

**IN THE COURT OF DISTRICT AND SESSION JUDGE
Gandhi Nagar Court, South Delhi, New Delhi**

Cr. Appli. 36 of 2019

Date: 12.10.2019

In the matter of

Jahid Khan & Anr.Applicants

v.

State (N.C.T of Delhi)Respondent

Coram: Sh. Rupesh Singh, Judge, Sessions Court

Present: Mr. Swapnil Chauhan Ld. Public Prosecutor
Ms. Sweta Singh Ld. Counsel for Applicants

Heard Ld. Counsel for the applicant Ms. Sweta Singh appearing on behalf of the applicants. Ld. Counsel submits that police has not gathered any material evidence in this case so far. The very genuineness of the F.I.R is contested as in para no. 14 of the alleged F.I.R. no. 157/2019; there is no signature/thumb impression of the complainant. Counsel further submits that the accused have been in police custody for 3 days and thereafter they were sent to judicial custody. Police has not demanded for any further police custody.

Ld. Counsel for the applicants submits that her clients are ready to give any kind of security against the bail and they are ready to cooperate with the investigation.

Ld. Public Prosecutor *in contra* submits that if the accused are released on bail they may tamper with the evidence. Since the accused are in

judicial custody merely on the basis of suspicion, there is no point of keeping them behind the bars.

As it is a settled principle of law “*Suspicion howsoever grave it is cannot take the place of settled law.*” In the plethora of judgments, the Apex Court has held that “*Bail is the rule and jail is an exception.*”

Ld. Public Prosecutor in his reply cited the case of *Murlidhar v. State, 2018* that says if the ingredient required for **Conviction** under section 392 & 397 IPC are accordingly satisfied, then the bail application should be dismissed. In the same line Ld. Counsel has also referred to the latest judgment of Supreme Court, *State v. Rupendra Dahiya* where it was held that *if the Public Prosecutor of the State has successfully proved his case beyond a reasonable doubt against the accused persons the accused persons may be convicted for the offences charges and may not be released on bail.*

This court appreciates the view of Ld. Public Prosecutor given in his reply but no where it establishes that at the stage of investigation, the *prime facie* involvement of the accused and bail cannot be rejected on that ground. Ld. Public Prosecutor also submits that accused have denied for T.I.P. i.e. Test Investigation Parade. In the case of *Munshi Singh Gautam v. State Of M.P.*, Hon’ble SC has held that T.I.P is not a substantive piece of evidence rather the admissibility of T.I.P by the witness is stronger when it is done in court. In the same case, the Supreme Court has also given the direction that if the investigating authorities want to conduct T.I.P immediately after the arrest and accused should not see the witness i.e. the fact that T.I.P on part of the accused has no relevance in this case.

Having heard both the Counsels, this court is of the opinion that the objections of Ld. Public Prosecutor is based on suspicion that if accused are released on bail they may tamper with the evidence. This cannot be the basis of sending each and every accused to jail and to curtail their personal liberty. This court grants bail with immediate effect. Accused shall furnish a bail bond of 1 lakh rupees each. They will not leave the city without the prior permission of the court and will ensure their daily presence before the SHO of Malviya Nagar police station.

Application is disposed off. Copy of this order shall be given to the S.P. as well as both the parties present.



(Sh. Rupesh Singh)
Sessions Judge
Delhi: 12.10.2019