

Vinod Kumar Vs. State

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Court : Delhi

Decided On : Sep-26-2003

Reported in : 2004IAD(Delhi)137; 107(2003)DLT678; 2004(73)DRJ378

Judge : S.K. Agarwal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 438; Indian Panel Code, 1860 - Sections 34 and 381

Appeal No. : Crl.M.(M.) No. 3976 of 2003

Appellant : Vinod Kumar

Respondent : State

Advocate for Def. : Anil Soni, Adv.

Advocate for Pet/Ap. : Krishan Kumar, Adv

Judgement :

ORDER

S.K. Agarwal, J.

Crl.M. No. 5381/2003:

Allowed, subject to all just exceptions.

CrI.M. (M.) No. 3976/2003 :

1. By this petition under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C. '), petitioner is seeking bail in case FIR No. 293/2003, under Sections 381/34, IPC, P.S. Chandni Chowk.

2. Learned Counsel for petitioner submits that petitioner's younger brother, Johny Kumar, who was working with Chhabra Trading Company, Chandni Chowk, Delhi was arrested on the allegations that he was taking one saree at the time of leaving the premises; on interrogation, he gave some disclosure statement involving his brother, both of them were arrested and were granted bail; stolen articles have already been recovered; petitioner moved an application before learned Additional Sessions Judge seeking pre-arrest bail. Learned Additional Sessions Judge dismissed bail application by a non-speaking order, which reads:

'22.9.2003

Present: Counsel for the applicant.

APP for the State with I.O.

Heard. No ground to grant anticipatory bail to the petitioner. Application is dismissed.

3. Giving reasons for granting bail to accused is different from discussing merits or demerits. At the stage of granting bail, a detailed examination of evidence and elaborate documentation of merits of the case has not to be undertaken. This has to be avoided. However, while exercising jurisdiction under Sections 438 or 439, Cr.P.C, the Additional Sessions Judge is required to give reasons while disposing of the petition, showing application of mind. It is needless to say that whatever may be constrains of time, the order which is subject to judicial review, has to be a speaking order. Reference in this regard can be made to the Supreme Court decision in *Puran v. Rambilas and Anr.*, : 2001 CriLJ2566 .

4. In this case, as noticed above, the order passed by learned Additional Sessions Judge dismissing the bail application is non-speaking. In view of the same, order

dated 22.9.2003 is hereby set aside.

5. Petitioner is directed to approach the Additional Sessions Judge within three days. In the event of petitioner's bail application being declined, he be granted 7 days' time to seek appropriate relief in accordance with law. The petitioner be not arrested in this case till then.

Petition stands disposed of. dusty.

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