

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

+ **Bail.Appn. 960/2009**

% Date of reserve: 02.07.2009
Date of decision: 06.07.2009

ALOK KUMAR ...PETITIONER
Through: Mr. Sunil Kumar Jha, Adv.

Versus

STATE ...RESPONDENT
Through: Mr. Arvind Kumar Gupta, Adv.

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

MOOL CHAND GARG, J.

1. This bail application has been filed by the accused, namely, Alok Kumar, who is facing trial under 302/34/120B IPC in a case registered vide FIR No. 9/2008 at Police Station Dwarka along with other accused persons, which is now pending in the Court of Addl. Sessions Judge, Dwarka on the allegations that he along with other accused persons, namely, Jai Kumar and Ajay had killed the deceased Rajesh due to his illicit relationship with Pooja, wife of Jai Kumar.

2. The proceedings were initiated against the petitioner and other co-accused persons on the basis of lodging of a complaint by PW-3 Dharampal, father of the deceased, who alleged that there were illicit relationship between Pooja and his son, Rajesh and it appears that

Pooja either herself or along with others caused the murder of Rajesh. This complaint was made by Dharampal on 6.10.2007 whereas the FIR of this case has been registered by the Police only on 5.1.2008 after receiving the post mortem report of deceased Rajesh.

3. After investigating the matter, the prosecution filed the challan. In support of their case, the prosecution relied upon the statement of Pooja recorded under Section 161 Cr.P.C. who was cited as an eye-witness of the incident and who stated in her statement that it was the petitioner, Jai Kumar and Ajay, who killed the deceased in her presence. Prosecution also relied upon the statement of Kuldeep, Ramesh and one Savitri in addition to the statement of complainant to show exit and entry of accused persons in the house of Pooja at the relevant time to prove circumstantial evidence in support of their case. All these witnesses appeared as prosecution witnesses except Savitri, who is no more.

4. PW-3 Dharampal deposed that he saw the petitioner and his co-accused persons entering and coming out of the house of Pooja between 2.30 and 4.30 p.m. However, it is contrary to his statement made to the Police, which is the basis of registration of FIR, where he stated that he reached the place of incident only at about 4.30 p.m. PW-5 Kuldeep has denied having seen the petitioner and other co-accused persons entering and coming out of the house of Pooja between 2.30 and 4.30 pm. As stated above, Savitri is no more. However, PW-7 Pooja has turned hostile and has not supported the prosecution's case at all. PW-2 Ramesh has also not supported the case of the prosecution.

5. In the aforesaid circumstances, the petitioner seeks bail on the ground of inordinate delay in lodging the instant FIR by the Police as well as on the ground that no incriminating evidence has come on record against him.

6. On the other hand, Ld. APP for the State has opposed the bail application. He has also filed the written synopsis. According to the prosecution, the present case was registered on the basis of the complaint made by Dharampal, father of the deceased. Regarding delay it has been stated that the delay has been caused because the post mortem report was received later and the Police wanted to know the cause of death of the deceased. It has also been submitted on behalf of the prosecution that even though PW-7 Pooja has turned hostile, the other witnesses proved that the petitioner and other co-accused persons have entered the house of Pooja and came out between 2.30 pm to 4.30 pm, which is the time when the death of the deceased Rajesh has been caused and therefore, there is sufficient evidence to implicate the petitioner in this crime.

7. Learned APP has submitted that the statement of PW3 Dharampal and PW5 Kuldeep connects the petitioner with the commission of crime. Both these witnesses have stated that the petitioner and his co-accused persons were seen coming and going out from the place of occurrence. However, as stated above neither the statement of PW3 Dharampal nor the statement of PW-5 Kuldeep who himself has denied the factum of having seen the petitioner coming or going out from the house of Pooja can be the basis of holding at this stage that the petitioner is guilty of committing the murder of the

deceased.

8. I have heard the submissions of both the parties and have gone through the records.

9. During the course of investigation it was revealed that Rajesh was injured in the house of Jai Kumar. He was taken to nearby hospital where he was declared dead. Thereafter, the Police took the custody of the body of the deceased and sent the same for post-mortem where the cause of death was revealed as ASPHYXIA with ligature marks of strangulation sufficient to kill the person manual homicide.

10. It would also be appropriate to take note of the statement of Dharampal, which is the basis of the registration of FIR:-

“I Dharampal S/o Late Sh. Durgat R/o WZ-395, Village Palam Gaon, aged about 52 years, stating that am residing with family at the above address and working as a Safai Karamchari in MCD. I am having two sons namely Surender and Rajesh. My son Rajesh who was unemployed and habitual of drinking Liquor. My Sister's son Jai Kumar who is my door neighbour residing in House No. WZ-394, Palam Village with his wife Pooja. My son Rajesh used to visit frequently and used to drink liquor with Jai Kumar. It is learnt to me that Rajesh was having illicit relationship with Jai Kumar's wife Pooja and in this regard I tried to stop & warned him several times not to go Pooja's house but to no effect. However, Rajesh continued to visit Pooja's husband and never followed my instruction despite of several warning. On 06.10.2007 at about 2.30 PM Rajesh came to house in drunken stage from somewhere and took lunch at home and without informing any one he left house. At about 4.30 PM in the evening my neighbor Santosh, who informed me that Rajesh, is senseless, at the house of Pooja. Upon hearing, I run away towards the house of Pooja and on the way my tenant Kuldeep and neighbor Ramesh meet, I informed them about the position of Rajesh and they accompanied me and we all three reached Pooja's house. We saw that Rajesh was lying on the floor and Pooja was standing there, and we asked Pooja – what happened? She did not say any thing and when we touch the body of Rajesh, found cold and it seem that he was dead. On the advice of Kuldeep and Ramesh – I took Rajesh to Sarthak Nursing Home, Palam village, where Doctor declared him brought dead. Thereafter, we took the dead body of Rajesh to my house and my Son Surender informed the Police over Phone. Thereafter, I went to house of Pooja to know

about the incident that how Rajesh died. By that time, Pooja had fled away from her house. Thereafter, my relatives came to my house Pooja was the wife of my Sister's son, therefore, in view of the fear of defame-in-public of the family I had stated without the name of any suspects but now I am confident that Pooja herself or with the assistances of others have murdered my son Rajesh, appropriate Legal Action be taken..."

11. However, from the aforesaid statement it does not transpire that the petitioner was one of the accused. As regards the ingress and aggress of the petitioner and other accused persons nothing has been stated by the aforesaid witness.

12. In these circumstances, when it is admitted by the prosecution that there is no evidence which can prove the guilt of the petitioner as a person responsible for committing the murder of the deceased and without further dissecting the evidence which has already come on record but taking into consideration the statement of PW7 Pooja, PW3 Dharampal. PW5 Kuldeep and PW2 Ramesh, I am satisfied at this stage, prime facie, that it cannot be said that the petitioner is responsible for commission of murder of the deceased Rajesh. Thus, the petitioner is directed to be released on bail on his furnishing bail bond in the sum of Rs. 25,000/- with one surety in the like amount to the satisfaction of the Trial Court.

13. Bail Application stands disposed of. However, nothing stated herein would influence the Trial Court in giving the judgment after the completion of trial.

MOOL CHAND GARG, J.

July 06, 2009
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