

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

+ Bail Application No. 1632/2008

% Reserved on : 12<sup>th</sup> January, 2009  
Date of decision: 20<sup>th</sup> January, 2009

MEHMOOD ...PETITIONER

*Through:* Mr.F. Haq, Advocate

*Versus*

STATE ...RESPONDENT

*Through:* Mr.Navin Sharma, Advocate

**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, Mehmood, who is facing trial under Section 302/454/34 IPC in case registered vide FIR No. 100/2005 at Police Station Mayur Vihar along with other accused persons now pending in the court of the Additional Sessions Judge Karkardooma on the allegations that he along with other accused persons caused grievous injuries to one Nazir (deceased) on 14.3.2005 at about 7 p.m because of which the deceased succumbed to the injuries. In the Complaint made by PW-1 Farook which is the basis of the registration of the FIR, it has also been alleged that after dragging the deceased from his house, the applicant gave an iron handle blow on his head from the back side. At

that time the applicant also said, "Iska Kaam Ho Gaya Ab Chalo". Consequent upon the injuries inflicted by the applicant, Nazir fell down and blood started oozing from his head and later on he succumbed to injuries. This injury has been found to be sufficient to cause the death of the deceased.

2. After committal of the case to Sessions charges were framed as aforesaid. The applicant is in Jail ever since 20.03.2005 except for the period he was granted interim bail on account of the illness of his wife. Some of the material witnesses have been examined before the trial court including PW-1 Farook the Complainant who is also the brother of the deceased and has fully supported the case of the prosecution though the other eye witnesses turned hostile.
3. In the aforesaid circumstances the applicant is seeking bail primarily on the ground that the statement made by PW-1 before the trial court belies his presence at the spot for the following reasons:

*(a) That deceased Nazeer was dragged as per statement of Md. Farooq from inside of his house by accused persons, no other family member of the deceased interrogated by the IO to support the same.*

*(b) No witnesses out of the residents from both sides of the lane up to the place of the incident were neither interrogated nor seen the incident as stated by Farooq PW-1.*

*(c) Farooq being brother not stated that he tried to save his brother and was pursuing the culprits along with the deceased till the impact of blow on the back of the head of the deceased by the handle of handpump.*

*(d) No abrasion or any injury on the body of the Farooq in attempt to save his brother deceased.*

*(e) When parallel enmity was also with the Farooq as well as the deceased with the assailants and Farooq was also available, no attempt shown by the culprits to assault the Farooq.*

*(f) The injured was not brought to the hospital by the Farooq. If the Farooq was present at the scene of the occurrence why injured was brought by Abdul Rashid shows an unnatural conduct of Farooq PW-1, if he was present at the scene of the occurrence.*

*(g) Cloths of Farooq were not blood stained, so was not seized by the I.O. also shows that Farooq was not present at the scene of the occurrence.*

4. It is submitted that for the aforesaid reasons if read in the light of the statement given by the other witnesses the presence of PW-1 becomes doubtful at the spot. Thus a serious dent stands caused in the story of prosecution about the role assigned to the applicant. In view of that, when two versions are possible one finding favor with the petitioner must be considered which is sufficient to enlarge the petitioner/applicant to bail pending trial more so when other accused persons are already on bail and that the petitioner while released on interim bail has not misused the liberty so granted. It is also submitted that no other material witness of fact remains to be examined. The petitioner has also relied upon the following Judgments namely :-

*(i) Union of India Vs. Prafull Kumar and Samal and Ors., AIR 1979 SC 366.*

*(ii) Rita Handa Vs. CBI, JCC 2008, Volume -3, 2020.*

*(iii) Surinder Singh @ Singara Singh Vs. State of Punjab, AIR 2005 SC 3669.*

(iv) *Akhtari B. Vs. State of M.P., 2001 AIR 1528.*

(v) *Dharampal Vs. State of Haryana,*

(vi) *Abdul Rehman Antulay Vs. R.S. Nayak, 1992 AIR 1701*

(vii) *Kashmirah Singh Vs. State of Punjab, AIR 1977 SC 2147*

5. On the other hand the APP for the state has submitted that this Court has not to scrutinize the testimony of the witnesses at this stage once the Complainant has fully supported his complaint made to the police which fully support the prosecution version. The doubt expressed by the applicant about the presence of PW-1 at the spot is a matter to be appreciated by the trial court taking into consideration all the facts of this case. At this stage when direct allegations have been made against the applicant by PW-1 coupled with other circumstances which goes to show that the petitioner is the person who caused the fatal blow with the iron handle on the head of the deceased which caused his death coupled with recovery of weapon at his instance points out his involvement in this case. Moreover the report of the doctor who conducted the post mortem which also opines that the injury to the victim is possible with the weapon recovered in this case is another circumstance which cannot be ignored. Merely because the petitioner was released on interim bail on account of the illness of his wife does not entitle the petitioner for regular bail taking into consideration the gravity of offence and the conduct the accused as deposed by PW-1. The role of the co-accused persons who have been released on bail is that

they caught hold of the victim and therefore, there is no parity between the case of the petitioner and the other accused persons.

6. Even otherwise the points mentioned above about the reliability of the statement of PW-1 are matters which may be explained by the Investigating officer when he appears in the witness box. The submissions that the complainant has not indulged himself in the fight and has not come forward to save his brother and for that reason he has not even suffered any injury cannot per se disprove the presence of the witness at the spot because reaction of a person faced with similar circumstances would depend on his personality. The complainant had taken the deceased to Lal Bahadur Shastri Hospital along with Shaukat and Javed where the deceased succumbed to his injuries. This is what he stated in his complaint made to the police. Merely because the other witnesses have not supported the prosecution and have caused some dent in the case of the prosecution, it cannot prima facie be believed that the petitioner is innocent. In any case, the evidence which has come on record cannot be scrutinized by this Court at the stage of granting bail as has been stated by Hon'ble Supreme Court in *Satish Jaggi Vs. State of Chhattisgarh & Ors.* [2007 Cri L. J. 2766]. Learned counsel for the State also relies upon a judgment in *Ved Prakash @ Kalu (JC) Vs. State* [2007 [1] JCC 1564] wherein it has been held that the nature and gravity of the charge and

the severity of punishment in the event of conviction are required to be take note of while considering the grant of bail, which is also the view taken in *Kalyan Chandra Sarkar Vs. Rajesh Ranjan alias Pappu Yadav and Anr. [AIR 2004 SC 1866]*.

7. I have also considered the judgments cited at bar by the petitioner but I do not find are of any help to the case of the petitioner for his release on bail pending trial in the facts and circumstances of this case looking to the gravity of the offence for which the applicant has been charged because neither it is a case of Prevention of Corruption Act nor the petitioner has completed five years in judicial custody. Even otherwise, there is no parity of his case with other co-accused persons.
8. The bail application is accordingly dismissed. Nothing stated herein will prejudice the case of the petitioner on merits.

MOOL CHAND GARG, J.

January 20, 2009  
dc