

FIR No. 218/21
PS Model Town
U/s 302/308/364/365/325/341/452/279/188/149/506/120B IPC & 25 Arms
Act
St. Vs. Sushil Kumar @ Pehlwan etc.

29.05.2021

In Court through Video Conferencing

In view of corona pandemic and restricted working of subordinate courts by Hon'ble High Court of Delhi vide office order no. 256/RG/DHC/2021 dated 08.04.2021 by video conferencing and in view of office order of District & Sessions Judge, North District, Rohini Courts, Delhi, the proceedings in the court is being done by video conferencing on URL <https://delhidistrictcourts.webex.com/join/reader.mm03.north>.

Present: Sh. Ashish Kajal, Ld. APP for the state through VC.

Sh. Pardeep Rana, Ld. Counsel for accused Sushil Kumar@Pehlwan through VC.

Sh. Sumit Shokeen, Ld. Counsel for accused Ajay Kumar Sehrawat in person.

Sh. Nitin Vashisht, Ld. Counsel for complainant in person.

Both accused Sushil Kumar @ Pehlwan and Ajay Kumar Sehrawat produced after 6 days PC remand.

IO Inspector Mangesh Tyagi, STARS-II, Crime Branch, along with case file.

Record perused.

Sh. Atul Shrivastava, stated to be Additional PP appointed by DoP in the present case started the arguments. However, on inquiry by the court about his locus standi to argue in the present matter, it is stated by Sh. Atul Shrivastava that he has been appointed as Additional PP in



the present matter and further stated that he will file the appointment letter within 5 minutes on the official e-mail ID of the court. However, he fails to produce or file any such appointment letter during the course of arguments and thereafter. It is also stated by IO that there is no such written appointment letter with him regarding appointment of Sh. Atul Shrivastava as additional PP in this case by any authority. It is further stated by IO that Sh. Atul Shrivastava himself stated that he has been orally appointed as Additional PP in the present matter by DoP.

The court declined to hear any argument from Sh. Atul Shrivastava as he fails to produce any valid document regarding his appointment to argue on behalf of state in the present case.

The case of the prosecution is that on the intervening night of 04/05.05.2021, a PCR call was received regarding firing having been taken place at Chatrasal Stadium, Delhi. The three victims of the Crime were taken to the hospital and one victim namely Sagar Dhankar succumbed to the injuries. It is further submitted that the investigation conducted so far, has revealed that about 18-20 persons were present at the spot and are suspected to be involved in the present crime.

The present application has been filed for extension of PC remand of the accused for further 7 days on the ground that both the accused are required to confront the other arrested co-accused persons. It is further stated by Ld. APP for the State that investigating agency has seized seven vehicles from the spot which were used in the commission of the crime but out of these seven vehicles, only four vehicles have been linked due to evasive and non-cooperation of both the accused persons. The police custody is required to link the remaining three vehicles with their users/culprits. It is further stated by Ld. APP for State that the co-passengers/culprits of these vehicles are also yet to be identified, who



were on the spot to commit this gruesome crime. It is further stated by Ld. APP for the State that the police remand is also required for the recovery of mobile phones used by the accused persons, to recover the clothes of accused persons which they were wearing at the time of incident, to recover DVR of the CCTV cameras installed at the house of accused Sushil Kumar. Further, it is submitted by Ld. APP for the State that in order to apprehend the remaining accused persons and to identify out the hide outs of both the accused persons at Haridwar, Rishikesh and Ghaziabad and to identify and apprehend the persons who have provided help to both the accused to hide out and to evade their arrest.

On the other hand, Ld. Counsels for both the accused persons have vehemently opposed the extension of police custody application and have stated that the sufficient custody of 6 days have already been granted to the investigation agency by the Court and no further police custody is required. It is further stated by both the Ld. Counsels that the investigating agency has already recovered sufficient/material evidences in the present case and nothing more is to be recovered from both the accused persons. It is further stated that the investigating agency is trying to veil their lackness in completing the investigation by alleging that the accused persons are not cooperating with the investigating agency. It is further stated by both the Ld. Counsels that four co-accused persons in the present case have been arrested on 26.05.2021 and other two co-accused persons in the present case have been arrested on 27.05.2021 and the investigating agency have sufficient time to confront accused Sushil Kumar and Ajay Kumar Sehrawat with these 6 co-accused persons and no further police custody is required to confront the co-accused persons. It is further stated by Ld. Counsel for both the accused that the investigating agency has taken one ground for PC remand i.e. the



recovery of DVR of CCTV Cameras installed at their houses. That both the accused were living at the government accommodation and there is no need to accompany the accused persons for the recovery of said DVR as the investigating agency have sufficient resources and ways to recover that DVR from the competent authorities. It is further stated that the freedom of both the accused shall not be curtailed on such an evasive application of the investigating agency mentioning sham and flimsy grounds. It is further submitted that the investigating agency has leaked the alleged video of the accused persons of the incident which is a material evidence in the present case and the investigating officer being the custodian of the case property shall be liable for the same. The investigating officer has filed the present application only to curtail the freedom of accused persons and to publicize the present matter for media trial. It is further submitted by Ld. Counsel for both the parties that the police custody remand of both the accused persons were given to the previous IO Inspector Dinesh Kumar by Ld. Duty MM on 23.05.2021, then how the custody of both the accused persons have been transferred to the Crime Branch without the order of the court.

In the rebuttal it is stated by Ld. APP for the State that there are certain material evidence which are yet to be traced and recovered and other co-accused which are yet to be arrested. Regarding the transfer of case from PS Model Town to Crime Branch, it is stated by Ld. APP for State that it is in the domain of higher police authorities to change investigating officer at any point of time and this court has no power to transfer the case to any other investigating agency except the constitutional Courts. It is stated by Ld. APP for the State that total 9 accused persons have been arrested in the present case and the accused namely Prince is running in Judicial Custody. Regarding the



leakage of alleged video clip by the investigating officer as alleged by Ld. Counsel for both the accused, it is stated by Ld. APP for State that it is the matter of inquiry as to who has leaked the said video on social media as there may be chances that any other co-accused who have not been arrested in the present case may have leaked the said video.

Arguments heard at length.

Record perused.

No one is above law and law treats everyone equally. Though constitution guarantees the right to life and liberty to all persons whether they are accused or not but that right is also subject to certain exceptions. Moreover, the importance of initial days of investigation to unearth the truth also has to be seen. The court is duty bound to strike a balance between the fairness of investigation and the rights of the accused. In the present situations the allegations against both the accused persons are very grave and serious in nature. Moreover, the involvement of large number of persons in the commission of crime as well as in hiding out of the accused persons, some of which belongs to some notorious gangs stationed in Delhi and outside Delhi are yet to be arrested. Moreover, certain recoveries i.e. mobile phone and clothes of accused persons are yet to be made. As such in the interest of justice I deem it appropriate to allow the application of IO to the extent of four days only. Accordingly, both the accused namely Sushil Kumar @ Pehlwan and Ajay Kumar Sehrawat are remanded to police custody for four days. IO is directed to conduct the medical examination of both the accused during the police custody remand as per rules.

Ld. Counsel for accused Sushil Kumar @ Pehlwan has moved an application u/s 54 Cr.P.C. for seeking examination of accused persons by medical officer twice a day.



Arguments heard.

Ld. APP for the State opposes the said application on the ground that there is no such mandatory provision that accused person be examined twice during the police remand.

Considering all the facts and circumstances, the present application is dismissed with direction to IO to conduct their medical examination before taking them to PS and thereafter after 24 hours and also before production, as per rules.

Ld. Counsel for both the accused has also moved an application U/s 41 D Cr.P.C. for seeking presence of the counsel during the custodial interrogation.

Section 41 D Cr.P.C. specifically laid down that "when any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout the investigation".

On inquiry, it is stated by Ld. Counsel for both the accused that the investigating officer is totally cooperating and not denying their counsel to meet the accused persons during the interrogation. The same is affirmed by both the accused persons.

Since, the IO is cooperating and not denying the counsels of the accused persons to meet them during the interrogation as per law, no further adjudication of these applications is required. Moreover, the IO is directed to act as per law. With these terms, these applications are disposed off.

Ld. Counsel for accused Sushil Kumar has also moved an application U/s 172 1B for seeking pagination of the case diary and to produce the case diary before the court. The case diary has been produced before the court and same is perused. The same is found duly



paginated.

Accordingly, the present application is disposed off.

Both the accused be produced before the Ld. Duty MM on 02.06.2021.

All the applications stands disposed off.

Order dasti to all quarters concerned.



Mayank Goel
Metropolitan Magistrate-03
MM-03:North Rohini
North District, Delhi
29.05.2021