

\$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ BAIL APPLN. 3550/2020

MOHD. DANISH Petitioner

Through Mr.Salman Khurshid, Sr. Adv.

versus

STATE (NCT OF DELHI) Respondent

Through Mr.Amit Prasad, SPP for State.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

% **26.11.2020**

The hearing has been conducted through video conferencing.

Crl. M.A. 15776/2020 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

Bail Appln.3550/2020

3. Notice issued.
4. Learned SPP accepts notice on behalf of State and seeks time to file status report.
5. Let needful be done within 10 days with an advance copy to the other side.
6. This Court has come across various status reports filed by the prosecuting agencies wherein most of the times, the details required are not mentioned therein.
7. I have gone through one judgment decided by High Court of Gujarat

in the case of *Thakore Laxmanji vs. State of Gujarat*:
MANU/G/J/0267/1992 decided on 14.02.1992 whereby the said Court
observed as under:

“7. In the opinion of this Court, every serious offence under I.P.C. or for that purpose under any special Acts wherein the accused prefers the bail application, if the same is not properly opposed and the accused is released on bail, the same ultimately demoralizes not only the police administration, as it also sometimes adversely affects the safety and security of the members of the aggrieved family and overall law and order situation in the society, giving the accused unjustifiable upper-hand ! Such an undesirable situation needs to be avoided at once and at any rate by taking special care and effective measures. Thus, the urgency and importance of the comprehensive counter-affidavit while opposing the bail application cannot be ignored or underestimated. Accordingly, it is highly desirable that the concerned Superintendent of Police and/or for that purpose any other responsible Police Officer entrusted with the supervision of the investigation of the case as well as the learned P.P. incharge of the bail application is made duty bound to see to it that proper counter affidavit highlighting the material aspects of the case is filed before the Court by the Investigating Officer incharge of the case.

8. Now of course, may be slightly unusual, but at the same time none-the-less less important is the fact that taking into consideration the lesson from the facts and circumstances of the present case and the overall gradual deterioration and the falling standards of taking a desired care in presenting a copy-book comprehensive counter affidavit, this Court, in overall public interest, feels that the time is quite ripe for some guidelines to be indicated with the help of which the attention of the concerned Investigating Officer and the P.P. can be precisely

focussed so as to point out what would make the comprehensive counter-affidavit which is necessary to be brought on the record of the case for the just decision of the bail application. Accordingly, the said guidelines are neatly streamlined as under:

Necessary material to be placed on record for opposing the bail application in affidavit by the Investigating Officer:

- 1. Misc. Cri. Appln. No.*
- 2. C. R. No of Police Station.*
- 3. Name (s) of the accused.*
- 4. Name (s) of the deceased.*
- 5. Name (s) of any other injured person (s).*
- 6. Date, time & place of incident.*
- 7. Date, time & place of filing FIR.*
- 8. Distance between the scene of offence and Police Station where FIR filed.*
- 9. Name of the informant, whether an eye witness ?*
- 10. Offence alleged.*
- 11. Weapons in the hands of the accused.*
- 12. Part played by accused and injuries caused to the respondents.*
- 13. Who gave fatal blow (s) to the deceased ?*
- 14. Cause of death, whether corroborated by medical evidence on the record ?*
- 15. Which accused injured whom ?*

16. *Whether corroborated by medical evidence ?*
17. *Motive for the alleged offence.*
18. *Number of eye-witnesses/injured witnesses.*
 - (1) *Statement recorded when ?*
 - (2) *Whether residing nearby ?*
 - (3) *If not residing nearby, place of incident, reason for his presence?*
19. *Witnesses, if any, to corroborate eye-witness (es).*
20. *If the accused not identified at the time of the incident, whether identified during Test Identification Parade ?*
21. *Test Identification Parade held when ?*
- 22 . *Recovery or discovery of weapons used in commission of offence.*
 - (1) *Whether blood-stained ?*
 - (2) *Recovery or discovery of the clothes of accused and whether blood-stained ?*
23. *Blood origin and group of the deceased/injured.*
24. *Blood origin and group of accused.*
25. *Whether dying declaration recorded ?*
 - (1) *If yes, how many ?*
 - (2) *Before whom ?*
 - (3) *Time and place.*
- 26 . *Whether any cross-case is filed ? If yes, its time*

and place. Whether informant are of the accused ?

27. Whether any accused received injuries ? If yes, nature of injuries and whether corroborated by medical evidence ?

28. Whether any extra-judicial confession made ? If yes, when before whom?

29. Whether any confession of the accused recorded under Section 164 of the Cri. Pro. Code ?

30. If case of circumstantial evidence:

(1) Which witness saw accused and deceased last together ?

(2) Motive.

(3) Conduct of the accused.

(4) Opportunity to commit murder.

(5) Whether recovery or discovery of the weapons, and whether blood-stained, blood origin/blood group etc.

(6) Whether recovery or discovery of clothes and whether blood-stained, blood origin/group.

31. Whether any of the accused had any criminal antecedents ?

32. Whether investigation is in progress ?

33. Whether charge-sheet filed ?

34. Whether charge is framed ?

35. The probable date of commencement of the trial.

9. To conclude, by way of the gist of the above discussion,

it may be stated that in cases whenever bail application is filed before any Court and pursuant thereto the notices are issued to the State, the learned P.P. incharge of the case is better advised to see to it that on the basis of the questionnaire / guidelines streamlined above, the Investigating Officer is asked to file the counter-affidavit. Accordingly, it will also not be out of the place if the Secretary, Home Department; Secretary, Legal Department, both at Gandhinagar, and the Director General of Police, Ahmedabad, taking note of the observations made above and the guidelines given in this judgment, give suitable directions to all the Police Stations as well as P.Ps. of the State to maintain printed forms of the questionnaire on the lines suggested above setting put 35 points of information on the basis of which they are supposed to file a proper affidavit in the Court whenever called upon to oppose the bail application.”

8. Accordingly, all prosecuting agencies are directed to file status report under affidavit as mentioned above and as per the details sought in the said judgment.
9. Copy of this order be communicated to Commissioner of Police, Delhi, Director, CBI, EOW, Director General, NCB, Director General, DRI, Director, ED and other prosecuting agencies who shall in turn issue necessary directions to the concerned Investigating Agencies to file status report under affidavit as mentioned above.
10. Renotify on 15.12.2020.
11. The order be uploaded on the website forthwith.

SURESH KUMAR KAIT, J

NOVEMBER 26, 2020/ab