

In the court of Ms. Rajni Yadav, Additional Sessions Judge, Gurgaon.

Bail application No. 348 of 8.11.2016.

Date of order: 22.11.2016.

CIS no. 2971/2016

Manoj Kumar son of Bailu Ram r/o Jaudola, P.S.Farrukh Nagar.

...Applicant/accused.

VS.

State of Haryana

...Respondent.

FIR no. 273 of 29.6.2016..

U/Ss :376D,392,342,450,397,34 of Indian Penal Code ,1860(hereinafter referred to as IPC) sec.25 of Arms Act..

P.S.Kherki Daula Gurgaon.

**First Application for regular bail U/s 439
of Code of Criminal Procedure,1973
(hereinafter referred as Cr.P.C.)**

Present: Sh.Vinod Rao,Advocate for the applicant/accused .
Shri D.K.Kundu , PP for the respondent-State.

ORDER:-

1. This order of mine shall dispose of first bail application under section 439 Cr.P.C. moved on behalf of the above named applicant/accused for admitting him on regular bail .

2 Reply to the bail application has been filed by the prosecution.

3 Prosecution story in brief is that complainant lodged a report with the police that on the intervening night of 28/29.6.2016 Imran,son of his sister in law and his wife Shehnaz were sleeping behind the room in a shed. At around 2.30 a.m.two boys came there and took away 8 mobile

phones and Rs.65000/- from his shop on pistol point. Both the boys committed gang rape upon Shehnaaz . Thereafter both the boys ran away. Based on this complaint the present case was registered and accused was arrested.

4 I have heard the rival contentions of learned counsel for the applicant, learned Public Prosecutor for the State and have also perused the case file very carefully.

5 It is contended on behalf of learned counsel for applicant-accused that he has been in custody since 20.7.2016. On merits it is contended that no common intention can be attributed to the applicant-accused alongwith other co accused who actually entered the house and operated upon the remaining incident. The recovery of two mobiles and Rs.3000/- has been effected from the applicant-accused but the complaint does not give any specification of the mobile phones, which were allegedly snatched away or robbed from the conscious possession by assailing party on the date of incident. On these grounds, bail is prayed for. In support of his arguments, learned counsel for accused-applicant has cited judgment in Ashok Kumar Vs.State of Haryana, 2003(1) RCR (CrL.) 244.

6 Learned PP has opposed the bail application on the ground that applicant-accused has played a specific role of standing as watch keeper outside the house when remaining co accused entered the house of complainant ransacking the entire area and confining the family members wrongfully and some of them committed gang rape upon one of lady member of the house. In these circumstances, bail application has been opposed.

7. **In Sanjay Chandra v. C.B.I. (SC) : 2011(4) R.C.R.(Criminal)**

898,on bail application it was held;

“In bail applications, generally, it has been laid down from the earliest times 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 preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.

8 In the entire position regarding ransacking of house, the assailants did not stop only with destroying the house property or committing robbery in the house but also committed gang rape upon one of the lady members. The allegations against the applicant-accused are direct that he was present outside the house as guard and under common intention and criminal conspiracy, these allegations are well covered. As trial is yet to begin and prosecution witnesses are yet to be examined, it is necessary that in such like cases, bail should be restrained in order to build the confidence

of the public at large and attending witnesses, who will depose in the court in future.

9. Resultantly the present bail application is hereby dismissed.This order shall have no bearing on the merits of the case.

Announced
22.11.2016

Rajni Yadav,
Addl. Sessions Judge,
Gurgaon.

Note All the 4 pages are duly checked and signed by me.

Rajni Yadav,
Addl.Sessions Judge,
Gurgaon.

Present: Sh.Vinod Rao,Advocate for the applicant/accused .
Shri D.K.Kundu , PP for the respondent-State.

Reply filed.Heard.Vide my separate detailed order of even date,
the application for bail has been dismissed.File be consigned or tagged with
main case as the case may be.

Announced in open court.
Dated: **22.11.2016**

(Rajni Yadav)
Addl. Sessions Judge,
Gurgaon.