

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

+ Bail Appn. 1781/2008

% Date of reserve : 04.09.2009
Date of decision: 09.09.2009

SANDEEP

...Petitioner

Through: Mr. K.B. Andley, Sr. Adv. with
Mr. M.L.Yadav, Adv.

Versus

STATE

...Respondent

Through: Mr. Navin Sharma, APP

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? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

: **MOOL CHAND GARG, J.**

1. This bail application has been filed by the petitioner, Sandeep, who is facing trial in a Sessions Case arising out of FIR No. 235/2005 under Section 365/302/120-B/201/182/34 IPC registered at Police Station Welcome, Delhi on the allegations that he was seen going to the room of Brijpal by PW-11 Shweta, who has supported the case of the prosecution. Another circumstance against the petitioner is the recovery of a wrist watch at his instance. He was arrested on 29.5.2006.

2. Briefly stated, the facts giving rise to the filing of the present case are that on 5.6.2005 FIR No. 235/2005 was registered under

Section 365 IPC at Police Station Welcome, Delhi on the statement of Kavita, wife of Brijpal, wherein she alleged that she was married to one Omkar Singh and out of the said wedlock she had two sons and one daughter. However, in the year 1994 she was thrown out of the house by her husband Omkar Singh and subsequently, she was brought to Delhi by her dever Brijpal, whom she ultimately married in February, 2003. According to Kavita, her husband Brijpal used to go to his job at Pilibhit and would return after 8 or 10 days. She also stated that on 2.5.2005 her husband Brijpal left for his duty as usual along with an airbag containing Rs. 10,000/- in cash. On 7.5.2005 in the evening she received a call from Anil that Brijpal had not reached to his duty. Brijpal could not be located anywhere either by the complainant or by her brothers. Subsequently, the complainant went to the police station and gave her statement there. Thereafter, after about a month the complainant Kavita with the help of Harinder got the plot of Brijpal located at Param Hans Vihar, Loni Border, Ghaziabad, transferred in her name. All this was done by the complainant, Kavita allegedly with the connivance of Harinder, who was residing on the first floor of her house, where she was residing on the ground floor. During investigation the statement of Shweta @ Meenu daughter of Kavita was recorded. According to her, Harinder, Sanjeev and Sandeep, the present petitioner, had come to their house and had an altercation with the deceased Brijpal Singh. Further, according to her, on 30.4.2005, Brijpal Singh and her mother Kavita quarreled with each other throughout the day and at night Harinder joined the quarrel. On 2.5.2005 at about 11.30 pm the said girl Shweta had seen Harinder and co-accused Sanjeev and Sandeep, the present petitioner, going

inside the room of Brijpal Singh. At about 2.30 am she again noticed Harinder coming to her house and climbing up the stairs. Thereafter, she did not see Brijpal. On suspicion Harinder and Kavita were arrested. On the pointing out of co-accused Harinder, the present petitioner, Sandeep was arrested. During interrogation, the petitioner allegedly disclosed that for the removal of the dead body of Brijpal, his car was used. The said dead body was thrown in Ganga Canal. The petitioner also allegedly produced a writ watch of deceased Brijpal. The petitioner had been in custody since 29.5.2006.

3. The petitioner seeks bail on the ground that he is innocent and has been falsely implicated in the present case. There is no legal evidence against him. All the material witnesses have been examined and nothing has come out of those statements which could implicate him in the alleged murder of Brijpal. The only evidence which has been relied upon by the learned Trial Judge for rejecting the bail of the present petitioner is the statement of PW-11, Shweta. However, the said statement does not in any manner implicate the petitioner in the alleged murder. The statement of Shweta was recorded by the Police after about a year of the disappearance of Brijpal, which factor alone makes the statement unreliable. The alleged disclosure statement of the petitioner is also incorrect and unbelievable. The alleged recovery of the wrist watch of the deceased from the petitioner is also wholly unbelievable and unreliable and the same cannot be the circumstance to convict the petitioner in the present case. The petitioner has been in custody since 29.5.2006 and has four minor children to support. He is also not a previous convict. The petitioner had earlier applied for bail in the Court of Sessions but his application for bail was dismissed vide

order dated 11.8.2008. The petitioner had earlier also applied for bail being Bail Application No. 251/2007 but the said application was dismissed by this Court vide order dated 7.2.2007.

4. I have Heard counsel for the parties. I find that the case of the prosecution regarding recovery of the wrist watch is not free from doubt inasmuch as the factum of wrist watch born by the deceased was first mentioned by PW-1 Iqbal Singh in his statement recorded under Section 161 Cr.P.C. on 21.02.2006 where no particulars as to the make of the watch was mentioned by him. In his cross-examination dated 23.7.2008, this witness stated, *"I had not stated to the Police about the make of the watch and name of the company."* The co-accused Harinder, who is also in custody since 2006, is also stated to have made a disclosure statement wherein there is a mention about the wrist watch of the deceased but at his instance no recovery was affected. Harinder has also not given any particulars of the watch. It is only on 29.05.2006, it is stated that the petitioner, Sandeep also made a disclosure statement regarding the wrist watch of the deceased in his possession, which is stated to be of 'Maxima', which is the name of company. The fact that the deceased was wearing a watch was not a new fact as it was known to the prosecution right from 21.02.2006. Moreover, when the particulars were not available or were not disclosed in any of the statements made by the witnesses, the recovery of wrist watch of 'Maxima' from the petitioner would not prove that the said wrist watch was that of the deceased. It is not disputed even by the prosecution that such wrist watches are easily available in the market. A perusal of the TIP proceedings goes to show that nothing was mentioned about any special mark on the wrist watch

or about the colour of the strap or the dial in the TIP proceedings. The particulars of other watches, including the colour of strap or the colour of dial, are also not mentioned in the TIP proceedings. Thus, merely because some other watches of 'Maxima' make were mixed up with the watch in question, the TIP proceedings cannot be taken as the sole basis for the conviction of the petitioner in isolation. As stated above, the statement of PW-11, Shweta recorded after a year of the registration of the FIR that she saw the petitioner along with two other co-accused persons entering into the room of Brijpal at about 11:30pm again does not prove the case of the prosecution against the petitioner of having murdered Brijpal.

5. This Court at this stage is not required to analyze the merits of the case to the hilt but taking into consideration that the petitioner is in custody since 29.05.2006, it would be appropriate to release the petitioner on bail on his furnishing bail bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) with one surety in the like amount to the satisfaction of the trial court. Ordered accordingly. Nothing stated herein would have any reflection on the merits of the case before the trial court.

6. Bail Application stands disposed of.

MOOL CHAND GARG, J.

SEPTEMBER 09, 2009
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