

Sumit Kumar Vs. State of Nct of Delhi

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Court : Delhi

Decided On : Dec-03-2003

Reported in : 2004(73)DRJ388

Judge : S.K. Agarwal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439; [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 394, 458 and 460

Appeal No. : Crl. M. (M.) No. 2999 of 2003

Appellant : Sumit Kumar

Respondent : State of Nct of Delhi

Advocate for Def. : Pawan Sharma, Adv.

Advocate for Pet/Ap. : Sidharth Aggarwal, Adv

Disposition : Petition dismissed

Judgement :

S.K. Agarwal, J.

1. This is a petition under Section 439, Cr.P.C. for grant of bail in case FIR No. 123/2001 under Sections 302/394/458/460, IPC P.S. Mayapuri, Delhi.

2. Prosecution allegations are that on the night intervening 16/17.5.2001 at a factory No. B-20, Maya Puri Phase-I, New Delhi, petitioner along with others committed murder of Chet Ram and assaulted Govind Bahadur and took away forcibly 119 packets of plastic dana and two telephone instruments and other goods and committed offence punishable under above noted sections. It is further alleged that petitioner was arrested in the other case; on interrogation petitioner disclosed his involvement in the above noted case, as well; petitioner and other accused persons were arrested and after their arrest, petitioner refused to participate in the TIP; after investigation challan was filed and the matter is pending trial. In support of their case learned Counsel for the State relied upon the statement of Dhan Bahadur (PW 2) and Govind Bahadur (PW 5).

3. Learned Counsel for the petitioner argued that Dhan Bahadur and Govind Bahadur were examined. PW 2 in the cross-examination has admitted that he did not see the petitioner and only can identify him by voice. Learned Counsel then referring to evidence of PW 5 Govind Bahadur argued that this witness came to the Court on 15.5.2003. He was unable to communicate. Learned Trial Court put certain questions to him and recorded the findings:

'From the above answers to the question put to the witness. His replies are not rational and witness is not competent to understand the questions. As such he is unable to depose.'

4. It is doubtful whether the procedure adopted while recording the statement of PW 56 is permissible in law. However, it is for the prosecution to take remedial steps, if any. Learned Counsel then referred to the following portion of cross-examination of PW 2 (Dhan Bahadur) which reads as under:

'I had not seen the vehicles brought by the dacoits. I have only heard the sound. When we woke up light was closed. It is wrong to suggest that I had not seen the accused persons and was not in a position to identify. It is correct that I had not seen the face. I heard the voice only. On 4.4.2002 the accused Sumit came with the police.'

5. Learned Counsel further argued that in the examination-in-chief this witness stated that the petitioner was the person who had given the knife blows on the head and the chest of the deceased (Chet Ram) but in the cross-examination he was duly confronted with the statement made earlier; and that petitioner could not be identified by voice. Learned Counsel for the petitioner also argued that the bail application of the petitioner was declined by the learned Trial Court, inter alias on the basis of recording that recovery of some incriminating articles, whereas nothing incriminating was recovered from the petitioner. Lastly it was argued that although the petitioner is involved in some other cases, but he is on bail on those cases, and that, on the basis of above said evidence, prosecution case is most likely to fail and petitioner is entitled to bail.

6. Learned Counsel for the State argued to the contrary, submitting that evidence is still pending; that identification by voice is admissible in evidence; that in any case evidence cannot be appreciated, at this stage and on the basis of the evidence already on record, petitioner is likely to be convicted. It is also argued that petitioner is involved hi four more cases of serious nature, the details of which are:

1. FIR No. 79/2002 under Sections 186/353/307/411/34, IPC and 25/27/ 54/59 of the Arms Act, P.S. Bara Hindu Rao, Delhi;

2. FIR No. 840/2001 dated 30.11.2001 under Sections 457/380, IPC P.S. Rohini, Delhi;

3. FIR No. 264/2001 dated 28.3.2001 under Sections 392/395/397/34, IPC P.S. Mangol Puri, Delhi;

4. FIR No. 76/2001 dated 24/25.1.2001 under Sections 395/397, IPC P.S. Mangol Puri, Delhi;

7. It is thus argued that petitioner is not entitled to be released on bail.

8. I have considered the rival contentions. Petitioner refused to participate in the TIP; as per the settled law identification by voice is admissible in evidence as held by the Supreme Court in Kripal Singh v. State, : 1965 CriLJ636 . Further while

dealing with an application for bail detailed examination of evidence, elaboration and appreciation has to be avoided, lest any party gets an impression on that his case is prejudiced.

9. Admittedly, the evidence is still being recorded, In my view appreciation of the evidence, at this stage is likely to prejudice either the case of the prosecution or the defense, therefore, the same is not being done, at this stage. Suffice it to say that looking at the nature of evidence, previous involvements of the petitioner, no case for grant of bail is made out. Dismissed.

10. Any observation made herein would not affect the merits of the case during trial. Learned Trial Court is directed to expedite the trial.

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