

Bail application no. 96/23
State v. Ashutosh
FIR No. 2/23
PS Sultanpuri
u/s 297/337/304A/304/201/212/182/34/120B IPC

17.01.2023

This is the application under Section 439 Cr.P.C. for grant of bail, moved on behalf of applicant/accused Ashutosh

Present: Shri P.K. Samadhiya, Ld. Addl. PP for the State.

Shri Shilpesh Choudhary, Ld. Counsel for the accused/ applicant.

IO/ Inspector Rajnish Kumar in person.

IO has filed reply.

Arguments on the bail application have already been heard.

It is pertinent to mention that the present bail application was argued by Shri Atul Srivastava, Ld. Addl. PP for State, however, today he is not present in the Court.

IO/ Inspector Rajnish Kumar today submits that Section 302 IPC has been added in this FIR.

It is argued by Ld. Counsel for the accused/ applicant that applicant/ accused is apprehended in this case only on the basis of discloser statement of accused persons. The only role of the applicant/ accused is that he gave his car to one of his friend namely Amit Khanna who is one of the accused in this case near about 5.30 pm on date 31.12.2022 from his father's residence. It is submitted that on and point of investigation the applicant/ accused helps the police officials. He himself handed his car to the police officials and helped them to arrest the other co-accused persons of this case. The co-accused Ankush who is

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one of the accused in the same FIR has already been granted bail from the Court of Ld. MM on 07.01.2023. The applicant/ accused is only the owner of the said vehicle. It is argued that at the time of commission of offence the applicant/ accused was present with his family and neighbors at his residence to celebrate the new year function. The applicant/ accused is having clean antecedents and having no criminal / civil case pending against him prior to the present case. The applicant/ accused has been falsely implicated in the present case as he has nothing to do with the commission of the above said offence. The applicant/ accused is the sole bread earner of the family and there is no one to look after his wife and his son who is about one year. No fruitful purpose will be served by keeping the applicant/ accused in judicial custody.

During arguments, Ld. Counsel for the accused submits that accused Ankush came to the house of the applicant alongwith accused Deepak and one auto driver. The applicant/ accused was called from his house by the accused Ankush. Ld. Counsel for the accused submits that the allegations against applicant/ accused that he did not convey the facts to the police or that he added in disappearing of the offence or that he harboured/ protected the other co-accused are bailable in nature. There was no intention to screen the co-accused. Accused / applicant had joined the investigation for 4-5 days with the police and police did not arrest him and later on due to media pressure the applicant/ accused has been arrested. Ld. Counsel for the accused/ applicant has argued that the applicant/ accused was not present in the car alongwith other co-accused.

Shri Atul Srivasatava, Ld. Addl. PP for State has argued that the accused / applicant has provided the vehicle to the accused persons who were not authorized to drive. The applicant/ accused was in constant touch with the co-accused persons. Ld. Addl. PP for State submits that at the instance of applicant/ accused, the co-accused persons were arrested. It is argued that for the offence of conspiracy the presence of the accused/ applicant at the place of incident is not required. The applicant/ accused cannot claim parity with co-accused Ankush as accused/ applicant is the one who had provided the vehicle to the co-accused knowing that they did not have valid driving licence. All the co-accused persons reached the house of the accused/ applicant Ashutosh and thereafter the offending vehicle reached his house. The accused/ applicant Ashutosh came out with the false story that co-accused Deepak was driving the vehicle and not co-accused Amit. As per the investigation done by the police official and the statement u/s 164 Cr.PC of one Sahil, co-accused Amit was driving the vehicle and not co-accused Deepak. Ld. Addl. PP for State submits that considering the entire scenario, the applicant/ accused was in conspiracy with other co-accused persons due to which the Ld. MM rejected the bail and granted police custody. Ld. Addl. PP for State has argued that the investigation is still at the initial stage.

In rebuttal, Ld. Counsel for the accused / applicant argued that even though Ld. Addl. PP for State is pressing the arguments regarding conspiracy, however, the same can only be attracted after accused/ applicant came to know about the

incident as disclosed by co accused when they reached his house. It is argued that Section 120B (2) IPC is bailable offence.

Record perused.

Brief facts of the case are that on 31.12.2022 SHO Sultanpuri was performing night patrolling in the PS Sultanpuri area when he reached at Pooth Kalan Kanjhwala Road, ERV staff informed him regarding one scooty bearing DL-11-H-7237 was found lying in accidental condition at Sani Bazar Road, Krishan Vihar, Delhi. He reached on the spot immediately and lodged the DD entry no. 19A at PS Sultanpuri. The call was entrusted to SI Hemant and HC Amit deployed in the emergency duty. Staff reached at the spot where one scooty bearing no. DL-11-H-7237 was found in accident condition in front of E-7/D-2 Krishan Vihar, Sani Bazar, Delhi. The spot was inspected by the crime team, exhibits and scooty were taken into police possession through seizure memos.

On the other hand, SI Umesh PS Kanjhawala had also received a PCR call vide DD no. 15A dated 01.01.2023 stating that “caller ne bataya ek ladki ki nude lass padi hue hai need help”. During inquiry PCR caller stated that the registration number of offending vehicle Baleno Car is DL-8CAY-6414. On reaching at the spot, one unknown dead body of female in almost nude condition was found lying on main Kanjhawala. Thereafter, dead body of deceased was sent to SGM Hospital, Mangolpuri, Delhi wherein the doctor declared the patient brought dead vide MLC no. 82 dated 01.01.2023 and dead body of deceased was got preserved at mortuary, SGM Hospital.

During the course of enquiry, owner of the offending vehicle stated that offending vehicle was driven by Deepak at the time of incident and all the other accused persons were accompanied with him in the offending vehicle. Later on, the dead body was identified Anjali. In reply it is alleged by the IO that all accused persons intentionally caused accident / hit to the deceased and further dragged the deceased very long distance by the offending vehicle in order to causing death of the deceased as well as for disappearance evidence of the offence with the common intention to screen from prosecution. Five accused namely Deepak Khanna, Amit Khanna, Krishan, Manoj and Mithun were arrested. During the course of investigation scientific and electronic evidences etc., is being collected.

As per record, during the course of further investigation, it has been revealed that the offending vehicle is registered in the name of Lokesh Prasad Sharma. He gifted offending car to his sister / brother in law i.e. accused/ applicant Ashutosh at the time of marriage. It was the accused / applicant who provided the offending vehicle Baleno car to the accused Amit Khanna who did not have any valid driving licence. As per the CDR collected by the IO during investigation, a call was made by co- accused Ankush to the applicant/ accused Ashutosh at about 4.56 am on 01.01.2023. Perusal of the record further shows that the role alleged by the investigating agency to the accused/ applicant seems to have come forth only after the act and he is not alleged to be present in the vehicle at the time of the act. There seems to have been no meetings of minds with any of the other co-accused

with the accused/ applicant Ashutosh prior to the call he allegedly received from co-accused Ankush.

As per the investigating agency the applicant/ accused is the custodial owner of the offending vehicle Baleno Car bearing registration no. DL-8C-AY-6414. He gave the car to his friend/ co-accused Amit, who did not have any valid licence. The accused/ applicant is alleged not to have revealed all the facts conveyed by his friend to the investigating agency as well as he is alleged to have misled the investigating agency that co-accused Deepak was driving the car at the time of incident. His role is alleged to be regarding helping in disappearance of the evidence of offence and of helping in harbouring / protecting the accused persons with the intention of screening the accused persons. All these above allegations seem to have come forth only after the act allegedly done by the co-accused persons. At this stage, there seems to be no document in the form of CDR / CCTV footage etc. produced by the investigating agency to show any prior meeting of minds of accused/ applicant Ashutosh with the other co-accused persons to commit the act before he received the alleged call from co-accused Ankush at 4.56 am. The accused/ applicant is in JC since 05.01.2023 and is no more required for custodial interrogation.

Keeping in view the above discussions and the facts and circumstances of the case, the applicant/ accused **Ashutosh** is granted bail on executing a personal bond of Rs. 50,000/- with one surety in the like amount to the satisfaction of the Ld. Trial Court/ Duty MM with the following conditions :

- a) The applicant/ accused shall not make any inducement, threat or promise to any person acquainted with the facts of the case.
- b) The applicant shall not tamper with the evidence.
- c) He shall not leave the country without the permission of the Ld. Trial Court.
- d) He shall always keep active his mobile's location application at all times.
- e) He shall co-operate with the investigating agency as and when required.

The application stands disposed off accordingly.

It is clarified that nothing stated herein shall tantamount to an expression of opinion on the merits of the case.

Copy of order be provided dasti as requested.

(Susheel Bala Dagar)
Additional Sessions Judge-01
(POCSO), North West/ Rohini/
Delhi/17.01.2023