

State Vs. Lalit

e-FIR No.12296/2020

PS: Rajinder Nagar

ऋषभ कपूर
RISHABH KAPOOR
महानगर दण्डाधिकारी-03
Metropolitan Magistrate-03
केन्द्रीय जिला कमरा नं. 150
Central District, Room No. 150
तीस हजारी न्यायालय, दिल्ली
Tis Hazari Courts, Delhi

15.09.2020

Matter heard through VCC over Cisco Webex.

Case is taken up in view of Circular No. 23456-23616 DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30.08.2020 issued by Ld. District & Sessions Judge (HQ).

Present: Sh. Vakil Ahmed Ld. APP for State

Sh. N.K Saraswat Ld. LAC for applicant

The present application for grant of regular bail u/s 437 Cr.PC. was filed on behalf of the applicant Lalit, through email id of this court.

Scanned copy of reply of under the signatures of HC Ravinder Singh, is received through email id of the court. Copy of same is already supplied to Ld. LAC for applicant/accused, electronically.

Heard. Record perused.

This order shall dispose of an application for **grant of regular bail u/s 437 of Cr.P.C.**, moved on behalf of **applicant/ accused Lalit**.

It is averred on behalf of the applicant has been falsely implicated in the present case and no recovery is left to be effected from the applicant/accused. It is further averred that applicant is undergoing judicial custody since 08.08.2020. It is further averred that accused is the sole bread earner of his family and his family is suffering immense difficulty due to his incarceration. It is further averred that present application is not filed in view of minutes of HPC dated 31.07.2020 and applicant is seeking regular bail. It is with these averments, prayer has been made to admit the applicant on regular bail.

Ld. APP for State has been contended that the present application is not maintainable as it is the second bail application moved on behalf of the applicant/accused, without establishing any changed circumstance after the dismissal of the earlier application. It is also contended that the applicant is a habitual offender and if he is admitted on bail, there exists

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a strong likelihood that he will indulge himself in the offences of similar nature. It is with these averments, the prosecution has sought dismissal of the present application.

At the very outset, it is pertinent to mention here that the present application is the **second bail application** moved on behalf of the applicant, seeking his enlargement on bail. It may be added here that vide orders dated 22.08.2020, the earlier bail application of the accused/applicant, was dismissed by this court. It has been averred on behalf of applicant that since the accused is undergoing judicial custody since long, therefore, it tantamount to a changed circumstance, entitling the applicant for grant of bail. However, in this regard it is pertinent to mention here that even though there is no bar in entertaining successive bail applications, by consideration before the same court. There also lies not time-limit, set for moving the court for bail, after the first or previous bail application, is rejected. But, it should be only when some new facts and circumstances have been developed, after rejection of previous bail application, then only the successive bail application should be considered on merits. In Parvinder Singh vs. State of Punjab 2003 12 SCC 528, the Hon'ble apex court held that though an accused has right to move successive bail applications for grant of bail, but the court entertaining such subsequent application, has a duty to consider the reasons and grounds on which earlier bail applications were rejected. In such cases, the court has a duty to record what are the fresh grounds which persuade it to take a view, different from one taken in earlier application. Similarly, in State of Madhya Pradesh versus Kajad AIR 2001 SC 3517, it was held that it is true that successive bail application are permissible under the changed circumstances, but without the change in circumstances, the second bail application would be deemed, seeking review of earlier judgment, which is not permissible under the criminal law.

Now, coming to the contentions advanced on behalf of the accused/applicant, qua changed circumstances justifying maintainability of present application. As per the version of the Ld. LAC for applicant, since the accused is undergoing J/C since long, hence in view of this changed circumstance, the present bail application can well be entertained by this court. In this regard, it is pertinent to add that the authorities cited above clearly suggests that the successive bail applications are maintainable before the same court only when, circumstance which led to the dismissal of earlier application, is shown to have been changed. Mere, branding a circumstance or glossing it with a term 'changed circumstance', does not, fall under the purview of circumstance, which leads to maintainability of successive bail application unless the same has direct bearing on the grounds upon which the decision on earlier application was made. If, without establishing the said changed circumstance, the court ventures itself into entertaining the successive bail applications, it virtually tantamount to review of its own order, which certainly is not contemplated under the scheme of Cr.P.C. As far as the assertions of Ld. LAC for applicant are concerned, pertinently, the perusal of order dated 22.08.2020 is suggestive of the fact that the first bail application as moved on behalf of the applicant/accused Lalit was dismissed by this court primarily on two counts which are, first, the previous bad antecedents of the applicant, justifying the apprehensions of the prosecution regarding the possibility of commission of

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offences of like nature by the accused/applicant and secondly, on the count that there existed a likelihood that if admitted on bail, the applicant will dissuade the prosecution witnesses. Pertinently, on establishing the fact by prosecution that the applicant has dented antecedents, the earlier bail application of accused/applicant was dismissed. The fact that, the applicant has previous dented criminal antecedents, remains undisputed and as such nothing Cogent has been placed on record on behalf of the accused/applicant vanishing the apprehension of the prosecution that if admitted on bail, the accused will not indulge himself in offences of similar nature or will not dissuade the material prosecution witnesses, I am of the view that the present application as moved on behalf of applicant lacks any maintainability.

In the light of my discussion made above, and also placing on reliance on the authorities cited above, since the earlier bail application of the applicant was dismissed on the ground of existence of likelihood of commission of offences of similar nature by the applicant, in case of his release and also upon appreciating possibility of his dissuading the prosecution witnesses, therefore merely on account of prolonged judicial custody of accused, the prayer of the applicant cannot be accepted. In these circumstances, the application in hand deserves dismissal and as such the present application is hereby dismissed.

The application is accordingly disposed of.

Scanned copy of this order be sent to the Ld. LAC for applicant through email. One copy be also sent to concerned Jail Superintendent through all permissible modes including email at daksection.tihar@gov.in , for necessary information and compliance.

Scanned copy of the order be also sent to Computer Branch for uploading on Delhi District Court Website.


(RISHABH KAPOOR)

MM-03 (Central), THC, Delhi

15.09.2020

Keshav @ Karan Vs. State

FIR No.200/2020

PS: Rajinder Nagar

15.09.2020

ऋषभ कपूर
RISHABH KAPOOR
मैट्रो स्टेशन नं-03
Metrol Station Magistrate-03
केन्द्रीय जिला कमरा नं. 150
Central District, Room No. 150
तीस हजारी न्यायालय, दिल्ली
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Matter heard through VCC over Cisco Webex.

Case is taken up in view of Circular No. 23456-23616 DJ(HQ)/Covid lockdown/Physical Courts Roster/2020 dated 30.08.2020 issued by Ld. District & Sessions Judge (HQ).

Present: Sh. Vakil Ahmed Ld. APP for State

Sh. S.K Pandey and Sh. Ravi Shukla Ld. Counsel for applicant

IO/SI Ali Akram in person

The present urgent application was filed on behalf of the applicant on email id of this court.

Scanned copy of reply of under the signatures of IO/SI Ali Akram, is received through email id of the court. Copy of same is already supplied to counsel of applicant/accused, through email.

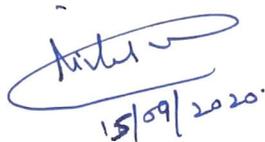
Heard. Record perused.

This order shall dispose off the application for grant of bail u/s 437 Cr.PC, moved on behalf of **applicant/accused Keshav @ Karan**.

It is stated that the applicant is innocent and has been falsely implicated in the present case. It is further averred that the custodial interrogation of the applicant/accused is no more required, nor any recovery is left to be effected from him. It is further averred that applicant is a young person having clean previous antecedents. With these averments prayer is made for enlarging applicant on bail.

Counsel for applicant submits that the co-accused has already been admitted on bail in present case and therefore the accused also deserves to be enlarged on bail.

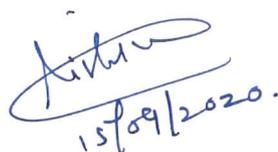
Ld. APP for State has opposed the present application citing seriousness of allegations and made a prayer for dismissal of the present application.


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In the present case, the applicant was arrested for the offences u/s 356/379/411 IPC. As per reply filed by IO/SI Ali Akram, the recovery of alleged mobile phone has already been effected in the present case. It is also conceded that complicity of accused in another case FIR No.389/2020 PS Patel Nagar, was found pursuant to disclosure made in present case FIR. As the recovery of the case property has already been effected from the accused, coupled with the fact that there does not exist any apprehension that if enlarged on bail, he will commit offences of like nature or will dissuade the prosecution witnesses, no useful purpose shall be served in keeping the accused behind bars. Further, the trial of the case would take a long time and till then the liberty of the accused cannot be curtailed, when his custody is as such not required for the investigation purposes. Even otherwise also, the presence of the accused during the course of remaining investigation, if any, as well as during trial can be ensured by taking sufficient sureties undertaking to ensure his presence. Besides, the co-accused has already been enlarged on bail. If so, in the circumstances, I am of the view that there exists no ground in further curtailing the liberty of the applicant/accused.

At this juncture, it is also pertinent to cite the observations made by the Hon'ble apex court ***In Sanjay Chandra versus CBI (2012) 1SCC 40***, wherein it was observed that 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 trial but in such cases, necessity is the operative test. The Hon'ble Apex court further observed that 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 that it would be improper for any court to refuse bail as a mark of this approval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for purpose of giving him a taste of imprisonment as a lesson.

In the light of the discussion made above, I am of the view that the contentions of the prosecution appears to be untenable and as such, there exists no reasonable justification, in not enlarging the applicant/accused, on bail. Accordingly, the accused/applicant Keshav @ Karan is hereby ordered to be enlarged on bail, subject to following conditions;


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1. That the applicant shall furnish personal and surety bonds in the sum of **sum of Rs.15,000/- each**, to the satisfaction of **Ld. Duty MM (on court duty)**.
2. That the applicant shall make himself available as and when required to do so by the investigating agency or the police;
3. That the applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing any facts to the court or the police;
4. That the applicant shall not tamper with the prosecution evidence nor he will try to win over the prosecution witnesses or terrorize them in any manner; and
5. That the applicant shall not deliberately and intentionally act in a manner which may tend to delay the investigation and trial of the case.
6. That the applicant shall not leave the territories of India during the pendency of present case proceedings except with the permission of the court.

The application is accordingly disposed off.

Scanned copy of this order be sent to the Ld. Counsel for applicant through email. One copy be also sent to concerned Jail Superintendent through all permissible modes including email at daksection.tihar@gov.in , for necessary information and compliance.

Scanned copy of the order be also sent to Computer Branch for uploading on Delhi District Court Website.



(RISHABH KAPOOR)

MM-03 (Central), THC, Delhi

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