

FIR No. 19/20  
PS: Darya Ganj  
U/s: 392/397/34 IPC  
Wasim Vs. State

30.07.2020

Fresh bail application u/s 439 Cr.PC received by way of assignment. It be checked and registered.

**Matter taken up through Video Conferencing (Cisco Webex).**

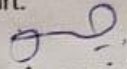
Present: Sh. Virender Singh, Ld. Addl. PP for State.  
Mohd. Ilyas, Ld. Counsel for applicant/accused Wasim.

The present application u/s 439 Cr.PC has been moved on behalf of applicant/accused Wasim, seeking regular bail. Reply filed by the IO.

At this stage, Ld. Counsel for applicant submits that he does not want to press the present application, therefore, same be dismissed as withdrawn. Statement of applicant's counsel recorded separately to this effect.

In view of the statement of counsel for applicant, the present application is dismissed as withdrawn.

This order be uploaded on the official website of District Court.

  
(Charu Aggarwal)  
ASJ-02/Central Distt.  
THC/Delhi-30.07.2020

FIR No.187/19  
PS: Karol Bagh  
U/s: 307/34 IPC  
Kunal @ Mukri Vs. State

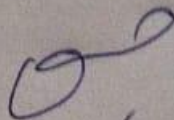
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Fresh bail application u/s 439 Cr.PC received by way of assignment. It be checked and registered.

**Matter taken up through Video Conferencing (Cisco Webex).**

Present: Sh. Virender Singh, Ld. Addl. PP for State.  
Sh. Jitender Sethi, Ld. Counsel for applicant/accused Kunal @ Mukhri.

1. This is the fourth bail application u/s 439 Cr.PC moved on behalf of applicant/accused Kunal @ Mukhri, seeking regular bail. Reply filed by the IO.
2. Trial of the case is pending in this court and is at the stage of prosecution evidence. Out of two public witnesses, one injured Akash has been examined and cross examined. Chief examination of complainant Mohit is complete, however, his cross examination is still pending.
3. The case of the prosecution is that complainant Mohit is the owner of restaurant in the name and style of "Hideout Café & Restaurant" at Karol Bagh. Injured Akash was Manager in the restaurant. Applicant Kunal and co-accused Abhishek were regular visitors at the said restaurant. On the date of incident i.e. on 25.05.2019, at about 11:15 PM, complainant and his manager Akash were present in the restaurant. At that time, both accused came there and suddenly applicant Kunal opened fire with a pistol on complainant Mohit and his manager Akash. Complainant Mohit somehow managed



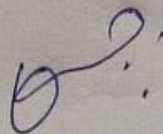
**FIR No.187/19**  
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to escape, however, his manager Akash sustained injury on his abdomen. Injured Akash was shifted to BLK Hospital from where he left the hospital against the medical advice i.e. "LAMA". As per the MLC, the Doctor has opined the injury sustained by injured as dangerous. On 28.05.2019, applicant/accused surrendered before concerned Ld. MM. His two days police remand was obtained by the IO and at his instance, pistol was recovered.

4. Arguments heard.

5. Ld. Counsel for applicant/accused submits that applicant has been falsely implicated in the present case. He raises doubt on the presence of PW complainant Mohit at the spot as he submits that the alleged incident occurred at 11:15 PM, however, the FIR was lodged at 05:45 AM, which creates doubt on the presence of PW Mohit, as, had Mohit was present at the spot, there was no reason to get lodged the FIR immediately after the incident. In order to raise further doubt on the presence of PW Mohit, he submits that as per chargesheet when the police officials reached at the spot no eye witness was found present there, similarly no eye was found present by the police even in the BLK Hospital where injured Akash was first shifted. He also submits that even as per the MLC of BLK Hospital, injured was shifted to the hospital by one Atul, friend of injured but not by PW Mohit. The further submission of Ld. Counsel is that as per the MLC of the injured, he left the hospital against medical advice as the MLC clearly mention "LAMA". The next contention of the Ld. Counsel is that as per the MLC of BLK Hospital, the injured was referred to RML Hospital but there is no medical record of the injured from RML Hospital which clearly shows that the injured was

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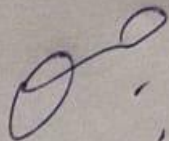


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discharged from the hospital on the same day. His other submission is that both the material witnesses of the prosecution have already been examined. Applicant is stated to be in custody since 28.05.2019. Ld. Counsel while relying upon "**Bhagirath Singh VS. The State of Gujrat (SC)**", 1984 C. C Case 17 (SC), submits that accused cannot be kept in custody during trial as punishment and at the time of bail the court only has to ensure the presence of accused.

6. Ld. APP strongly oppose the bail application as he submits that there are serious allegations against the applicant. He also submits that the last bail application of the applicant was dismissed by this court on 16.12.2019, thereafter, there is no change of circumstance. He drawn the attention of the court that PW Mohit has correctly identified the applicant during his chief examination. Pistol was recovered at his instance and applicant is clearly shown in the CCTV footage collected from the spot.

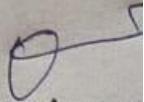
7. I have considered the rival contentions of Ld. APP and Ld. Counsel for applicant and perused the record. The argument of Ld. counsel that there is delay in lodging the FIR and presence of PW Mohit is doubtful at the spot, are matter of trial and subject to cross examination of PW Mohit and IO. The judgment of Hon'ble Apex Court relied upon by Ld. Counsel is not of any help to the applicant since in the said judgment the Hon'ble Apex Court apart from observing that the court should consider whether the presence of the accused can be assured during trial, has also observed that while considering bail, the court should also keep in mind whether there is possibility of tempering of evidence by the accused. In this case, one of



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the material witness Akash, who was injured in the incident, has already turned hostile on the identification of both the accused. **PW Mohit has also not identified co-accused Abhishek but he has correctly identified the applicant/accused Kunal in his chief examination.** Cross examination of PW Mohit is still pending which could not be completed due to on going lockdown. In view of the fact that injured has already turned hostile on the identification of both accused and even PW Mohit also did not identify co-accused Abhishek, therefore, the possibility to influence him (PW Mohit) thereby tempering with the evidence by the applicant cannot be ruled out. Otherwise also, specific role has been attributed to the applicant/accused that he fired upon the injured with the pistol, which later on was recovered at his instance. Keeping in mind all the facts and circumstances, this court is of the opinion that this is not a fit case that applicant be admitted on bail, hence, the bail application is hereby dismissed.

Copy of this order be given dasti to the applicant's counsel and b  
uploaded on the official website of District Court.

  
(Charu Aggarwal  
ASJ-02/Central Di  
THC/Delhi-30.07.20