

3

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

%

*Reserved on: 24<sup>th</sup> May, 2013*  
*Date of Decision: 28<sup>th</sup> May, 2013*

+ **BAIL APPLN. NO.744/2013**

RAMVILAS @ HARISH (IN J.C.) ..... Petitioner  
Through: Mr. Vikas Padora and Mr. Chaman  
Lal, Advocates.

versus

STATE NCT OF DELHI ..... Respondent  
Through: Ms. Jasbir Kaur, APP with Insp.  
Pramendra Singh, P.S. Nihal Vihar

**CORAM:**  
**MR. JUSTICE R.V. EASWAR**

**JUDGMENT**

**R.V. EASWAR, J.:**

This is an application for grant of regular bail under Section 439 of the Cr.P.C. in case F.I.R. No.73/2011 dated 12.3.2011 registered in P.S. Nihal Vihar. The applicant is Ramvilas @ Harish who is presently confined in Jail No.1, Tihar in judicial custody.

2. According to the prosecution the case against the applicant is like this. The body of Mahender Singh, son of Ramdas and resident of RZD-115, Nihal Vihar was found in front of the house according to the information received vide DD No.9A/10A by the Police Station on 12.3.2011. The body was sent

4

to SGM Hospital, Mangol Puri. According to Babli, the wife of late Mahender Singh (who was also known as Jitender), some unknown persons had thrown the dead body in front of house, after killing him. She further stated that the deceased is a vegetable vender and had come back from work at night at 11:00 p.m. on 11.03.2011 and after taking food he went out saying that he had to get back the sum of ₹500/- and weight of 1 kilo from the person to whom he had lent them. Thereafter, at around 5'O clock in the morning on 12.03.2011 there was a knock on the door of the house. All the three persons in the house, i.e. Babli, the applicant who is the brother of the deceased and his uncle Prem Pal woke up and when they opened the door, they found that Mahender Singh was lying dead opposite the house wearing only shirt and underwear and that his pants, jacket and chappals were lying nearby. According to Babli, the applicant and his uncle took the body inside the house. The landlord of the house, one Amar Singh, thereafter called the doctor and police. When the doctor came he pronounced Mahender Singh dead. According to the police, there was sign of injury near the right hand finger and signs of ligature marks on the neck of the deceased. The date and time of occurrence was stated to be the intervening night between 11<sup>th</sup> and 12<sup>th</sup> March, 2011, between 11 p.m. to 5 a.m.

3. On 19.3.2011 one Ashok Kumar, son of Babu Ram, gave a statement to the police under Section 161 of the Cr.P.C. According to the statement, he

5

had come from Bareilly to Delhi to take his sister Shakuntala back to Bareilly. She was married and living in Delhi. He stated that he was staying in the house which was taken on rent by his uncle Prempal in Nihal Vihar. It was the house where Mahender and his brother Ramvilas, the applicant herein, were also staying. On 12.3.2011, at about 11 p.m., when he (Ashok Kumar) was in the house of Mahender and Ramvilas, he heard a knock in the door. He opened the door and found that Mahender @ Jitender was there. Mahender came inside and kept the weights (Batta) in the gallery on the ground floor. Then he went to his room. After sometime Ashok Kumar noticed Mahender going out of the house. It appears that Ashok Kumar was staying in the first floor of the house and Ramvilas @ Harish was also staying in the same room. According to Ashok Kumar, after Mahender @ Jitender went out of the house, Ramvilas, the applicant herein, left the room and went to the room of his Bhabhi, i.e., Babli. After about half-an-hour Mahender @ Jitender came back and saw his wife in the bed with Ramvilas @ Harish. He got angry and started fighting with Ramvilas. On hearing the noise, Ashok Kumar came down to enquire about the reason and found that the applicant had caught hold by Mahender @ Jitender and had put him down on the bed and was holding him down. Babli had caught hold of the legs of Mahender. According to Ashok Kumar, Ramvilas @ Harish put a pillow on the mouth of Mahender but somehow Mahender managed to remove it. Thereafter

Ramvilas @ Harish put a cloth around the mouth of Jitender and tied it. Then, with the help of an electricity wire, Ramvilas @ Harish strangled Mahender; he did not release the wire till Mahender died.

4. Ashok Kumar, who stated that he watched all this in horror got scared and hid himself inside the bathroom. Thereafter Harish and Babli took the dead body of Jitender and put it near the main gate of the house after removing the jacket, pants and slippers and throwing them away. When they were returning to the house, Ashok Kumar could not control his cough. When he coughed he was seen by the applicant herein. He threatened Ashok Kumar that if he told anybody about the incident, he (the accused) will kill him. Ashok Kumar was scared and he came back to his room and could not sleep due to fear. However, Harish, the applicant herein, came back to the room and slept soundly. At 4:30 AM in the morning, Harish woke up and told Ashok Kumar to go out and knock the door of all the houses in the locality and wake up everybody. According to Ashok Kumar, he went out and knocked only the door of the landlord Amar Singh. In the meantime Harish and Babli had placed the body of Jitender @ Mahender on the bed. The wife of Amar Singh came along with her two sons. According to Ashok Kumar, the applicant herein had told him that whenever anybody enters the house, he should start rubbing the feet of the body of Mahender @ Jitender so as to avoid suspicion. Thereafter Amar Singh also came and he called the

doctor. The doctor came after some time and said that Mahender @ Jitender was dead. Amar Singh thereafter informed the police official who came and made enquires. According to Ashok Kumar, he left the place and did not return because of fear since Harish had threatened him with dire consequences if he tells anybody about the incident.

5. On the same day, i.e. 19.3.2011, the witness, namely, Ashok Kumar made a statement under Section 164 Cr.P.C. before the Metropolitan Magistrate narrating the aforesaid events. The statement was recorded by the MM.

6. The accused Harish @ Ramvilas, the applicant herein was taken into custody where he remains till now.

7. In the course of the trial the witness Ashok Kumar retracted from the statement made by him under Section 164 Cr.P.C. before the M.M., saying that he had given the statement to the police and the Magistrate under threat from the police. When being cross-examined by the learned APP, he resiled from his statement made under Section 164 Cr.P.C. He stated that the police confined him in the police station and threatened him to make a statement as per their directions. It was only under those circumstances, i.e. under threat from the police that he made a statement under Section 164 Cr.P.C. before the MM.

8

8. It is in the above circumstances that the applicant Ramvilas @ Harish has applied for regular bail. The argument of the learned counsel for the applicant is that since the only eye-witness in the case has retracted his statement made under Section 164 Cr.P.C. and has categorically stated that the statement was given under police threat, there is no other evidence against the applicant which entitles him to the grant of bail. He submitted that on the day of the incident, when the police visited the spot and made enquiries they did not record any statement either from Babli, the wife of deceased or from the applicant, who is the younger brother of the deceased. It is further submitted that the incident took place on the intervening night between 11<sup>th</sup> and 12<sup>th</sup> March, 2011 and the statement from Ashok Kumar was taken under Section 161 and Section 164 of the Cr.P.C. after a delay of one week, i.e., on 19.3.2011 and that too, after a new I.O. took over the case on that date. It is contended that not only did the eye witness retract from his earlier statement, but he also stated in the trial court that the statement under Section 164 was made by him under police threat. It is submitted that the accused has spent about two and a half years in judicial custody and since most of the witnesses have already been examined by the trial court, bail should be granted.

9. On the other hand the learned APP strongly opposed the prayer for bail. Relying on the status report, it was contended that the electric wire which is the weapon of offence and which was used to strangle the deceased was

recovered at the instance of the applicant herein and that as per the medico-legal opinion, the death of Mahender @ Jitender was due to asphyxia consequent to ligature strangulation with the wire. She pointed out that there were injury marks on the neck of the deceased which were caused by the strangulation. She also pointed out that according to the status report filed by the I.O., till now 15 out of the 28 witnesses have been examined and out of the 13 witnesses remaining to be examined, there were two important witnesses, i.e., M.M. who recorded the statement of Ashok Kumar under Section 164 Cr.P.C. and the Investigation Officer who are yet to be examined. According to the status report, the next date of hearing before the trial court is 29.7.2013 and if bail is granted, the accused may jump bail and may also threaten the witnesses. She, therefore, prayed that the applicant should not be granted bail.

10. In his brief rejoinder, the learned counsel for the bail-applicant submitted that the test reports were in favour of his client in as much as they have stated that there was no blood or saliva of the deceased found in the pillow allegedly used by the accused which shown that there was no strangulation. He also submitted that no skin pieces were found in the wire which could have supported the prosecution. It was reiterated that the only so called eye witness in the case has retracted from the statement made under

10

Section 164 and therefore there is no justification for holding the bail-applicant in custody any more.

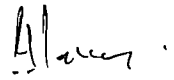
11. On a careful consideration of the matter, I am of the view that bail cannot be granted. It is true that the applicant has spent about two and a half years in custody but that cannot be the only reason to enlarge him on bail. The other circumstances have to be taken in to consideration. These circumstances are that the only eye witness in the case, who made statement before the Magistrate under Section 164 Cr.P.C., has retracted therefrom in the court during the trial. The Magistrate who recorded the statement is yet to be examined. His evidence is likely to throw considerable light on the veracity of statement of the witness, i.e., Ashok Kumar. The Investigation Officer is also yet to be examined. In addition to these two, there are 11 more witnesses who are yet to be examined. In this situation, I do share the apprehension of the prosecution that the accused-applicant may attempt to influence the witnesses, if enlarged on bail. The so called delay, pointed out by the learned counsel for the applicant, between the date of occurrence of the crime and the date of the statement made by the eye witness under Section 164 of the Cr.P.C., was explained by the eye witness Ashok Kumar in the statement made under Section 164 Cr.P.C. itself that he did not venture to stay in the house where the crime took place and ran away due to fear instilled in his mind due to threats made by Ramvilas @ Harish. Moreover, the learned

11

APP did point out in the course of her argument that it is quite strange that neither Babli, the wife of the deceased Mahender @ Jitender, nor the applicant who is the younger brother of the deceased, called the doctor or the police and it was only the landlord Amar Singh who called both. She also read out in Court the statement made by Amar Singh on 13.3.2011 where he stated that Harish (the applicant) asked him not to call the police and that he was planning to take his brother's body to the village for cremation. All these aspects will be examined by the trial court.

12. Having regard to the aforesaid circumstances, the prayer for grant of bail under Section 439 of the Cr.P.C. is rejected. The trial court is directed to complete the examination of the witnesses at the earliest.

The bail application is accordingly dismissed.

  
(R.V. EASWAR)  
JUDGE

MAY 28, 2013  
Bisht