

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

+ Bail Application Number 1133/2009

% Date of reserve : 28.10.2009
Date of decision : 05.11.2009

PRAVEEN KUMAR ...PETITIONER
Through: Mr.D.M.Bhalla, Advocate

Versus

STATE ...RESPONDENT
*Through: Mr.Navin Sharma, APP for the State
I.O Inspector Simerjeet Singh, P.S.Sultan Puri*

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 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 application filed on behalf of the petitioner who is facing trial in Sessions Case No.249/2006 arising out of FIR No. 803/2002 under Sections 302/34/120-B IPC and 25/27 of the Arms Act registered at Police Station Sultan Puri, Delhi.

2. The FIR in question was registered on the basis of statement of PW-1 Baljeet Singh, who in his statement made before the trial court has deposed that on 7.7.2002 at about 8 pm he was sitting in the house of his nephew, Rajesh, along with him. At that time Rajesh told him that he wanted to go to

Bus Terminal Sultanpuri to take account of cash from his driver there. He accompanied his nephew, Rajesh, to the bus terminal. When they reached the said bus terminal and were waiting for the driver of Rajesh, they noticed that one boy was giving beating to a poor man. Rajesh intervened and asked why he was so mercilessly beating a poor man. On this the said boy became infuriated and said that he would first set Rajesh right. After this, the said boy went inside the bus terminal and returned with two other boys. They then caught hold of Rajesh and one of those boys attacked Rajesh with a bottle and as a result Rajesh started bleeding from his head and started bending down towards the earth. Thereafter, the third boy took out knife from his pocket and hit Rajesh on the left side of his chest. Thereafter, those boys ran away from the spot with the knife. Rajesh was removed to the Bhram Shakti Hospital, where he was declared as brought dead in the hospital.

3. The petitioner was not arrested at the spot but was arrested on 20.07.2002 and sent up for trial. The petitioner being in custody filed an application seeking bail before the trial, which was dismissed vide order dated 13.05.2009. Hence, the present petition for bail.

4. It is submitted on behalf of the petitioner that the alleged knife and bottle used for the commission of offence have neither been seized nor produced in court by the prosecution. Though it is asserted by the prosecution that the accused Deva made a disclosure statement to get the knife recovered, but there is no record to show its recovery. Further, as per

the testimony of Baljeet Singh, the bottle had broken at the spot but there is nothing on record to show that any efforts were made to recover the same and the reasons for its non-recovery are also not placed on record.

5. It is also submitted on behalf of the petitioner that there is no admissible evidence of identification of the petitioner so as to implicate him in this case. It is submitted that PW-1 Baljeet Singh, in his supplementary statement dated 09.07.2002 recorded under Section 161 Cr.P.C. has stated that he was shown the photograph of the petitioner in the Police Station as per Ex.PW1/DB. This fact thus frustrates the purpose of putting the petitioner to Test Identification Parade. Thus, his refusal to join the same is justified and cannot be read against him. Even otherwise, the role attributed to the petitioner is that of catching hold of the deceased at the time of alleged assault by the co-accused. It is submitted that the alleged act of the petitioner does not reflect his intention to cause the alleged injury. At the most, he tried to prevent the deceased to leave from the place of incident. It is also submitted that the petitioner cannot be held responsible for the individual act of the co-accused more particularly, when he had no common intention with him. For the purpose of common intention there is a requirement of concert and prior meeting of mind for the commission of a particular offence to be proved on record. There is nothing on record to reflect that the petitioner had any knowledge that co-accused Deva was carrying a knife. Moreover, there was no exhortation on the part of the petitioner to him for inflicting alleged injury on the person of the deceased.

Reliance is placed upon Criminal Appeal Number 91 of 1995 titled as *Raj Kumar Vs. State*.

6. The Apex Court in *Ajay Sharma Vs. State of Rajasthan*, AIR 1998 SC 2798, where the accused person had exhorted the co-accused and latter inflicted a stab injury, had set aside the conviction of the appellant under Section 302 IPC and convicted him under Section 324 IPC. If at the most the petitioner is held guilty for the commission of offence by virtue of the above-said case law, the petitioner would be sentenced to maximum of three years of incarceration. However, the petitioner in this case is in judicial custody since 20.07.2002 and has undergone more than 7 years of imprisonment i.e. more than double of the sentence which might be imposed upon him under Section 324 IPC. Thus, the petitioner is entitled to bail on this short score alone under the provisions of Section 436-A IPC.

7. It is submitted that the prosecution has so far examined only 13 witnesses out of 27 witnesses. The prosecution is likely to take considerable time for the conclusion of the trial of the case. The petitioner cannot be confined in judicial custody for an indefinite period and thus, entitled to be released on bail. The petitioner has deep roots in the society and is a permanent resident of Delhi. His presence can be secured by posing stringent conditions upon him.

8. The learned APP on the other hand has submitted that PW-1 Baljeet Singh when appeared in the Court has identified the present petitioner as one of the accused who caught hold of the deceased when he was stopped along

with other co-accused but was not arrested. It is also a matter of record that the petitioner refused to participate in the Test Identification Parade. Moreover, the manner in which the petitioner caught hold of the deceased shows the conscious involvement of the petitioner in the crime. In fact, his role is not simply that of catching hold of the deceased. Learned APP also made reference to the following portion of the statement made by PW-1 Baljeet Singh before the trial court:-

“Soon thereafter that boy returned along with two other boys and those two boys caught hold of Rajesh and the first boy hit Rajesh with a bottle of glass which he had brought, on the head of Rajesh. Rajesh started bleeding from his head and starting bending down towards the earth. Rajesh tried to get up and tried to run away but the first boy who hit the Rajesh with bottle and another boy who along with other boy holding Rajesh, caught hold of Rajesh. The third boy took out the knife from his pocket and hit Rajesh on the left side of his chest and after hitting Rajesh, all the 3 boys ran away with the knife from the spot.”

9. Despite all this the circumstances pointed out by the petitioner in his bail application, including the supplementary statement of Baljeet Singh under Section 161 Cr.P.C. dated 09.07.2002 wherein he has stated that the photograph of the petitioner was shown to him before the Test Identification Parade and considering the incarceration of the petitioner for more than seven years in jail, without commenting any further on the evidence produced by the Prosecution before the court, I find it to be a fit case to

admit the petitioner on bail on his furnishing bail bond in the sum of Rs.25,000/- (rupees twenty five thousand only) with one surety in the like amount to the satisfaction of the trial court. It is ordered accordingly.

10. The bail application is accordingly allowed.

MOOL CHAND GARG, J.

November 05, 2009
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