. PP for the State, while objecting to the applicant's prayer for bail is that the crime with which the applicant has been charged with is grave in nature. However, in this regard, this Court outrightly and unequivocally observes that it is trite law² that gravity or seriousness of offence cannot be treated as the only consideration for refusing bail. Even otherwise, from the perusal of the reply filed by the IO, it is observed that the role attributed to the applicant is premised only on the disclosure statements of the co-accused persons and that despite repeated queries, no role for commission of offences in question has been brought to the attention of this Court by the IO. Further, upon a query from the Ld. Addl. PP for the State, it has been brought to the notice of this Court that the only allegation against the applicant at this stage pertains to the offence punishable under Section 174A IPC. Further, in the instant case, admittedly, the applicant has been in judicial custody since 12.07.2024 and in the meanwhile, charge-sheet has been filed and committed before this Court; applicant

¹*Sanjay Chandra v. CBI, (2012) 1 SCC 40 and K. Rajapandian v. State (NCT of Delhi), 2022 SCC OnLine Del 1315*

²*Sunder Singh Bhati v. State, 2022 SCC OnLine Del 134*

being 19 years of age and no previous involvement of the applicant in any other offence has been brought to the attention of this Court. Needless to further observe that as per record, including the reply of the IO, nothing has been recovered from the possession of the applicant or at his instance. Consequently, under such factual scenario, this Court is of the opinion that the balance clearly tilts in favour of the applicant at this stage. Concomitantly, the apprehension of the Ld. Addl. PP for the State pertaining to the applicant's flight risk and/or tampering with prosecution's case can be taken care of¹ by imposing elaborative and stringent conditions.

7. Consequently, in conspectus of the above and further keeping in view the incarceration of the applicant in the present case since 12.07.2024; further considering the fact that the allegations against the applicant are pertaining to Section 174A IPC only; investigation of the case has already been completed; charge-sheet filed; age of the applicant; there is no previous involvement of the applicant in any case; period of custody of the applicant and his jail conduct being satisfactory as per the nominal roll received from the CJ-05, Tihar; this Court deems it fit to grant bail to the applicant.

8. Accordingly, in light of the aforementioned facts and circumstances, the present application under Section 439 Cr.P.C./483 BNSS for regular bail *qua* the applicant, namely, **Saad S/o Raja** is ***allowed***, and the said applicant is admitted to bail, upon furnishing of **personal bond of Rs. 15,000/- (Rupees Fifteen Thousand only)**, with two sureties of the like amount

¹*Abhishek Kumar Singh v. State of H.P.*, 2020 SCC OnLine HP 3296

each to the satisfaction of this Court and further subject to the following additional conditions that;

- (i) *the applicant/accused shall not commit offence similar to the offence of which the applicant/accused has/is suspected to have committed;*
- (ii) *the applicant/accused shall attend the court on all the dates fixed during the trial;*
- (iii) *the applicant/accused shall ordinarily reside in his place of residence and immediately inform change of address, if any, to the Investigating Officer;*
- (iv) *the applicant/accused shall furnish to the Investigating Officer a cell phone number on which the applicant/accused may be contacted at any reasonable time and shall ensure that the number is kept active;*
- (v) *the applicant/accused shall cooperate in any further investigation, as and when required and shall appear before the investigating agency/Court as and when called for, as per law;*
- (vi) *the applicant/accused shall not, directly or indirectly, contact or visit or offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of the case; and*
- (vii) *the applicant/accused shall not tamper with evidence, nor try to prejudice the proceedings in the matter in any manner.*

9. It is clarified herein that the observations made in the present order are only limited for the purpose of deciding the present application of the applicant and would have no bearing on the factual matrix of the present case, which is a separate issue to be determined as per law.

10. In view of the above, the present application of the applicant, namely, Saad S/o Raja is ***disposed off as allowed***.

11. A copy of the present order be given ***dasti*** to the Ld. Counsel for the applicant, namely, Saad as well as the IO. Further, a **copy of this order be sent to the concerned Jail**

Superintendent with the direction to hand over a copy of order to the applicant.

Abhishek Goyal
ASJ-03, Central District,
Tis Hazari Courts, Delhi
20.09.2024