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

+ **BAIL APPL. No. 1500/2012**

VINOD KUMAR SHARMA

..... Appellants

Through: Mr. Shailender Babbar and
Varun Gaur, Advocates

versus

STATE NCT OF DELHI

..... Respondent

Through: Ms. Fizani Hussain, APP with
Inspector Ram Avtar, SI Ajmer
Singh
Mr. Rupansh Purohit,
Advocate for complainant

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

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21.08.2013

1. This is an application filed under Section 439 Cr. P.C. r/w Section 482 Cr. P.C. for grant of regular bail by accused Vinod Kumar Sharma in case arising out of FIR 30/2010 under Section 302/307/34/147/148/323/325 IPC r/w Section 25/27 of Arms Act, registered at PS Dabri, South West District, New Delhi.

2. The aforesaid FIR was registered on the statement of Mr. Vivek Gaur wherein he narrated that he along with his family has been residing at C-25, New Krishna Park, Vikas Puri, New Delhi. He was running a factory of manufacturing scooter parts at Khasra No. 38, Village Dabri, New Delhi. On 24th January, 2010, at about 9.30/10.00 a.m. Haryana Police came to investigate the theft case lodged by them and apprehended three persons from the factory of his paternal uncle, namely, Vinod Sharma located at Khasra No. 38, Village Dabri, New Delhi. At about 11.00 a.m. Vinod Sharma, who is his paternal uncle along with son Aman Gaur and driver Amrit Lal came to the spot. Employees of Vinod Sharma, namely, Neeraj, Rahul and Naresh Karotia and wife of Ram Mehar Singh also came to the spot. Thereafter Vinod Sharma, his son Aman Gaur and his workers started creating riot situation. Wife of Ram Mehar Singh and worker Laxman brought big lathies from inside the factory. Sh. R.K. Naseem, a noted criminal lawyer, who was his uncle, was present and tried to pacify them. Thereafter, Sh. R.K. Naseem stood at one side with his back towards Vinod Sharma. Meanwhile, Laxman handed over one rectangular type stick to Vinod Sharma. Wife of Ram

Mehar Singh also threw a piece of brick. Vinod Sharma attacked with that stick on the head of Sh. R.K. Naseem from back side. As a result of which he fell down and became unconscious. Aman Gaur took out his revolver and fired three rounds on Sh. R.K. Naseem and father of the complainant Sh. Virender Sharma in order to kill them but nobody was injured due to the bullet injury. Aman Gaur while firing uttered “Jaan Se Maar Dunga”. On the other side, Neeraj, Ramesh Raghav, Kailash Khatri, Naresh Karotia, Rahul and Amrit Lal attacked his brother Sunny and Monty with the help of sticks and fists. There were long standing civil and criminal litigations going on with Vinod Sharma. He got his uncle Sh. R.K. Naseem admitted in the hospital in serious condition. Sh. R.K. Naseem succumbed to the injuries on 8th February, 2010. The petitioner was arrested on 28th January, 2010.

3. Bail of the petitioner is sought on the grounds that :-

- i) there is delay in initiating trial thereby depriving the accused of his right to speedy trial. The delay is totally attributable to prosecution and complainant party deliberately.

In fact, no trial has begun inasmuch as out of eight accused already surrendered, charges qua four has only been framed whereas against other four accused charges has not been framed as yet. Charge against applicant was framed on 15th February, 2011 and till today not even a single witness has been examined by the prosecution. Initially prosecution filed revision petition and vide order dated 19th April, 2011 this Court stayed the operation of the order against two of the accused persons, which was got vacated only vide order dated 4th April, 2013. In fact, Rajiv Gaur and other witnesses of the complainant kept on seeking one adjournment or the other and did not allow the trial to begin. Furthermore, one of the witness misbehaved with the trial judge, as such, she recused herself and when the matter was heard by other judge then a transfer application was moved by wife of the deceased and the matter was transferred by learned District Judge. However, the order was set aside vide order dated 2nd January, 2012. This delay is again attributable to the complainant and the witnesses. Learned prosecutor also sought number of adjournments. Not a

single adjournment was sought by the applicant. As such, the delay in trial is solely attributable to the prosecution and the complainant.

ii) the applicant suffered serious injuries ranging from head injury to fracture arms and ribs by the attack at the hands of the complainant party but the local police and even Crime Branch who filed charge sheet did not dare to register any case or to proceed against the culprits who committed various serious offences in which the applicant was a victim. The applicant thereupon filed a complaint case wherein learned Metropolitan Magistrate vide order dated 3rd August, 2011 directed the local police to register FIR. Thereafter FIR was registered, despite that there is no headway to the investigation. The Investigating Officer who filed the charge sheet against the applicant has relied upon CCTV Footage wherein it can be seen that applicant was hit by complainant but still he chose not to proceed and register a cross case against the complainant and even after getting directions for filing status report in response

to the application of applicant under Section 156(3) Cr. P.C. chose to report that no offence was committed.

iii) Not only that, there is shabby investigation inasmuch as the Investigating Officer intentionally and deliberately destroyed the evidence given by the applicant as the CCTV footage supplied by the applicant was not produced which would have revealed that it was the complainant party who was aggressor. The Investigating Officer deliberately did not mention any injuries suffered by the applicant despite the fact that the applicant was arrested on 28th January, 2010 from Sant Parmanand Hospital. He had undergone his surgery regarding the broken bones ranging from skull to arms.

iv) CCTV footage relied upon by the prosecution would reveal that initially complainant started hitting the applicant and had given head butt to the applicant thereafter beat his son whose right shoulder got broken.

v) The applicant is alleged to have given a danda blow to the deceased which fact is denied. Even assuming the same to be

correct, single blow theory would be applicable and, as such, offence under Section 302 IPC is not made out. At the most this is a case under Section 304 (Part II) IPC. Bail was granted to son of applicant after considering CCTV footage relied upon by the applicant. If the CCTV footage is seen, it would be amply clear that the complainant party and the deceased were author of the alleged incident.

vi) The applicant also claims bail on account of his ill health. He is a known patient of diabetes, chronic heart disease and hypertension. Thrice he was operated for his heart disease. He is suffering from chronic kidney disease. He has to consume 30-35 tablets a day. He is above 60 years. Now prostate cancer has developed which needs specialised medical attention from specialized institution in India and abroad.

vii) As regards the antecedents of the applicant, it was submitted that he was an MLA during BJP regime and because of the sensitive nature towards political issues, rivals involved him in ten cases out of which in eight cases either he was

acquitted or discharged and two cases are pending. Further, the applicant had a family dispute with his brother, deceased and their children. The deceased used his influence and got six cases registered against him which are still pending. The applicant is an Ex. MLA and is a victim of the aforesaid incident at the hands of the complainant party. Investigation is already complete. He is no more required for any purpose and is in judicial custody for the last approximate 40 months. He has deep roots in the society and is not likely to flee from justice. He undertakes to abide by any condition that may be imposed upon him. The co-accused Aman Gaur has been granted bail by this Court vide order dated 23rd December, 2011. As such, he be released on bail.

4. Reliance was placed on number of judgments:-

- i) ***Dipak Shubhashchandra Mehta Vs. CBI***, JT 2012 (2) SC 439
- ii) ***Vakil Prasad Singh vs. State of Bihar***, 2009 (2) SCALE 22
- iii) ***Pankaj Kumar Vs. State of Maharashtra***, 2008(90) SCALE 760

iv) ***Babba Vs. State of Maharashtra***, (2005) 11 SCC 569

v) ***Bal Krishna Pandey Vidur Vs. State of Uttar Pradesh***, JT 2001 (10) SC 97

vi) ***Akhtari Bi Vs. State of Madhya Pradesh***, JT 2001 (4) SC 40

vii) ***Bashishth Singh vs. State of Bihar***, (2002) 10 SCC 384

viii) ***Giani Pratap Singh vs. State of Rajasthan & Anr.***, 1995 (5) SCALE 29

5. The application is vehemently opposed by the learned Public Prosecutor for the State on the ground that the petitioner cannot claim parity with co-accused Aman Gaur who was granted bail by this Court. The role assigned to the present petitioner is entirely different. He was heading unlawful assembly and gave a fatal blow on the head of Pandit R.K. Naseem from his back side with intention to kill him. Due to fatal blow, he became unconscious and was removed to hospital and ultimately he succumbed to injuries on 8th February, 2012. These facts are corroborated with the FIR, statement of witnesses and CCTV footages. The post mortem report of the deceased shows the cause of death as “Carnio Cerebral Injury subsequent to forcible blunt impact imparted directly over the head

and this head injury was sufficient to cause death in the ordinary course of nature. As per forensic expert report, the wooden stick could cause the head injury as mentioned in the post mortem report. Further as per the forensic expert opinion of DNA finger printing unit, DNA Profile of the source of wooden piece is similar with the DNA Profile of the source of Ex.1 (piece of gauze cloth described as blood sample in gauze). Furthermore, the petitioner is not a law abiding citizen which is evident from the fact that he is involved in as many as 13 cases. Charge in this case has already been framed against the petitioner. He is getting treatment for his ailments in different reputed hospitals of Delhi Government. Two other associates of the petitioner are still absconding. A detailed list of dates before the Trial Court has been filed for showing that out of 101 dates, on as many as 56 dates, case was adjourned due to adjournments sought by the petitioner and co-accused. As such, the delay is not attributable to the prosecution. Moreover, after the framing of the charge, now the case is fixed for prosecution evidence from 4th September, 2013 to 9th September, 2013. As such, there is no merit in the application, same deserves to be dismissed.

6. The application is also opposed by the complainant on following grounds:

(i) As regards medical ground set up by the applicant, the applicant is getting the best treatment from best hospitals of India. It is not the submission of the applicant that due to incarceration he is not getting proper treatment. Reference was made to the reply given by the Senior Medical Officer of Tihar Jail to the RTI application where it was reported that all injuries and fractures have been healed, he is being provided with medical treatment as per his illness. The petitioner is getting requisite and appropriate treatment from best hospitals such as AIIMS, GB Pant and DDU. As regards the submission that applicant is suffering from Prostate Cancer, it was submitted that in the entire medical record there is nothing to establish that he is suffering from Prostate Cancer. Moreover, medical condition cannot by itself be a ground for bail. Reliance was placed on *Pawan @ Tamatar Vs. Ram Prakash Pandey*, AIR 2002 SC 2224.

(ii) The medical report, death report, post mortem report makes it crystal clear that the fatal blow was given on the head of the deceased from his back side by the petitioner with the intention to kill the deceased.

(iii) The antecedents of applicant are not clear, inasmuch as, he is involved in as many as 17 criminal cases besides the present one, details of which was given. It was further submitted that in three cases, the petitioner was acquitted as the prosecution witnesses turned hostile. It depicts a lot about his conduct and influence and in the circumstances, if he is given bail, there is every likelihood that the prosecution witnesses might be influenced and might turn hostile.

(iv) The allegations against the petitioner are quite serious. He is charged for offence under Section 302 IPC besides other offences which involves the death punishment or at least life imprisonment.

(v) He cannot claim parity with co-accused Aman Gaur who was released on bail by this Court, inasmuch as, it was specifically observed in the order that Aman Gaur did not give the fatal injury to the deceased. The accused who is facing trial for serious offences

and is a criminal having number of cases pending against him, is also an Ex. MLA, can influence not only the public witnesses but the Government officials as well.

(vi) As regards the plea that there is delay in trial of the case, it was submitted that the Trial Court has already given six dates for recording the evidence of eye-witnesses. Moreover, the delay cannot be attributed to the prosecution or the complainant. One after the other applications were moved by the accused before the Trial Court as well as this Court which is causing delay. Moreover, in cases involving heinous offences, delay cannot be a ground for bail. Reliance was placed on *Sanjay Sharma vs. State of Jammu and Kashmir* 2004 Cr.L.J. 1473 and *Kumari Suman Pandey vs. State of U.P.* 2007 (12) SCC 364.

(vii) As regards the submission that the complainants were the aggressor, it was submitted without admitting this plea of the applicant, even if it is presumed that the complainants were the aggressor what was the fault of the deceased. He was simply

pacifying both the sides when he was brutally given a hit from his back by the petitioner.

(viii) As regards the fact that he is in judicial custody for the last more than three years, that itself is not sufficient for granting bail in such a heinous offence. Reliance was placed on *State through CBI vs. Amaramani Tripathi* 2005 AIR (SC) 3490. As such, application is liable to be dismissed.

7. I have given my thoughtful consideration to the respective submissions of learned counsel for the parties and have perused the record.

8. Without referring to any specific judgment, which has been pronounced by Hon'ble Apex Court from time to time, including the latest in case of *Dipak Subhash Chander Mehta vs. CBI & Anr.* JT 2012 (2) SC 439, the Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. At the stage of granting bail, a detailed examination of the evidence and elaborate documentation of the merits of the case need not be undertaken. The Court granting bail has to consider, among other circumstances, the

factors such as (a) the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; (b) reasonable apprehension of tempering with the witness or apprehension of threat to the complainant; and (c) Prima facie satisfaction of the Court in support of the charge. In addition to the same, the Court while considering a petition for grant of bail in a non-bailable offence apart from the seriousness of the offence, likelihood of accused fleeing from justice and tempering with the prosecution witnesses have to be noted.

9. Needless to say, petitioner is facing trial for offence under Section 302 Indian Penal Code, besides other charges which, if proved, may entail punishment up to death sentence. That being so, the very first parameter which is important for grant of bail, namely, the severity of accusation and quantum of sentence which it carries, does not entitle the petitioner to the grant of the discretion of bail.

10. One of the grounds seeking bail by the petitioner is delay in the trial of the case. The details of the cases filed by the parties reveals that against the order of charge passed by the learned Trial Court, the

State went into revision against two co-accused and the trial was stayed by this Court qua those two accused persons only and not against the petitioner. Thereafter on the request of parties, the stay has been vacated and the Trial Court has been directed to expedite the trial. The petitioner also filed revision petition against the order framing charge which is pending. Co-accused Aman Gaur, Neeraj and Rahul also filed a revision petition which was also adjourned from time to time. Complainant also filed a criminal revision against the order of charge. The co-accused filed bail application before this Court. The petitioner filed a petition against the order of transferring of the case. The complainant also filed a petition for cancellation of bail of Aman Gaur. Thus, delay in holding trial cannot be attributable alone to the prosecution but accused has equally contributed to it. That being so, it cannot be made a ground to release the petitioner on bail. In *Sanjay Sharma* (supra) and *Kumar Suman Pandey* (supra) delay in trial not solely attributable to prosecution was held not to be a ground to release the accused on bail.

11. As regards the submission that there was a shabby investigation and although the applicant suffered serious injuries but police did not

register any cross-case against the complainant party, it is a matter of record that in pursuance to a complaint filed by the petitioner, Metropolitan Magistrate has ordered for registration of FIR and FIR has been registered and it was stated that it is pending investigation.

12. The question as to whether the claimant was not aggressor or that single blow would not attract the provisions of Section 302 IPC are not required to be gone into at this stage as that will tantamount to pre-judging the entire case at this juncture which is not warranted. At the stage of considering bail application, a detailed examination of evidence and elaborate documentation of the merits of the case is not required to be undertaken.

13. Regarding the claim for bail on account of his ill health, it is a matter of record that the applicant is getting treatment in AIIMS, GB Pant and DDU hospital. There is no grievance of the applicant about the treatment given to him by these hospitals. The only plea taken by him is that prostate cancer has developed and the same requires specialized medical attention. Firstly, there is no document to this effect that the petitioner is suffering from prostate cancer and in case

of such a disease, the Superintendent, Jail can be given directions to provide him best of the treatment. It was submitted by learned Public Prosecutor for the State that if the treatment is not available in government hospital then the same can also be provided in private hospital at the expense of the petitioner but that cannot be made a ground for releasing him on bail.

14. As per the own showing of the petitioner, he is involved in various cases. He remained Ex-MLA as such there is a reasonable apprehension or likelihood of the petitioner influencing the witnesses.

15. Incarceration of the petitioner in Jail for over 40 months by itself cannot constitute a ground for bail.

16. The authorities relied upon by learned counsel for the petitioner are on the facts of its individual case and it is settled law that each case has to be decided on its peculiar facts and circumstances.

17. Keeping in view the facts and circumstances of the case, seriousness and gravity of the offence, antecedents of accused, coupled with the fact that as per the prosecution case, he was the person responsible for inflicting injury on the head of Pandit R.K.

Naseem which proved fatal and he succumbed to injuries, petitioner is not entitled to be released on bail. The learned counsel for the petitioner rightly did not seek parity from the order passed by this Court releasing co-accused Aman Gaur on bail, inasmuch as, it was observed that he was not the main person who inflicted injury on the person of Pandit R.K. Naseem, which is not so in the case of petitioner. As per prosecution case he is the main perpetrator of the crime.

18. For the reasons mentioned above, I dismiss the bail application of the petitioner.

19. It is, however, clarified that nothing stated herein shall tantamount to an expression of opinion on merits of the case.

**SUNITA GUPTA
(JUDGE)**

AUGUST 21, 2013

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