

FIR No.157/19

PS. Laxmi Nagar

Applicant: Kayum

24.07.2020

Present: Ld. APP for the State (through video conferencing).

Sh. Mohit Bhardwaj, Ld. Counsel for accused/applicant Kayum
(through video conferencing).

At the very outset, it is pertinent to mention that this is the third bail application moved by the accused. The first and second bail applications were dismissed vide order dated 18.06.2020 and 17.07.2020 respectively.

Vide this order, I shall dispose of the application moved by accused Kayum, seeking bail.

In view of the order passed by Ld. District & Sessions Judge, East District, Karkardooma Courts, Delhi issued in wake of COVID-19 Pandemic, the bail application has been placed before the undersigned to be heard through Video Conferencing using CISCO WEBEX application.

Link was sent to the Ld. APP for the State and Ld. counsel for the applicant for a conference call scheduled for 11.30 a.m today.

Reply filed by the IO. Same is perused.

Arguments on the bail application heard on behalf of both the parties.

It is submitted by Ld. Counsel for the accused that accused has been falsely implicated in the present case and he is in JC since long time. It is further stated that nothing has been recovered from the possession of accused and that accused is the only bread earner of his family. It is further stated that he has already been granted bail by the concerned Courts in other cases. It is further prayed that considering the prevailing situation on account of COVID-19 pandemic, the accused be granted bail in the present

case as he is ready to abide by all terms and condition to be imposed upon him, if he is granted bail.

On the other hand, the application has been vehemently opposed by Ld. APP for the state stating that accused was arrested in FIR No. 330/19 and during the course of investigation, accused disclosed commission of offence in the present case and thereafter, recovery was affected. He further stated that accused is a habitual offender and he may tamper or hamper the evidence and jump the bail.

The court is mindful of the fact that as a general rule it is a bail not the jail which is the right of the accused. However, the right of the accused must be balanced with the general interest of the society and the fairness of investigation and the possibility of the witness tempering with the evidence. The apprehension of threat to witnesses and the possibility of the accused fleeing the process of law, are factors which cannot be ignored.

Other considerations to be kept in mind while deciding the bail application are:

- (i) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
- (ii) Reasonable apprehension of tempering with the witness or apprehension of threat to the complainant.
- (iii) Prima facie satisfaction of the court in support of the charge (***Ram Govind Upadhyay Vs. Sudarshan Singh (2002) 3 SCC 598.***

Further it has been held in a number of cases including ***Rajesh Rajan Yadav @ Pappu Yadav Vs. CBI through its Director (2007) 1 SCC 70 and Ash Mohammad Vs. Shiv Raj Singh @ Lallu Babu and Anr. (2012) 9 SCC 446.***

That though the period of custody is a relevant factor, the same has to be weighed simultaneously with the totality of circumstances and the criminal antecedents.

In *ChandraKshwas Prasad @ Chandu babu Vs. State of Bihar and Anr.* It was held by Hon'ble Supreme Court of India as under:

“10. Although it has to be accepted that the respondent/accused has already been granted bail by the concerned Courts in other cases, a duty is cast upon the Court in addressing such a prayer in a case on its own merit and while applying its discretion, it must be applied in a judicial manner and not as a matter of course.”

In the case in hand, accused was involved in other criminal activities of similar nature, the allegations against the applicant/accused are grave and serious and no circumstances has been changed. Therefore, there is every likelihood that the accused may temper with the prosecution's evidence if released on bail and the possibility of accused fleeing from the process of law cannot be ruled out. Since there is no change of circumstances from the time the previous application was dismissed vide order dated 17.07.2020, hence the present bail application of the applicant/accused Kayum is hereby **dismissed**.

Application is disposed of accordingly.

Copy of this order be also sent to Ld. Counsel for applicant through e-mail.

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MM-04/East/KKD/Delhi/24.07.2020

FIR No.321/19

PS. Laxmi Nagar

Applicant: Kayum

24.07.2020

Present: Ld. APP for the State (through video conferencing).

Sh. Mohit Bhardwaj, Ld. Counsel for accused/applicant Kayum
(through video conferencing).

At the very outset, it is pertinent to mention that this is the third bail application moved by the accused. The first and second bail applications were dismissed vide order dated 18.06.2020 and 17.07.2020 respectively.

Vide this order, I shall dispose of the application moved by accused Kayum, seeking bail.

In view of the order passed by Ld. District & Sessions Judge, East District, Karkardooma Courts, Delhi issued in wake of COVID-19 Pandemic, the bail application has been placed before the undersigned to be heard through Video Conferencing using CISCO WEBEX application.

Link was sent to the Ld. APP for the State and Ld. counsel for the applicant for a conference call scheduled for 11.30 a.m today.

Reply filed by the IO. Same is perused.

Arguments on the bail application heard on behalf of both the parties.

It is submitted by Ld. Counsel for the accused that accused has been falsely implicated in the present case and he is in JC since long time. It is further stated that nothing has been recovered from the possession of accused and that accused is the only bread earner of his family. It is further stated that he has already been granted bail by the concerned Courts in other cases. It is further prayed that considering the prevailing situation on account of COVID-19 pandemic, the accused be granted bail in the present

case as he is ready to abide by all terms and condition to be imposed upon him, if he is granted bail.

On the other hand, the application has been vehemently opposed by Ld. APP for the state stating that accused was arrested in FIR No. 330/19 and during the course of investigation, accused disclosed commission of offence in the present case and thereafter, recovery was affected. He further stated that accused is a habitual offender and he may tamper or hamper the evidence and jump the bail.

The court is mindful of the fact that as a general rule it is a bail not the jail which is the right of the accused. However, the right of the accused must be balanced with the general interest of the society and the fairness of investigation and the possibility of the witness tempering with the evidence. The apprehension of threat to witnesses and the possibility of the accused fleeing the process of law, are factors which cannot be ignored.

Other considerations to be kept in mind while deciding the bail application are:

- (i) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
- (ii) Reasonable apprehension of tempering with the witness or apprehension of threat to the complainant.
- (iii) Prima facie satisfaction of the court in support of the charge (***Ram Govind Upadhyay Vs. Sudarshan Singh (2002) 3 SCC 598.***

Further it has been held in a number of cases including ***Rajesh Rajan Yadav @ Pappu Yadav Vs. CBI through its Director (2007) 1 SCC 70 and Ash Mohammad Vs. Shiv Raj Singh @ Lallu Babu and Anr. (2012) 9 SCC 446.***

That though the period of custody is a relevant factor, the same has to be weighed simultaneously with the totality of circumstances and the criminal antecedents.

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“10. Although it has to be accepted that the respondent/accused has already been granted bail by the concerned Courts in other cases, a duty is cast upon the Court in addressing such a prayer in a case on its own merit and while applying its discretion, it must be applied in a judicial manner and not as a matter of course.”

In the case in hand, accused was involved in other criminal activities of similar nature, the allegations against the applicant/accused are grave and serious and no circumstances has been changed. Therefore, there is every likelihood that the accused may temper with the prosecution's evidence if released on bail and the possibility of accused fleeing from the process of law cannot be ruled out. Since there is no change of circumstances from the time the previous application was dismissed vide order dated 17.07.2020, hence the present bail application of the applicant/accused Kayum is hereby **dismissed**.

Application is disposed of accordingly.

Copy of this order be also sent to Ld. Counsel for applicant through e-mail.

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MM-04/East/KKD/Delhi/24.07.2020

FIR No.760/20
PS. Laxmi Nagar

24.07.2020

Present: Sh. Sameer Kumar Sinha, Ld. Counsel for applicant (through video conferencing).

Vide this order, I shall dispose of the application moved by applicant for release of articles mentioned in the application.

In view of the order passed by Ld. District & Sessions Judge, East District, Karkardooma Courts, Delhi issued in wake of COVID-19 Pandemic, the abovesaid application has been placed before the undersigned to be heard through Video Conferencing using CISCO WEBEX application.

Link was sent to Ld. Counsel for applicant for a conference call scheduled for 12.15 p.m today. It is submitted by Ld. Counsel for applicant that in the present application inadvertently he has mentioned FIR no. 760/19 instead of FIR no. 760/20 and prays that the same may be allowed to be corrected.

Heard. Hence the FIR No. 760/19 be read as FIR No.760/20.

Reply to the application has been filed by the IO. Perused. As per the reply, the IO has not objected to the application stating that the said articles mentioned in the application are not required by the police.

I have heard the applicant. Perused the record.

As per the directions of the **Hon'ble High Court of Delhi in Manjit Singh vs. State in Crl MC No. 4485/13 dated 10.09.2014**, case property may be released to the rightful owner after preparing detailed

panchnama, taking photographs, valuation report and a security bond. Further, production of said articles should not be insisted upon during trial and its photographs along with panchnama should suffice for the purpose of evidence.

In view of above IO/SHO is directed to release the said articles to the applicant/owner on furnishing security / indemnity bond as per valuation of said articles. Valuation shall be done prior to releasing the said articles to the applicant. A detailed panchnama shall be prepared after taking photographs of the said articles from all angles and the same shall be attested/countersigned by complainant as well as accused. The cost of photographs shall be borne by the applicant. Panchnama along with photographs and indemnity bond shall be filed in the court along with charge-sheet.

Copy of this order be sent to Ld. Counsel for applicant through electronic mode.

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