

State Vs. Prem @ Bunty
e-FIR No.010599
PS Rajender Nagar

रिषभ कपूर
RISHABH KAPOOR
Met. No. 13
केन्द्रीय जि. नं. 03
Central Dist. नं. 150
तीस हजारा सय, दिल्ली
Tis Hazari Courts, Delhi

04.07.2020

Present: Ld. APP for State (through VCC over Cisco Webex)
Ms. Sareeka Ld. LAC for applicant/accused State (through VCC over Cisco Webex)
IO/ASI Jaiveer Singh State (through VCC over Cisco Webex)

Matter is heard through VCC over CISCO Webex Application from 2:24 PM.

The present urgent application was filed on behalf of the applicant on email id of this court on 03.07.2020. Same is taken up for hearing through VCC in view of Circular No. 6797-6899/CMM/Central/DR/2020 dated 29.06.2020.

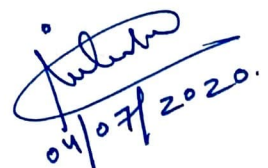
The present application is moved for Ld. LAC for grant of regular bail to the applicant/ accused Prem @ Bunty.

Before proceeding further, it is pertinent to mention here that a previous application for interim bail, moved on behalf of accused/applicant has already been dismissed by this court on 01.07.2020 for the want of certificate of good conduct of accused during his period of custody, from Jail Superintendent, as per direction of Hon'ble HPC meeting dated 18.05.2020. The present application is also not accompanied with aforesaid certificate of good conduct of accused during the period of his custody.

Scanned copy of reply of IO ASI Jaiveer Singh is received through email id of the court.

This order shall dispose of the application for grant of regular bail, moved on behalf of applicant/accused Prem@ Bunty.

It is averred on behalf of accused/applicant that he has been falsely implicated in the present case. It is further averred that the no recovery has been effected from the applicant/accused. It is further averred that the accused is a poor person having no involvement in the present case. It is further averred that due to hazardous situation having arisen due to Corona Virus pandemic, the applicant/accused be enlarged on bail so as to render mental support to his


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family members. With these averments, prayer is made for grant of bail to accused.

Ld. LAC for accused/applicant submits that the co-accused namely Krishan has already been admitted on regular bail by this court, therefore the present accused/applicant be released on bail on the ground of parity.

Ld. APP for the State submits that the accused shall not be released on bail as he is a habitual offender, having previous involvements.

Prior to delving into the merits of the present application, let us advert ourselves to the law relating to parity as a ground for bail.

In State vs Captain Jagjit Singh 1962 SCR (3) 622, Hon'ble Apex Court observed that it is true that two of the persons who were prosecuted along with the respondent were released on bail prior to the commitment order; but the case of the respondent is obviously distinguishable from their case inasmuch as the prosecution case is that it is the respondent who is in touch with the foreign agency and not the other two persons prosecuted along with him. The fact that the respondent may not abscond is not by itself sufficient to induce the court to grant him bail in a case of this nature. Further, as the respondent has been committed for trial to the Court of Session, it is not likely now that the trial will take a long time. In the circumstances we are of opinion that the order of the High Court granting bail to the respondent is erroneous and should be set aside. We therefore allow the appeal and set aside the order of the High Court granting bail to the respondent. As he has already been arrested under the interim order passed by this Court, no further order in this connection is necessary. We, however, direct that the Sessions Judge will take steps to see that as far as possible the trial of the respondent starts within two months of the date of this order.

In Sunder Lal v. State of U.P. (1983 Cri LJ 736) the Hon'ble Allahabad High Court observed that "The learned counsel only pointed out that by reason of fact that other co-accused had been admitted to bail the applicant should also be granted bail. This argument alone would not be sufficient for admitting the applicant bail who is involved in a triple murder case."

From the cases discussed above, we find that parity alone had not been considered as a ground for release on bail. The above discussion further suggests that case of each applicant is to be examined on its own footing, even though co-accused had been released on bail.

Apart from ground of parity, the factors such as (i) the nature and gravity of the circumstances in which offence is committed, (ii) the position and the status of the accused with reference to the victim and witnesses, (iii) the likelihood of (a) the accused fleeing from justice or (b) of repeating the offence or (c) of jeopardizing his own life being faced with grim prospect of possible conviction in the case or (d) of tampering the witnesses, (iv) the history of the case as well as of its investigation and (v) other relevant grounds which, in view of so many variable factors, cannot be exhaustively set out, have to be considered.

*Judicial
04/07/2020.*

In present case, on perusal of the scanned copy of previous conviction/involvement report received along with reply of IO (through email), it emerges that the accused is having previous involvements in certain other cases, involving serious offences. More particularly, the accused has been shown to have complicity in respect of case FIR No.271/2014, u/s 379/411/34 IPC, case FIR No. 226/2014 u/s 392 IPC, both at PS Nabi Karim, case FIR No.251/2016 , u/s 354/354B/308/323/506/34 IPC PS Anand Parbat, case FIR No.513/2017 u/s 379/411 IPC, case FIR No. 616/2017 u/s 379/411 IPC, both registered at PS New Delhi Railway Station and Case FIR No. 86/2019 u/s 356/379/411/34 IPC at PS Karol Bagh.

If that be so, the apprehension of prosecution that if enlarged on bail, he will commit the offences of like nature or will dissuade the material prosecution witnesses, appears to be well justified. In view of the unclean previous antecedents of the applicant/accused, there exists a strong likelihood of him either repeating the offences alleged or dissuading the witnesses of the case. Merely, on the ground of parity alone, the applicant/accused cannot be enlarged on bail in disregard to the aforementioned factors.

In such circumstances, this court is of the firm view that no ground for grant of bail is made out to the accused/applicant Prem@Bunty. Accordingly, the present application deserves dismissal and same is hereby dismissed.

Scanned copy of this order is being sent to Sh. Manoj Kumar (Assistant Ahlmad) through whatsapp/email for transmitting same to the Ld. LAC for applicant and also for sending to concerned Jail Superintendent through all permissible modes including email at daksection.tihar@gov.in , for necessary information.

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

04.07.2020

रिषभ कपूर
RISHABH KAPOOR

13

MM-03
केन्द्रीय जेल, दिल्ली नं. 150
Central District Court, Room No. 150
तीस हजारी न्यायालय, दिल्ली
Tis Hazari Courts, Delhi

State Vs. Prem @ Bunty
e-FIR No.010599/2020
PS Rajender Nagar

04.07.2020

Present: Ld. APP for State (through VCC over Cisco Webex)
Sh. Ashwani Kumar Chadha and Sh. Kunal Chadha, Ld. Counsel for applicant/
accused (through VCC over Cisco Webex)
IO/ASI Jaiveer Singh State (through VCC over Cisco Webex)

Matter is heard through VCC over CISCO Webex Application at 03:03 PM.

The present urgent application was filed on behalf of the applicant on email id of this court on 03.07.2020. Same is taken up for hearing through VCC in view of Circular No. 6797-6899/CMM/Central/DR/2020 dated 29.06.2020.

The present application is moved by Ld. Counsel for grant of **regular bail** to the applicant/accused Prem @ Bunty.

Since, vide separate order of even date, another application for regular bail as moved on behalf of applicant/accused Prem@Bunty through Ld. LAC, on same grounds and with similar averments, has already been dismissed. Therefore, the present application also stands dismissed as infructuous.

Application stands disposed off.

Scanned copy of this order is being sent to Sh. Manoj Kumar (Assistant Ahlmad) through whatsapp/email for transmitting same to the Ld. Counsel for applicant and also for sending to concerned Jail Superintendent through all permissible modes including email at daksection.tihar@gov.in , for necessary information. At request, let scanned copy of order of even date passed in other regular bail application moved on behalf of applicant/accused by Ld.LAC, be also sent to Ld. Counsel for applicant, through whatsapp/email.

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

04.07.2020

रिषभ कपूर
RISHABH KAPOOR

M. 13
के. व. जे. नं. 150
Central Dist. Room No. 150
तीस हज़ार पाल दिल्ली
Tis Hazari Courts, Delhi

NCR No.0019/2020

PS IP Estate

04.07.2020

Present: Sh. Vakeel Ahmad, Ld. APP for State (through VCC over Cisco Webex)
Inspector Arvind Sharma, I/C Cyber Cell, Central District (through VCC over Cisco Webex)

Matter is heard through VCC over CISCO Webex Application at 12:00 PM.

Heard. Record perused


This order shall dispose off the application moved by Inspector Arvind Sharma, I/C Cyber Cell, Central District, for seeking permission to initiate investigation in respect of NCR No. 0019/2020 dated 01.07.2020 u/s 500 IPC at PS I.P Estate.

It is averred in the application that upon complaint made by M/s Bennett Collman & Co. Ltd. with allegations of defamation of its Executive Director Sh. Diwakar Asthana along with esteemed offices of PMO, Union Govt. and Chief Ministers of some states through alleged tweets on social media, the NCR NO.0019/2020 dated 01.07.2020 u/s 500 IPC, was registered at PS IP Estate. It is with these averments, prayer is made for seeking permission to conduct investigation into the case.

Prior to delving into the merits of the present application, it is pertinent to mention here that the Section 500 of IPC lays down for the punishment of offence of defamation which has been defined u/s 499 of the code. The offence u/s 500 is a non cognizable offence. In non cognizable cases, the police cannot enter into investigation due to combined operation of section 2(l) and section 155 of The Code of Criminal Procedure. Section 199 of the Cr.PC deals with the procedural aspect of this offence. It provides that in cases involving the defamation of a private party, the cognizance can be taken by court only upon the complaint made by the person who is stated to be defamed. This provision further incorporates that in cases involving defamation of public dignitaries as mentioned in clause (2) of Section 199 of the Code, the cognizance can be taken only upon the complaint in writing made by the Public Prosecutor.

Herein, the question which arises is whether in view of expressed provisions of Section 199 of Cr.PC, the police can still initiate the investigation into an offence of defamation ?

In Rahul Gandhi Vs. Rajesh Mahadev Kunte SLP (Crl.) No. 3749/2015, Hon'ble Apex Court observed that Police has no role in criminal defamation. It cannot lodge an FIR and a Magistrate cannot seek an inquiry report from police under sections 156 (3) and 202 of the Code


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of Criminal Procedure. The Magistrate has to himself make inquiry into the allegations. It was also observed that magistrates cannot ask the police to investigate a private criminal defamation complaint as it is the complainant who needs to prove the case.


In R. Arun & Another v/s The Inspector of Police, Thiruppur North Police Station, Thiruppur District & Another Crl.O.P.No. 2328 of 2017 & Crl.M.P. Nos. 1643 & 1644 of 2017 Decided On, 14 November 2017, Hon'ble Madras High Court observed that

16. In the present case in hand, the cause of action arose from the message posted in the Internet by the first petitioner. The message was clear and explicit to defame the defacto complainant and her company, to the effect that, at the most, such posting may amount to defaming the defacto complainant or her company. None of the words or phrases in the said message amounts to insulting the modesty of a woman, in the light of my observations made above. As such, the offence of Section 509 IPC cannot be made out as against the first petitioner.

17. As rightly pointed out by the learned counsel for the petitioners that insofar as the offences under Sections 43, 65 & 67 of the Information Technology Act is concerned, the same has also not been made out since there is absolutely not a single allegation in the complaint to make out these allegations.

18. Section 155(2) of the Code of Criminal Procedure prohibits a police officer from investing into a non cognizable offence without a prior order of a Magistrate. As stated above, apart from Section 509 IPC, all other offences charged as against the petitioners are non cognizable offences. Therefore, by including Section 509 IPC, which is a cognizable offence, the Investigating Officer has been empowered to investigate into the offences in view of the enabling power under Section 155 (4) Cr.P.C., to investigate into a cognizable offence, without the prior order of the Magistrate. This raises a doubt as to whether Section 509 IPC has been purposefully included among other offences to enable the Investigating Officer to proceed with the complaint without obtaining a prior order of a Magistrate. As discussed earlier, the averment made in the complaint, the various statements of the witnesses under Section 161 Cr.P.C., as well as the charge sheet laid does not make out a case for an offence under Section 509 IPC. Therefore, in my view Section 509 IPC has been included only for the purpose of enabling the Investigating Officer to proceed against the first petitioner.

19. There is yet again one more feature by which the entire charge sheet can be rendered as illegal. Section 199 Cr.P.C., prohibits the Court from taking cognizance of an offence under Section 500 IPC except on the complaint made by the person aggrieved by the offence. In other words, the complaint of defamation cannot be directly made to a police officer but only through a private complaint under Section 200 Cr.P.C. In view of this bar and having found that no cognizable offence has been made out against the first petitioner in the complaint or in the charge sheet, it was improper on the part of the Investigation Officer to proceed against the first petitioner for an offence under Section 500 IPC, among other offences.


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20. To sum up, the entire investigation seems to have been done for the only offence which has been made out namely, Section 500 IPC and the offence under Section 509 of IPC was unwarranted, since the same has not been made out. Since the law requires a private complaint to be made for the offence under Section 500 IPC, the present charge sheet, as against the first petitioner, is liable to be struck down.. In the result, the Criminal Original Petition stands allowed. Consequently, the proceedings in C.C.No.174 of 2016 on the file of the learned Judicial Magistrate No.I, Tiruppur is quashed. Connected Miscellaneous Petitions are closed.

In view of the discussion made above, it clearly emerges that in cases involving offence of defamation, the police probe is barred due to the special procedure prescribed under the provisions of Section 199 of The Code of Criminal Procedure. Therefore, the prayer made by I/C Cyber Cell seeking permission for conducting investigation in the NCR NO.0019/2020 dated 01.07.2020 u/s 500 IPC at PS IP Estate, appears to be untenable. Accordingly the present application is hereby dismissed.

Application stands disposed off.

Scanned copy of this order is being sent to Sh. Manoj Kumar (Assistant Ahlamd) through whatsapp/email for transmitting the same to applicant Inspector Arvind Sharma, I/C Cyber Cell, Central District, through email and for necessary 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

04.07.2020