

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

+ Bail Application No.1480/2008

% Reserved on : 23.1.2009
Date of decision: 29.1.2009

PARMIT @ PEHLWAN ...PETITIONER

Versus

STATE ...RESPONDENT

WITH

+ Bail Application No.1534/2008

SANDEEP @ KALE ...PETITIONER

Versus

STATE ...RESPONDENT

Advocates who appeared for the parties

For Petitioners/applicants: Mr. L.S. Saini, Advocate
For State : Mr.Arvind Kumar Gupta, APP

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 common order shall dispose of the aforesaid two bail applications filed on behalf of Parmit @ Pehlwan S/o Jagbir Singh and Sandeep @ Kale S/o Ramesh Kumar, who are undergoing

trial in a case arising out of FIR No. 133/2007 under Sections 307/302/34 IPC read with Section 25/27 of the Arms Act registered at Police Station Kanjhawala and are in judicial custody since 23.7.2007 and 22.7.2007 respectively, except for a brief period of fifteen days when the applicant, Parmit @ Pehlwan was released on interim bail on account of his sister's marriage.

2. According to counsel for the applicants, the applicants are entitled to bail inasmuch as, the alleged eye-witness of the incident, namely, PW-1 Anil Kumar S/o Hukum Singh at whose instance the present FIR was registered has turned hostile and has not supported the case of the prosecution. He has not identified the applicants as the persons who took part in the alleged assault resulting in the death of Ranbir S/o Ramphool and injury to himself. It is also submitted that till date, the prosecution has examined only one witness, whereas they have cited as many as 27 witnesses and it is likely that the trial of the case will take a long time. It is also submitted that the applicants are permanent resident of Delhi and there is no apprehension of their absconding or tampering with the evidence in any manner. Now only police officials are left to be examined and public witness in regard to the identification of dead body are left to be examined. It is thus submitted that the applicants, who have clean incidents, are entitled to be released on bail.

3. Regarding the applicant, Parmit @ Pehlwan it is also stated

that he was hardly 17 years and 11 months old at the time of the alleged incident and is a national player, who represented India in Pakistan in a Football Match. It is further submitted that the recovery of shirt is mere plantation. That T-shirt was taken by the IO from his house and thereafter it was planted upon him after putting blood stain on that T-shirt. No public person joined at the time of recovery of T-shirt which falsify the prosecution story. It is also submitted that there is no evidence against him which connects him in this case. He is not known as Pehlwan and was arrested on the basis of wrong identification.

4. Insofar as Sandeep @ Kale is concerned, it is stated that the recovery of shirt from black colour pulser motor cycle no. DL 8S F 7367 which was parked in L-1 Liquour Godown, Jhajjar road, Bahadurgarh near chungli, is mere plantation. That shirt was taken by the IO from his house and thereafter, it was planted upon him after putting blood stain on that shirt. It is pertinent to mention that no public person joined at the time of recovery of shirt which falsify the prosecution's story. It is also stated that recovery of pistol is mere plantation by the Police as nothing was recovered from the possession or at the instance of the present applicant. It is also stated that present applicant is not known as Kale and was arrested on the basis of wrong identification.

5. The applications have been opposed by counsel for the State, who has also filed the written synopsis. According to the

prosecution, the present case was registered on the basis of telephonic message received at Police Station Kanjhawala on 17.7.2007. On receipt of the information, police reached at the spot and found Santro Car (White) No. DL-4CS-9633 belonging to a close relative of PW-1 Anil Kumar and the said car was taken into possession. A dead body which was lying in a pool of blood at the driving seat was also taken into possession. The said body had one wound on head (right side) and one wound on the left shoulder (back side). The wounds were due to bullet injuries. It is further stated that two empty cartridges were found. One was lying on the front side of the case and the other on the back seat. The FIR was registered at the instance of Anil Kumar, who appeared as PW-1 before the trial court. In his statement, he unfolded the story of crime committed by the accused persons/present applicants. It may be appropriate to take note of the statement of PW-1, Anil Kumar, which is the basis of recording of the FIR :

“Anil Kumar S/o Hukam Singh R/o VPO Kumar Pur District Sonapat, Haryana, Aged 22 years states that I am resident of above-said address and works as building material supplier in Sector-8, Rohini. My friend Ranbir S/o Ramphool who belongs to my village, came to me at 11.00 AM today and we left for Rohtak to meet Ranbir's friend in the Santro Car of my jija bearing No. DL4S-9633. At 4 PM on the way back when we were filling gas at Mundaka CNG Gas Centre Ranbir's friend's Kale's phone came. Ranbir turned the car towards Kanjhawla and told me that in Kanjhawla a friend's money has to be recovered. From there we will move towards Rohini. We reached near Kanjhawla Chowk and in the meantime Kale's phone came and he told that he is standing after the chowk in front of the Vatika. We reached Vatika where one boy was standing and he was made to sit inside the car by Ranbir. While sitting in the car we waited for Pehlwan who was called by Kale. He did not come for 15 minutes. Kale also rang to Pehlwan. After that we left Kale

there and moved towards Rohini. When we reached near Rama Vihar Kale's phone came again and he told that Pehlwan has come. Ranbir turned back the car and reached Kanjahawla and he boarded Kale and Pehlwan in the car. Kale asked Ranbir to proceed through the back of village from Firni Road. On that road after covering some distance Pehlwan took out the pistol and started firing at Ranbir who fell down on the starting unconsciously. After that Pehlwan pointed the pistol on my head and fired out but it misfired and then both of them ran away raising pistol in their hands. I shouted but nobody dared to stop them. My friend has been murdered by Kale and Pehlwan. Someone rang 100 No. and the police came on the spot. On the arrival of police, I gave my statement. I can recognize both of them on confronting. Legal action be taken against them. Statement recorded. It is all right. Sd. English Anil Kumar."

6. From the aforesaid statement, it is apparent that the FIR maker informed about the death of Ranbir S/o Ramphool. He stated that the Santro car in which the dead body was found, belonged to his jija. He also stated that the applicants were involved in the aforesaid crime and that the injuries were caused to the deceased by a pistol on the head as a result of which he fell down inside the car.

7. As per the prosecution's story, the car was taken into possession on 17.7.2007 and from under the seat cover of car, one empty cartridge and bullet was recovered. One shirt of Anil Kumar, who was injured in the incident, was also recovered on 17.7.2007. During the course of investigation, the police arrested Sandeep @ Kale on 22.7.2007 who gave the disclosure statement and had given the detail of his mobile No. 9999565267. The telephone calls made by the aforesaid mobile connect the accused Sandeep @ Kale with the crime and supports the version

of the incident given by Anil Kumar. From the disclosure of Parmit @ Pehlwan, a T- shirt worn by him was recovered which had the blood stain of the deceased. The Pulsar motorcycle which was used by him to flee away from the spot on 17.7.2007 and the pistol was also recovered. The seized clothes were sent to CFSL for analysis. The CFSL gave result on 19.10.2007 and opined that the blood stains on the T-shirts of accused person matched with the blood group of the deceased. The accused persons have refused to participate in the TIP proceedings.

8. It is stated that the case of the prosecution in view of the statement of PW-1, Anil Kumar, now depends on the circumstantial evidence which would connect the applicants with the crime and therefore, it is not a fit case where the applicants are entitled to be admitted to bail. More so, the case is pending for recording the evidence of other prosecution witnesses on 16/17.3.2009.

9. I have given my thoughtful consideration to the rival submissions. Merely because PW-1, Anil Kumar has not supported the prosecution's case, this alone does not exonerate the applicants of allegations made against them which also involve circumstantial evidence including the recovery of T-shirt etc. which may prove the case against the applicants. In these circumstances, at this stage I am not inclined to accept the prayer made by the applicants in the present applications.

10. Accordingly, Bail Application No. 1480/2008 and Bail Application No. 1534/2008 are dismissed. Trial court record, if any, be sent back forthwith.

MOOL CHAND GARG, J.

January 29, 2009
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