

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 30.11.2009

Judgment Delivered on: 3.12. 2009

BAIL APPLICATION NO. 2072/2008

ASHOK JAIN

..... Petitioner

Mr.Siddharth Luthra, Sr. Advocate with  
Mr.Satya Narayan, Mr.Arurag Ahluwalia  
and Mr.Hitender Nath, Advocates.

versus

STATE

..... Respondent

Through Mr.Pawan Behl, APP.  
Mr.K.K. Sud, Sr. Advocate with  
Mr.V.K. Malik, Advocate for  
Complainant.  
Insp.Dharamvir Singh, AHS Crime.

&

BAIL APPLICATION NO. 1644/2008

RISHI PAL @ PAPPU (IN JC)

..... Petitioner

Through Mr.D.C. Mathur, Sr. Advocate  
with Mr.Jitendra Sethi and Mr.Vikram  
Bariwal, Advocates.

versus

STATE

..... Respondent

Through Mr.Pawan Behl, APP.  
Mr.K.K. Sud, Sr. Advocate with  
Mr.V.K. Malik, Advocate for  
Complainant.  
Insp.Dharamvir Singh, AHS Crime.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

Yes

3. Whether the judgment should be reported in the Digest?

Yes

**INDERMEET KAUR, J.**

1. Petitioners before this Court are Rishi Pal and Ashok Jain. Rishi Pal is in custody since 7.12.2007; Ashok Kumar is in custody since 20.2.2008.

2. Incident is dated 29.9.2007; on the said day Vijay Yadav @ Vijji had scummed to gun fire shots which had been fired upon him at Gali Arya Samaj, Bazaar Sita Ram, Delhi. The injured had been removed to the LNJP hospital where he had been declared brought dead. FIR under Section 302 of the IPC had been registered.

3. During the course of investigation, the name of the present petitioners had surfaced. Admittedly, even as per the version of the prosecution, Rishi Pal had removed the victim to the hospital on his motor cycle. Admittedly Rishi Pal and the deceased Vijay Yadav @ Vijji had a business partnership but thereafter disputes had arisen between them. Investigation from the local Police had stood transferred to the Crime Branch on 9.10.2007.

4. On 25.11.2007, two accused persons Bhisham @ Chintoo and Vinod @ Gola had been arrested. Pursuant to their disclosure statements the conspiracy between said persons and the other co-accused had surfaced. As per their version Gopal Krishan Aggarwal, Ashok Jain and Rishi Pal were the persons who were behind the murder because of their personal enmity with the deceased.

5. In all 13 persons have been charge sheeted; of whom one has died; Gopal Krishan Aggarwal had been granted bail by the High Court but vide order of the Supreme Court dated 27.3.2009, the said order had been set aside and bail of Gopal Krishan Aggarwal had stood cancelled. All the accused persons are in JC.

6. On behalf of the petitioners, it has been pointed out that there is no evidence qua the role of the petitioners; the FIR had been registered on 29.9.2007 under Section 302 IPC, and admittedly it does not name the present petitioners. The statement of the brother of the deceased Abhay Singh was recorded on 30.9.2007 and thereafter again on 11.10.2007; in both these statements names of the petitioners did not surface; it was only in the third supplementary statement of Abhay Singh recorded on 16.10.2007 that the names of Rishi Pal and Ashok Jain were mentioned for the first time.

Attention has been drawn to the said version. It is pointed out that even as per this statement it has been stated that Ashok Jain used to regard the deceased Vijay Yadav @ Vijji and Abhay Singh as his enemies; it is stated that Rishi Pal had got a raid conducted on Ashok Jain by the Anti Corruption Branch of the CBI but a few days later Ashok Jain and Rishi Pal had become one unit; Rishi Pal had suspected that Abhay Singh was responsible for the said raid; the ill-feeling by Ashok Jain and Rishi Pal continued against Abhay Singh and his deceased brother Vijji. It is stated that apart from this suspicion of Abhay Singh, there is no role attributed to the present petitioners; even otherwise this has come in the third supplementary version of Abhay Singh and there is no explanation as to why he did not come forth with this version in the first instance itself, manipulation in the investigation is writ large.

7. Attention has also been drawn to the case diaries maintained by the Investigating Officer, attention has been drawn to the entries dated 16.10.2007; admittedly this case diary has not been signed by the Presiding Officer; it is submitted that case diaries of earlier dates have been signed by the Presiding Officer again throwing doubt on the veracity of the investigation.

8. Attention has also been drawn to the case diary dated 17.10.2007, on which date only the first page of the case diary has been signed. It is stated that on 17.10.2007, the Investigating Officer has recorded that he had interrogated PW-Durga Pandit; why the statement of PW-Durga Pandit was recorded only on 12.3.2008 i.e. after a delay of 5 months, has not been answered by the prosecution; it was well within the knowledge of the Investigating Officer that Durga Pandit had some information to elicit and as such his statement recorded after such an explained delay is unanswered.

9. Attention has also been drawn to the statement of PW-Sunil Sharma which was recorded on 16.10.2007. This statement although does not attribute any specific role to the petitioner yet is also a manipulated version for the reason that this was the date on which the case diaries had not been signed by the Presiding Officer.

10. Attention has also been drawn to the statement of PW-Krishan Kumar dated 12.3.2008. It is stated that this version of Krishan Kumar is only a hearsay version and the information elicited in this statement had been given by the deceased at some point much prior in time to the incident; the said date has also not been disclosed.

11. Attention has been drawn to the version of Deepak Sharma who has admitted that the petitioner Rishi Pal had taken the deceased to the hospital on his motor cycle. In these circumstances when Rishi Pal was admittedly at the spot when the incident had occurred; his role in the said incident is ousted. It is submitted that the statement of PW-Vinod Kumar recorded on 17.10.2007, is also to the effect that Rishi Pal had taken the injured Vijay in his motor cycle.

12. On behalf of the petitioner Ashok Jain it is submitted that pursuant to the application moved under the Right to Information Act, certain documents have been extracted. The information received on 13.10.2009 clearly shows that Ashok Jain had been informed that no kalandara or FIR had been registered against the deceased Vijay @ Vijji between January, 2007 to October, 2007 thus falsifying the submission of the prosecution that there were disputes between the deceased Vijay Singh @ Vijji and Ashok Jain; the kalandara proceedings dated 31.3.2007, in fact show that the dispute was between Vijay and one Pravin Pratap Singh.

13. It is submitted that Inspector K.G. Tyagi, who was the I.O. of the Crime Branch is himself a questionable personality; he has been accused in a trap case for having taken an illegal gratification pursuant to the proceedings in the present FIR;

there are other cases also pending against him which the prosecution cannot dispute; in these circumstances investigation carried out by such an Officer whose credentials are themselves under suspect, to a large extent throws shadows of doubt on the credibility of the investigation.

14. It is submitted that the charge sheet in this case has been filed on 21.2.2008; two supplementary charge sheets have since been filed. It was only in the supplementary charge sheets that the statements of the witnesses now sought to be relied upon by the prosecution had surfaced and as such a piece-meal charge sheet filed against the present petitioners without any specific attribution of any role to either of them has no value.

15. Learned counsel for the accused Rishi Pal has placed reliance upon a judgment of a co-ordinate bench of this Court in 2007 (2) JCC 1306 Tunde Gbaja vs. CBI to support his submission that in the absence of a complete charge sheet detailing out the offence not having been filed, an indefeasible right had accrued to the accused entitling him to bail. This judgment was on an application under Section 167 of the Cr.P.C. for grant of statutory bail and would have no application to the arguments now sought to be propounded.

16. Record shows that in the course of evidence collected by the prosecution statement of Abhay Singh, brother of the deceased victim recorded on 16.10.2007, revealed that a conversation between Rishi Pal, Ashok Jain and co-accused Gopal Krishan Aggarwal had been heard by PW-Sunil Sharma. This was to the effect that they had enmical terms with the deceased Vijay Yadav @ Vijji and his brother Abhay Singh; Sunil Sharma had cautioned Abhay Singh and deceased about the same. Statement of PW-Sunil Sharma was also recorded on 16.10.2007, he has corroborated this version of PW-Abhay Singh.

17. From the version of aforestated PWs it is apparent that the investigation had revealed that the relationship between Ashok Jain, Rishi Pal on the one hand and of Abhay Singh and his deceased brother Vijay @ Vijji on the other hand were strained, tense and enemical.

18. On 3.12.2007, statement of PW-Manish Kumar @ Mannu was recorded. He was a supplier of the petitioner Rishi Pal who was a builder by profession. As per his version about 5-6 months prior to the incident Rishi Pal had asked him if Hitender @ Chhotu (co-accused) had told Abhay Singh that the deceased Vijay Singh @ Vijji had given a contract to kill him for which Hitender @ Chhotu would get a handsome amount.

19. PW-Harjit Singh @ Pappi was the friend of the deceased. As per his version, Rishi Pal, Ashok Jain and Gopal Krishan Aggarwal had become very intimate with one another; they had developed links with Hitender @ Chhotu and his gang; further Rishi Pal had enmity with deceased because of an earlier argument when Rishi Pal had alleged that the deceased had planned to kill him; in fact Vijay Singh the deceased had told him that Rishi Pal, Ashok Jain and Gopal Krishan Aggarwal had relations with Hitender @ Chhotu and he feared that he could be killed at their hands.

20. As per statement of PW-Krishan Kumar @ Kukoo he had arranged a meeting between Rishi Pal and Ashok Jain; on the date of the incident i.e. 29.9.2007, he received a call from Rishi Pal from his mobile no.9873056281 on his mobile no.9899263059 wherein Rishi Pal had informed him that the work which he had given to Gopal Krishan Aggarwal and Ashok Jain had been done and this information be passed on to Ashok Jain; PW-Krishan Kumar thereafter informed Ashok Jain by using his mobile no.9999901314. The call details of the said phone numbers have also been investigated evidencing that such calls between the said numbers had been made.

21. Durga Pandit had also given a statement under Section 161 of the Cr.P.C.; as per his version he had received

calls from Vinod @ Gola (co-accused), Bhisham @ Chintoo and Deepak @ Chowda on his mobile no.9811111956 wherein they had made confessions to him on telephone that they had killed the deceased Vijay Yadav @ Vijji and they had received money from Rishi Pal, Ashok Jain and Gopal Krishan Aggarwal in lieu of the same. The mobile call records of the accused have also corroborated this version of Durga Pandit.

22. Deepak Kumar was the holder of mobile no.9210866522. He was a tea vendor in Katra Gokal Shah, Bazaar Sita Ram, Delhi; his version also to the effect that he had received calls on his mobile number wherein; Vinod @ Gola, Bhisham @ Chintoo and Deepak @ Chowda had confessed that they had killed Vijay Yadav; mobile records of this phone also corroborate the oral version of PW-Deepak.

23. Statements of Krishan Kumar, Durga Pandit and Deepak Kumar are in the nature of extra judicial confessions made by Rishi Pal and the co-accused Vinod @ Gola, Bhisham @ Chintoo and Deepak @ Chowda; substantiating the further submission that in lieu of this killing they had received the money from Ashok Jain, Rishi Pal and Gopal Krishan Aggarwal.

24. Prosecution has also placed on record the criminal antecedents of Rishi Pal; it is stated that he is a desperate

criminal and a BC of the area; he is a history sheeter of PS Hauz Qazi, Central District.

25. Per contra, counsel for the accused Rishi Pal had placed on record the criminal antecedents of PW-Abhay Singh. It is stated that PW-Abhay Singh is also a history sheeter and his antecedents are also doubtful. There are three cases pending against him; deceased Vijay Singh also falls in the same category. This fact coupled with the fact that the Investigating Officer is himself a tainted person whose credibility is highly suspect; little reliance can be placed upon his line of investigation; Court has also to keep in mind that the major chunk of the evidence on which the prosecution is relying is based on the version of PWs recorded on 16.10.2007 and 17.10.2007, on which dates admittedly the case diaries had not been signed by the Presiding Officer.

26. At this stage, such irregularities, committed in the course of investigation even if correct cannot be gone into; Court is not sitting in judgment; the considerations for bail are distinct from the considerations to be kept in mind by the Court while dealing with the trial. The evidentiary value of the statements made in the course of the investigation cannot be gone into at this stage. It is only a prima facie view of the evidence gathered and collected by the prosecution which has

to weigh in the mind of the Court for consideration of an application for the grant or refusal of bail.

27. Conspiracy is a matter of secrecy and there can hardly be any overt evidence for such an offence; role attributed to the present petitioners as per the version of the PWs is that Ashok Jain, Rishi Pal and Gopal Krishan Aggarwal had six months preceding the incident entered into a conspiracy; this conspiracy had been initiated pursuant to the enmity which was brewing between the petitioners on the one hand and the deceased Vijay and his brother on the other hand. It had been initiated on the suspicion of Rishi Pal and Ashok Jain that the Anti Corruption raid in the house of Ashok Jain had been done at the behest of Abhay and his deceased brother Vijay. This acrimony and animosity between the parties had gained momentum.

28. Role of both the petitioners in the conspiracy to kill the deceased Vijay Singh has been prima facie borne out. The apprehension of the compliant that the accused Rishi Pal is a BC of the area and the possibility of there being breach of a peace if he is released on bail also cannot be altogether ruled out. In the Trial Court arguments are yet to be addressed on charge. Petitioners appear to be influential persons; Rishi Pal is a history sheeter; proceedings under the MACOCA are also

stated to be pending against him; Ashok Jain being a political man was the Deputy Chairman of the MCD. Both the petitioners have strong wielding influences which many a time can be used for negative purposes.

29. It is made clear that any observation made in this order will have no bearing on the merits of the case.

30. In this background, no ground is made out for grant of bail. Dismissed.

INDERMEET KAUR, J

December 3, 2009  
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