

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

+ **Bail. Appn. 1005/2009**

Date of Reserve : 06.10.2009

Date of Decision: 13.10.2009

SATISH KUMAR Petitioner

Through: Mr. S.K. Rai, Advocate

Versus

STATE (NCT of DELHI) Respondent

Through: Mr. Arvind Kr. Gupta, APP for State

Mr. Jai Singh, Insp. P.S. Hari Nagar

WITH

+ **Bail. Appn. 1006/2009**

MANISH KUMAR Petitioner

Through: Mr. S.K. Rai, Advocate

Versus

STATE (NCT of DELHI) Respondent

Through: Mr. Arvind Kr. Gupta, APP for State

Mr. Jai Singh, Insp. P.S. Hari Nagar

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 order shall dispose of the bail applications filed by the petitioners, who have been implicated in this case at the behest of the deceased-Sunil Anand on whose instance FIR No.400/2008 of this case has been registered on 11.8.2008 at P.S. Hari Nagar.

2. The deceased initially was taken to the DDU hospital by his father. As per the MLC prepared at DDU Hospital, the burn injuries as recorded by PW-22 Dr.Neeraj, which is exhibited as E.PW22/A, are as under:-

“Superficial to deep burns over lateral upper limbs.
Superficial flame burn over interior chest and abdominal
valve = 20%”

3. Thereafter, the deceased was also taken to RML Hospital at about 12.25 am in the early morning of next day when he was again examined by the doctors and a second MLC was prepared. In the second MLC, the extent of burn injuries as noted by PW-23 Dr.Poras Choudhary of RML Hospital, which is exhibited as PW23/A, is as under:-

“65% superficial to deep burns”

4. It is the case of the prosecution that while the deceased was being examined at RML Hospital, he also made a statement which has also been attested by Dr. Paritosh at about 3 am on 12.10.2008 which has been accepted as dying declaration. It is on that basis that the FIR in question was registered at 5 pm on that day. Initially, the Police registered the case under Section 307/34 IPC but after the death of the deceased, who succumbed to burn injuries, the case was converted under Section 302/34 IPC. In his statement made to the Police, the deceased, Sunil Anand, has stated:-

On 11.10.2008 at 9.30 PM accused Manish and Goldy came to shop and asked for recharge a Mobile of Rs. 100/- and the deceased demanded the money first on this Manish started abusing deceased and Goldy also started abusing the deceased. In the meantime the elder brother of Manish also came there and they started beating the deceased. The deceased further stated in the statement that after got himself free from the clutches of three persons mentioned above, he set on his motorcycle No. DL 4S AX 3777 and all the three persons chased him on their motorcycle. Goldy stopped the

motorcycle. Manish threw the kerosene oil on the deceased Manish' elder brother lighted the matchstick and threw on the deceased.

5. According to the petitioners, they have been falsely implicated in this case and in fact they are innocent persons and have nothing to do with the crime alleged against them.

6. It has been submitted by the petitioners that the variation in the two MLCs i.e. one prepared at DDU Hospital i.e. Ex.PW5/A and one prepared at RML Hospital i.e. Ex.PW23/A which are very substantial to the facts of the case inasmuch as while the DDU Hospital shows 20% burn injuries, the RML Hospital shows 65%, casts serious doubt in the case of the prosecution. It is also submitted that even the statements given by the doctors are also contradictory.

7. It has been submitted that Dr. Chanchal Singh, who appeared as PW5 and had examined the injured/deceased at DDU Hospital for the first time, in her cross examination had stated that she found only superficial to deep burn over the lateral upper limb and superficial to flame burn over interior chest and abdominal valve. She also stated that the patient was conscious and told about the injuries caused to him at that time and did not name anybody nor did give the details as to how the injuries were caused. He was fit for making statement at that time. Of course, he was not clearly speaking due to injuries. Injuries were also on hands, chest and abdomen. There were no burn injuries on his face, neck and the back. Similarly PW-22 Dr.Neeraj who was posted in DDU Hospital at the relevant time as Sr. Resident, Surgery had stated that the percentage of the burn injuries was

approximately 20%. He also stated that nobody was named by the patient at that time nor did he explain the manner in which he received the burn injuries. Though, the injuries were superficial to deep on both upper limbs and superficial burn injuries on interior (front) chest and abdomen.

8. It is also submitted that PW-4 Dr. Jyotirmay Baishy of RML Hospital, who examined the deceased at RML Hospital gave a different story by stating that at the time when the patient was admitted in Ward NO.2 under Dr. L.K. Makhija (HOD) of burn and plasti MLC NO.12350/2008 was prepared, he was diagnosed as having 56% burn injuries, mostly deep with inhalational burn and the cause of his death was cardio respiratory failure due to septicemia. He also stated that the patient had deep burn injuries with facial burn with inhalational burn. In the cross-examination, this witness stated that inhalational burn can occur in a case of facial burn and also in case of burn in a closed place and chamber.

9. Reference has also been made to the statement made by PW-23 Dr.Poras Chaudhary, S.R. RML Hospital, who stated that he also examined the deceased. At that time, he was conscious and oriented and was able to speak. He did not disclose the name of any of the assailants/culprits. It has been submitted by counsel for the petitioners that on the basis of statement made by Dr.Poras Chaudhary, PW23, and the statements made by doctors at DDU Hospital that there is no explanation by the prosecution as to how the injuries became 65% burn injuries and how the injuries also came on the face and back of the deceased when these were not there on his face and back at the time when he was examined at DDU Hospital. Moreover, the

statement made by Dr.Jyotirmay, who stated that the injuries of the nature which led to the inhalational burn injuries could be occurred in a closed room and chamber, which is not the case of the prosecution.

10. It is thus submitted that in the aforesaid circumstances, when there was no burn injury on the face, neck and back of the patient, how those injuries occurred when he was admitted to RML Hospital. The deceased was set on fire in an open place at C-92 and was always in conscious and oriented position in the DDU Hospital and RML Hospital while examined by the doctors but he had not named any of the accused of this case before them.

11. It is also submitted that the statement of Dr.Pritesh, who appeared as PW-18, is not reliable as no statement was recorded before Dr.Pritesh as he was not SR Surgical Emergency. His age is 25 years only and is a student. There is no application on record for recording the statement of the deceased. IO and father of the deceased by conniving with Dr.Pritesh took the signature on the statement of the deceased. It is also his case that the father took his son from the DDU hospital to his house where he set him on fire in a closed room and later on took him to the RML Hospital. The father also initially set him on fire but due to burn injuries upto 20% the deceased was discharged. And therefore, subsequently he was burnt again in a closed room and in that incident the patient received facial burn with inhalational burn.

12. At this stage, it would also be relevant to take note of the cross-examination of PW-18 Dr. Pritesh, P.G. Surgery, RML Hospital, who

deposed as under:-

“On the date I was my duty hours were round the clock as I was on Emergency 24 hours duty. Initially the Surgery departments doctors used to take care of all burn cases and initial treatment is given in Surgery Emergency. Patients are transferred to Burn Ward after 9 a.m. on Sunday. There is no other doctor by the name of Pritesh. But there is one doctor who is called by the name of Ritesh. I had seen the patient first time around 3:00 am when I thoroughly examined him before giving the permission that patient is fit for statement. I had also seen the patient when he was admitted in the hospital. We have to just examine the surface area involved in burn as well as the degree of burn associated with any fact involvement any breathing difficulty sign of dehydration. We are not specialized in giving tertiary care so after resuscitation patients are transferred to respective burn and plastic surgery unit. It took 10 mins. for me to examine the patient.

It is submitted that this cross-examination also explains the so-called discrepancy in the case of the prosecution.

13. It is also submitted that the Sessions Judge has failed to appreciate that the prosecution has failed to prove its case and has failed to produce the reliable witnesses. According to the petitioners, it is the father of the deceased, who is the real culprit in this case as it is he who has caused burn injuries on the person of the deceased after his initial examination at DDU Hospital, which fact is supported by PW-4 and PW-22 of DDU Hospital and PW-23 of the RML Hospital.

14. It is also submitted that now the prosecution's evidence is likely to be closed as the last witness is under cross-examination. The matter thereafter would be kept for defence evidence but as the petitioners are in jail, no one would be able to lead defence on their behalf. The evidence led so far does not justify keeping petitioners in judicial custody any further, who are innocent persons and therefore, are entitled to be released on bail.

15. On the other hand, learned APP for the State has submitted that the FIR of this case has been registered at the instance of the deceased Sunil Anand, who has specifically implicated both the petitioners by stating that they caused burn injuries upon the person of the deceased by throwing kerosene on the deceased and his motor cycle. It is submitted that not only the motor cycle of the deceased has been seized by the prosecution in a burnt condition soon after the incident but testimony of PW-18 Dr.Pritesh, who permitted recording of the statement of the deceased, proves the case of the prosecution against the petitioners. It is stated that Dr.Pritesh has deposed that the statement of Sunil Anand was recorded in his presence and the injured put his thumb impression on complaint Ex.PW18/A at point A and that his signatures are at point 'B' and his name is at point 'C' and the time of recording the statement is at point 'D'. He also stated that whatever was stated by the deceased Sunil Anand was recorded by the IO in his presence. He further submitted that from the aforesaid facts it is clear that the dying declaration has been recorded which has been duly proved on record.

16. Learned APP for the State has also relied upon the testimony of PW-25 and submitted that this witness has stated that upon receipt of DD No. 53 he reached the DDU Hospital, where he found the deceased Sunil Anand admitted in the hospital and subsequently upon receipt of DD No. 55 he reached the spot and seized the motor cycle in the burnt condition and took the photographs. He also seized one shirt in a burnt condition. Upon receipt of DD No. 2 he went to the RML Hospital where he found deceased Sunil Anand in a burnt condition. As per the testimony of PW-25 and PW-1

Surender Mohan Anand, father of the deceased, it is clear that the father also reached to the DDU Hospital upon receipt of information about burning of his son. As regards cause of death, it is submitted that as per MLC and evidence of doctors burn injuries are also on chest and abdomen. The burn injuries on chest caused respiratory distress. The doctor further stated in evidence that there was burn in respiratory system (inhalational burns). The doctor has stated that the cause of death is burn injuries leading to cardio respiratory failure due to septicemia. The perusal of the dying declaration as well as the testimonies of the witnesses proves that the petitioners are guilty of the offence. The prosecution has examined 25 witnesses out of 30. In fact, it is the case of the petitioners themselves that the witness for whose cross-examination, the case is now listed on 13.10.2009 is the last witness to be examined on behalf of the prosecution.

17. I have considered the submissions made from both the sides. In this case the FIR was registered on 12.10.2008. The case is at an advance stage inasmuch as the prosecution evidence is likely to be concluded on 13.10.2009. In these circumstances, while deciding the bail applications it is neither necessary nor required for this Court to analyse the evidence in detail and to comment upon the veracity of the witnesses who have appeared for the prosecution. The facts disclose that the case has been registered at the instance of the deceased who is no more. In his statement made to the Police, the deceased has specifically implicated the petitioners as the persons who caused burn injury on his person, which initially led to the registration of case under Section 307/34 IPC but on account of the death of the

deceased has been converted under Section 302/34 IPC. Merely because the extent of burn injuries has been found to be higher when the deceased was taken to RML Hospital and there is some opinion given by one doctor that such injuries could be caused only in a closed space is not sufficient to throw the entire case of the prosecution and to accept the defence of the petitioners at this stage even though there is every likelihood that the trial may come to an end by the end of January when while delivering the final judgment, the trial Judge may examine the points raised by the petitioners in the cross-examination of the doctors including their defence that there was second incident of burning the deceased by his father as argued before this Court though prima facie this defence is not tenable.

18. Suffice it to say that at this stage when the evidence of the prosecution is almost complete inasmuch as the only witness left to be cross-examined is IO, who is under cross-examination, it would be appropriate to allow the prosecution to complete their evidence and to give directions to the trial court to complete the trial within a time bound period which would also safeguard the interest of the petitioners.

19. As such, without commenting on the merits of the case, I do not find it to be a fit case to release the petitioners on bail at this stage when the case is at the fag end and the implication of the petitioners in the FIR goes to point out that their involvement cannot be a figment of imagination by the investigating agency. It is true that whether a case under Section 302 IPC is made out or the petitioners are guilty of some other offence is a matter to be decided by the trial court after taking stock of the entire evidence which has

now been collected by the Prosecution after the cross-examination of the IO and also by taking into consideration the defence evidence, if any, which may or may not be led by the petitioners after their statements are recorded under Section 313 Cr.P.C., if required.

20. However, in the facts of this case, the trial judge is directed to complete the trial of this case by 31.01.2010 and if for any reason not attributable to the petitioners, the trial is not completed by that date then the petitioners would be entitled to move a fresh bail application before the Trial Court or before this Court.

21. With these observations, bail applications stand disposed of. A copy of this order be sent to the trial court along with TCR, if any.

MOOL CHAND GARG, J.

OCTOBER 13, 2009
ag/dc/anb