

State Vs. Vicky

FIR No: 147/2020

Under Section: 25/54/59 Arms Act

PS: Roop Nagar

21.07.2020

Through video conferencing

This is fresh application for grant of bail filed on behalf of the applicant.

Present: Sh. Alok Saxena, Ld. APP for the State.

Sh. Akhil Tarun Goel, Ld. Counsel for the applicant.

IO in person through VC.

Reply filed by the IO. Copy Supplied to Ld. Defence Counsel.

Ld. Counsel is seeking regular bail of accused Vicky on the ground that accused has been falsely implicated in the present case and the recovery has been planted. It is argued that investigation is already complete and accused is no more required for further investigation. It is further argued that the wife of the accused is handicapped and having two minor daughters of 12 years and 16 years and there is no one to look after the family of the applicant. It is further argued that accused is not involved in fifty-six (56) cases as reported by IO and rather facing trial for five of said cases only.

Per contra, Ld. APP for State has argued for dismissal of bail on the ground that earlier application of accused (for grant of bail) has already been dismissed by Ld. ASJ (on duty) vide order dated 30.06.2020 and there is no change of circumstance since passing of said order.

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At the outset, I may mention that the factum of dismissal of earlier bail application was not disclosed in the present application. The regular bail application of accused was dismissed by by Ld. ASJ (on duty) vide order dated 30.06.2020 while considering all the contentions which have been raised in present application with the following observations:

*“Allegations against accused/applicant are of very serious nature. Accused/applicant is habitual offender and was previously also involved in as many as 56 cases. The chances of accused/applicant repeating such offences are very high and possibility of tampering with the witnesses/evidence cannot be ruled out at this stage. The investigation of this case is at very initial stage.*

*Keeping in view the aforesaid facts and circumstances, I find no merits in the present application. The same is hereby dismissed and disposed of accordingly.”*

Therefore, it is clear that the earlier application moved on behalf of accused/applicant was dismissed by Ld. ASJ keeping in view the totality of facts and circumstances. Ld. ASJ has specifically observed that the allegations against the accused are very serious and chances of accused repeating such offences or tampering with evidence cannot be ruled out. The previous involvement of accused (even if in five cases as claimed by counsel though not supported by any document) is sufficient to assume that accused may commit the offence of similar nature or tamper with the evidence, if enlarged on bail.

In the case of **Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another**, (2005) 2 SCC 42, the Hon'ble Supreme Court observed as follows:

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*"Ordinarily, the issues which had been canvassed earlier would not be permitted to be re-agitated on the same grounds, as the same it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting."*

In the case of **State of Tamil Nadu vs S.A. Raja Appeal (crl.) 1470 of 2005** decided on 26 October, 2005, the Hon'ble Supreme Court held as follows:

*"Of course, the principles of res judicata are not applicable to bail applications, but the repeated filing of the bail applications without there being any change of circumstances would lead to bad precedents."*

In the case of **Harish Kathuria & Anr. Vs. State, Bail Application No. 1135/2011**, decided on 18.08.2011, the Hon'ble High Court of Delhi has observed as follows :

*"Successive bail applications can be filed as has been held in the catena of judgments but then it has been observed that there must be change in circumstances which warrant fresh consideration of the application. Successive bail applications without there being any change in circumstances is not only to be deprecated but is in effect a gross abuse of the processes of law which must be visited with some amount of sanction by way of cost for wasting the time of the Court. There are cases of persons who are languishing in jail for wanting their appeals to be heard for want of time while as unscrupulous persons like the petitioners, who have embarked on a forum shopping or rather be called a bench hopping, are wasting the time of the Court."*

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As there is no change in circumstances after dismissal of previous application for bail and, therefore, the instant application is also to meet the same fate.

The present application appears to be nothing but a crude attempt on the part of defence to try its luck for grant of regular bail on change of Presiding Officer having bail roaster duty.

In view of the aforesaid discussion, application for bail moved on behalf of the applicant stands dismissed. Copy of this order be sent to Ld. Defence Counsel by official email. Another copy of this order be also sent to IO for information.

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(Anuj Agrawal)  
ASJ-03, Central District  
Tis Hazari Courts, Delhi  
21.07.2020

State Vs. Vicky

FIR No: 146/2020

Under Section: 356/379/411/34 IPC

PS: Roop Nagar

21.07.2020

Through video conferencing

This is fresh application for grant of bail filed on behalf of the applicant.

Present: Sh. Alok Saxena, Ld. APP for the State.

Sh. Akhil Tarun Goel, Ld. Counsel for the applicant.

IO in person through VC.

Reply filed by the IO. Copy Supplied to Ld. Defence Counsel.

Ld. Counsel is seeking regular bail of accused Vicky on the ground that accused has been falsely implicated in the present case and the recovery has been planted. It is argued that investigation is already complete and accused is no more required for further investigation. It is further argued that the wife of the accused is handicapped and having two minor daughters of 12 years and 16 years and there is no one to look after the family of the applicant. It is further argued that accused is not involved in fifty-six (56) cases as reported by IO and rather facing trial for five of said cases only.

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*“Allegations against accused/applicant are of very serious nature. Accused/applicant is habitual offender and was previously also involved in as many as 56 cases. The chances of accused/applicant repeating such offences are very high and possibility of tampering with the witnesses/evidence cannot be ruled out at this stage. The investigation of this case is at very initial stage.*

*Keeping in view the aforesaid facts and circumstances, I find no merits in the present application. The same is hereby dismissed and disposed of accordingly.”*

Therefore, it is clear that the earlier application moved on behalf of accused/applicant was dismissed by Ld. ASJ keeping in view the totality of facts and circumstances. Ld. ASJ has specifically observed that the allegations against the accused are very serious and chances of accused repeating such offences or tampering with evidence cannot be ruled out. The previous involvement of accused (even if in five cases as claimed by counsel though not supported by any document) is sufficient to assume that accused may commit the offence of similar nature or tamper with the evidence, if enlarged on bail.

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*"Ordinarily, the issues which had been canvassed earlier would not be permitted to be re-agitated on the same grounds, as the same it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting."*

In the case of State of Tamil Nadu vs S.A. Raja Appeal (crl.) 1470 of 2005 decided on 26 October, 2005, the Hon'ble Supreme Court held as follows:

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As there is no change in circumstances after dismissal of previous application for bail and, therefore, the instant application is also to meet the same fate.

The present application appears to be nothing but a crude attempt on the part of defence to try its luck for grant of regular bail on change of Presiding Officer having bail roaster duty.

**In view of the aforesaid discussion, application for bail moved on behalf of the applicant stands dismissed.** Copy of this order be sent to Ld. Defence Counsel by official email. Another copy of this order be also sent to IO for information.

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(Anuj Agrawal)  
ASJ-03, Central District  
Tis Hazari Courts, Delhi  
21.07.2020



State Vs. Saim @ Namir

FIR No: 0025/20

Under Section: 435/436/506/34 IPC

PS: Bara Hindu Rao

21.07.2020

Through video conferencing

Present: Sh. Alok Saxena, Ld. APP for the State.  
Sh. Ayub Ahmed Qureshi, Ld. Counsel for the applicant.

The copies of statement of eye-witnesses namely Nawabuddin and Ashkin (recorded U/s 161 Cr. P.C.) have been filed by State electronically. Copy supplied to defence.

Remaining arguments heard.

Chargesheet including statements of eye-witnesses perused.

Ld. Counsel for accused has argued for grant of bail on the ground that accused has been falsely implicated in the present case and there is no evidence against him. It is further argued that accused is no more required for investigation as chargesheet has already been filed. It is argued that accused is in JC since 10.03.2020 and, therefore, deserves to be granted bail in the facts and circumstances of the case.

Per Contra, Ld. APP for State has argued for dismissal of the bail application on the ground that allegations against the accused are grave and

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serious in nature. It is further argued that accused may threaten the witnesses, if released on bail, considering his past antecedents.

I have heard rival contentions and perused the record.

The allegations against the accused are that he in furtherance of his common intention along with other co-accused, caused mischief (by fire) by setting on fire as many as nine vehicles belonging to different victims and in that process few neighbourhood shops and houses also got damaged.

The allegations against applicant are grave and serious in nature. The eye-witnesses namely Nawabuddin and Ashkin have seen the accused and co-accused committing the alleged offences. He has further been specifically named by the eye-witnesses. The act of accused, thereby causing mischief by fire, was not only criminal but also carried a greater degree of risk as the same might have resulted into loss/injury to precious human life also but for the good fortune of the people residing in the vicinity.

During course of arguments, Ld. Defence Counsel attempted to discredit the version of eye-witnesses by pointing out that there is no date on their statements recorded U/s 161 Cr. P.C. However, in my view, the arguments of defence does not disclose good ground to be entertained as the version of eye-witnesses and other witnesses shall only be tested during course of trial and it would be premature to examine the sufficiency/probative value of the evidence at this stage.

In the case of *Vaman Narain Ghiya v. State of Rajasthan (2009) 2 SCC 281*, the Hon'ble Supreme Court observed as follows:

"While considering an application for bail, detailed discussion of the evidence and elaborate documentation of the merits is to be avoided. This requirement stems from the desirability that no party should have the impression that his case has been pre-judged. Existence of a prima facie case is only to be considered. Elaborate analysis or exhaustive exploration of the merits is not required."

In the case of **State of Orissa vs Mahimananda Mishra Crl. Appeal No. 1175/2018** decided on 18.09.2018, the Hon'ble Supreme Court, while setting aside an order of grant of bail, observed as follows :

*"It is also well settled that the Court must not go deep into merits of the matter while considering an application for bail. All that needs to be established from the record is the existence of a prima facie case against the accused. Keeping in mind the aforementioned principles, we are of the view that the High Court was not justified in going into the evidence on record in such a depth which amounts to ascertaining the probability of the conviction of the accused."*

The offence U/s 436 IPC is quite grave in nature and punishable with imprisonment upto life. IO has also reported involvement of accused in as many as four other cases and, therefore, the possibility of accused committing similar offences or threatening the witnesses/tampering with evidence cannot be ruled out.

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In view of the above, I am not inclined to release the applicant/accused Saim @ Namir on bail. His bail application is accordingly dismissed.

Copy of this order be sent concerned Jail Superintendent as well as IO for information.

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