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

Date of Reserve: 13th December, 2010
Date of Order: 20th December, 2010

+ Crl.M.C.No. 2583/2010

% **20.12.2010**

Dinesh Attri **... Petitioner**

Through: Mr. L.S.Chaudhary, Advocate &
Mr. Ajay Chaudhary, Advocate

Versus

State & Anr. **... Respondent**

Through: Mr. Sunil Sharma, APP for the State
Mr. S.P.Kaushal & Mr. Nagender Prasad, Advs. for R-2

+ Crl.M.C.No. 2639/2010

% **20.12.2010**

Dinesh Attri **... Petitioner**

Through: Mr. L.S.Chaudhary, Advocate &
Mr. Ajay Chaudhary, Advocate

Versus

State & Anr. **... Respondent**

Through: Mr. Sunil Sharma, APP for the State
Mr. S.P.Kaushal & Mr. Nagender Prasad, Advs. for R-2

+ Crl.M.C.No. 2637/2010

% **20.12.2010**

Dinesh Attri **... Petitioner**

Through: Mr. L.S.Chaudhary, Advocate &
Mr. Ajay Chaudhary, Advocate

Versus

State & Anr. **... Respondent**

Through: Mr. Sunil Sharma, APP for the State
Mr. S.P.Kaushal & Mr. Nagender Prasad, Advs. for R-2

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

These petitions have been filed by the petitioner for cancellation of bail granted to the respondents by learned Additional Sessions Judge. It is submitted by the petitioner that learned ASJ did not exercise his jurisdiction judiciously and granted bail to the accused persons in FIR No. 163/2010

registered under Section 308/365/427/34 IPC PS Sector 23 Dwarka, contrary to the established principles of law.

2. Brief facts necessary for considering the present petition are that the complainant/petitioner in this case made a complaint to police that on 22nd May, 2010 when he was near Sports Complex Sector 11 Dwarka in his car No. DL 5CD 5418, a white Accent car whose last digits were 89 chased his car but he somehow managed to reach home. However, on 23rd May, 2010 at 7.00 pm while he was returning home in his car after evening walk in Sector 11 park, the same white car chased him. There were two more cars along with it, one was SX4 and another one was Wagon-R. All the persons in these cars forcibly stopped his car in front of Sector 10, Godrej Apartments, surrounded his car and started assaulting his car with *lathis* and *dandas* and then pulled him out of the car. He was given severe beatings and then forcibly pushed inside the Wagon-R car. In that car one boy viz. Malik, resident of KM apartments with a pistol and 03-04 boys were already there. They took him to jungle near Sector 19 Dwarka booster pump where 14-15 boys collected one by one and they all gave him beatings with *dandas, lathis* and iron rods. One of them shouted that his eyes should be bulged out with a knife. Out of the boys, who gave beatings to him, he knew three of them viz. Malik, Abhishek Sehrawat & Joginder. These three boys had also given him beatings with the intention to kill him. Injuries were caused all over his body including his head, face and other parts of the body and he was thrown in jungle near Sector 11 Dwarka Metro Station presumed to be dead. The victim was later on brought to hospital by one Anurag, in a very bad shape. Even at the time of making statement to IO he was in severe injured condition and statement was made by him in presence of his brother Ajit Singh.

3. MLC of the victim prepared at the hospital showed that there were multiple CLWs on scalp and on left parietal occipital region and there were multiple abrasions over scalp and face, extensive bruises and blackish discoloration on back, bruises over both sides of face, bruises over abdomen, vertical CLW of 4cm size bone deep on left leg, vertical CLW of 3cm size bone deep on right leg, tear of lower lip of size 2cmX2cmX2cm from gum margin to medieval margin and the wounds were actively bleeding. Nature of injuries was of three types – simple, grievous and dangerous. The victim had to remain in hospital for about 17 days. A case against the accused persons was registered under Section 365 and 308 IPC.

4. The learned Sessions Judge in this case initially passed an order on an anticipatory bail application of the accused persons directing investigating agency not to arrest the accused persons. This order was assailed before this Court and this Court vide order dated 5th July, 2010 in Crl. M.C. No. 2073/2010 set aside the order on the ground that the order was patently an illegal order. Thereafter the accused persons were arrested and then the learned Additional Session judge vide impugned order dated 3rd August, 2010 admitted the accused persons to bail on executing personal bond of Rs.50,000/- with one surety on the ground that two-day police custody remand was given to the prosecution and the prosecution did not prefer extension of police remand and MLC of the injured did not show any bullet injury. The prosecution had also failed to recover the vehicles during police remand.

5. I find that the learned Additional Session Judge in this case totally gave a go-bye to his duty of considering the seriousness of the offence and the manner in which offence was committed. While granting bail to an accused person, the Court has not only to keep the liberty of accused in mind, because

accused is presumed innocent till proved guilty, but the Court has also to keep in mind the seriousness of the offence, prima facie evidence, the safety of society and the victim. If the Legislature wanted that every accused should remain on bail till he was not proved guilty, the Legislature would have made every offence bailable. But the very fact that Legislature had made certain offences non-bailable and certain bailable, shows that the Legislature reposed faith in Courts that the Courts shall exercise this discretion of granting bail prudently and shall give bail only in deserving cases where probability of accused being innocent was reflected from the facts. Where the accused persons were named by the complainant, as he knew them from before and the complainant had been kidnapped and beaten so brutally that his whole body was full of injuries and thereafter he was left to die, I consider granting bail to such accused persons within 15 days of the arrest shows the callous attitude of the Court below to the settled legal position, to society and to the victim.

6. The Courts are not meant only to protect the liberty of accused persons, they are also meant to protect the society from the hands of criminals and that is why it is important that discretion of granting bail must be exercised judiciously by the Courts, keeping in view the crime scenario in the society and the boldness with which the criminals, let loose at society by the Courts and the police, roam around and inflict fatal wounds on the society at will. It is noteworthy that respondents herein were also involved in similar type of other incidents and FIRs were registered against them in respect of waylaying persons and making attempts on their lives. Two of such incidents have been placed on record. One FIR is 694/06 under Section 308/341/427/509/34 IPC PS Dwarka in which one of the accused was involved in a similar offence of stopping car of the another victim and who was in car with his wife and making obscene gestures to the wife

and using abusive language for the wife. When the victim protested he was dragged out of the car and given beatings with *bats* and *dandas*. The second FIR is FIR No. 165/04 under Section 307/427/34 IPC and under Arms Act PS Delhi Cantt. The petitioner has also placed on record the photographs of the victim showing the brutal manner in which the victim was beaten all over the body. The MLC of the victim itself shows that his whole body was full of bruises, multiple injuries, bone deep cuts and his face was also disfigured by cutting it from lip, I consider that the learned trial Court did not exercise his discretion judiciously and granted bail to these accused persons contrary to established principles of law. It is settled law that in case of serious nature where the accused persons are professional criminals and have other involvements, the bail should not be granted in a casual manner. While granting bail the safety of the victim and the safety of the society also must be kept in mind. Even if the accused persons had been acquitted in some case, acquittal in a case does not mean that accused had no involvement in the crime. Acquittal takes place because of several reasons - the witnesses did not muster courage to depose truth or may have been won over, the witnesses though deposed in the Court but were not believed or they were so much harassed by repeated visits to the Court that they had stopped appearing in the Court for deposing.

7. I consider it is a fit case where the bail of the accused/respondents should be cancelled. The petitions are allowed. The bail order passed by the learned trial Court is set aside and bail is cancelled. The respondents be arrested and put to jail.

December 20, 2010 **SHIV NARAYAN DHINGRA, J.**
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