

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 30.12.2022

+ **BAIL APPLN. 3698/2022 & CRL.M.(BAIL) 1511/2022**

MOHD TAUSEEF

..... Applicant

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Applicant : Mohd. Rais Farooqui, Mohd. Ahmed Shamsheer, Mohd. Imran Malik, Mr. Laique S. Farooqui, Mr. Khalid Azeez, Mr. Asad Beig & Mr. Aditya Mishra, Advs.

For the Respondents : Ms. Richa Dhawan, APP for the State with Insp. Dharmendra Sharma, PS Rajinder Nagar

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HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

AMIT MAHAJAN, J

1. The present petition is filed for grant of pre-arrest bail in FIR No. 167/2022, under Section 397/394 of Indian Penal Code, 1860, registered at Police Station Old Rajinder Nagar.

2. The FIR was registered pursuant to a PCR call *vide* DD No. 102 dated 09.06.2022 made by one Nitin Dhawan alleging robbery of

jewellery items and cash by four armed men who came in white coloured Chevrolet Cruze car bearing No. RJ04CA2541.

3. During the course of investigation, the footage of the CCTV cameras in the vicinity were obtained and the vehicle used for the purpose of robbery was identified. The said vehicle was found to be stolen from Ghaziabad, UP. The two accused persons, namely, Mohammad Mustakeen and Mendi Hasan were arrested and the vehicle used at the time of incident was recovered from their possession. Another co-accused, Mohd. Kashif *alias* Badshah was arrested on 18.09.2022 on a secret information. The said co-accused, in his disclosure statement, stated that the robbed property was given to the present applicant.

4. Learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. He submits that apart from the disclosure made by the co-accused, there is no other evidence against the applicant.

5. He further submits that the co-accused, on whose disclosure, the name of the applicant came up, has already been granted bail by this Court by order dated 09.12.2022.

6. Learned APP for the State opposes the present application. She submits that the applicant is the receiver of the robbed property and the robbed material is still to be recovered.

7. She further submits that the applicant has been absconding and the proceeding under Section 82 have already been initiated against him.

8. She further submits that the applicant has a history of committing crime and was previously involved in a similar case of robbery.

Reasoning

9. The alleged role of the applicant is not similar to the alleged role of Mohd. Kashif *alias* Badshah. This Court, while considering the fact that the applicant has already spent four months in custody, and that the only evidence against the applicant was his own disclosure statement, had directed the release of Mohd. Kashif on bail.

10. The present, is not a case of grant of regular bail but is an application under Section 438 of Cr.P.C. The Hon'ble Supreme Court in catena of judgments have categorically held that the power to be exercised under Section 438 of Cr.P.C. are extraordinary and ought not to be exercised in a routine manner. It has been held that in cases where the accused has joined investigation and has fully cooperated with the investigating agency and is not likely to abscond, the custodial interrogation, perhaps, should be avoided. The allegations made against the applicant are serious in nature.

11. He is stated to be in possession of the robbed articles which are yet to be recovered. The applicant had been absconding and, initially,

Non-bailable warrants were issued and, thereafter, proceeding under Section 82 of the Cr.P.C. have been initiated. The applicant also has a case history and is found to be involved in another case, being FIR No. 973/2020, under Sections 392/34 of IPC.

12. The Court, while considering the application for bail, has to keep in mind the nature of the charge, the nature of evidence, the severity of the punishment to which the accused may be liable if convicted and also the antecedents of the accused.

13. It is also rational to keep into account the antecedents of the man applying for bail that might suggest that he is likely to commit serious offences while on bail. The Hon'ble Apex Court in the case of **Ash Mohammad v. Shiv Raj Singh, (2012) 9 SCC 446** observed as under:

“17. We are absolutely conscious that liberty of a person should not be lightly dealt with, for deprivation of liberty of a person has immense impact on the mind of a person. Incarceration creates a concavity in the personality of an individual. Sometimes it causes a sense of vacuum. Needless to emphasise, the sacrosanctity of liberty is paramount in a civilised society. However, in a democratic body polity which is wedded to the rule of law an individual is expected to grow within the social restrictions sanctioned by law. The individual liberty is restricted by larger social interest and its deprivation must have due sanction of law. In an orderly society an individual is expected to live with dignity having respect for law and also giving due respect to others' rights. It is a well-accepted principle that the concept of liberty is not in the realm of absolutism but is a restricted one. The cry of the collective for justice, its desire for peace and harmony and its necessity for security cannot be allowed to be trivialised. The life of an individual living in a society governed by the rule of law has to be regulated and such regulations which are the source in law subserve the social balance and function as a significant instrument for protection of human rights and security of the

collective. It is because fundamentally laws are made for their obedience so that every member of the society lives peacefully in a society to achieve his individual as well as social interest. That is why Edmond Burke while discussing about liberty opined, "it is regulated freedom".

18. *It is also to be kept in mind that individual liberty cannot be accentuated to such an extent or elevated to such a high pedestal which would bring in anarchy or disorder in the society. The prospect of greater justice requires that law and order should prevail in a civilised milieu. True it is, there can be no arithmetical formula for fixing the parameters in precise exactitude but the adjudication should express not only application of mind but also exercise of jurisdiction on accepted and established norms. Law and order in a society protect the established precepts and see to it that contagious crimes do not become epidemic. In an organised society the concept of liberty basically requires citizens to be responsible and not to disturb the tranquillity and safety which every well-meaning person desires. Not for nothing J. Oerter stated:*

"Personal liberty is the right to act without interference within the limits of the law."

19. *Thus analysed, it is clear that though liberty is a greatly cherished value in the life of an individual, it is a controlled and restricted one and no element in the society can act in a manner by consequence of which the life or liberty of others is jeopardised, for the rational collective does not countenance an anti-social or anti-collective act."*

14. The applicant has been absconding and the antecedents do not suggest that he is not likely to commit serious offences while on bail. The investigation in relation to applicant is at a nascent stage and due to non-cooperation of the applicant, has not proceeded. The robbed articles are stated to be in possession of the applicant.

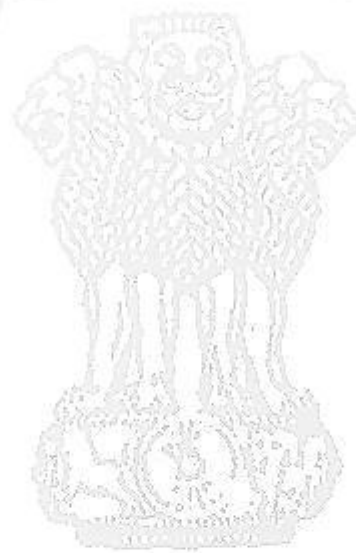
15. At this stage, it cannot be said that the custodial interrogation of the applicant is not necessary.

16. Thus, keeping in mind the nature of allegations; the antecedents of the applicant; the fact that the applicant has not joined and cooperated with investigation and that the investigation is at a nascent stage, Court feels that this is not a fit case for exercise of the discretion under Section 438 of Cr.P.C. The application is, therefore, dismissed.

17. It is, however, made clear that any observations made in the present order are only for the purpose of deciding the present bail application and should not influence the outcome of the trial.

DECEMBER 30, 2022
“SS”

AMIT MAHAJAN, J



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