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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 02nd July, 2020

Decided on : 07th July, 2020

+ **BAIL APPLN. 396/2020**

SUMIT @ KALA

..... Petitioner

Through : Mr.Ramesh Gupta, Sr Advocate
with Mr.Ashish Verma, Advocate.

versus

STATE

..... Respondent

Through : Mr.Amit Ahlawat, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J. *(Through Video Conferencing)*

1. This petition is filed under Section 439 of the Criminal Procedure Code, 1973 (hereinafter referred as the 'Cr P C) for regular bail in FIR No.392/2019 registered at police station Bawana, Delhi for the offences punishable under Section 304/506/34 Indian Penal Code, 1860 (hereinafter referred as the 'IPC) to the petitioner/applicant.

2. Primarily, the learned senior counsel for the applicant urges the two of the co-accused namely Vikas and Parveen have since been granted bail in this case, hence parity is sought qua accused Sumit.

3. The facts alleged are in the intervening night of 08th and 09th of August, 2019 at about 12.30 – 01.00 AM, a loud voice was coming from in front of the house of complainant-Bijender. His brother Jaipal Singh informed him about a quarrel outside, with their brother Anil. He along

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with his brother and father came in the Gali and saw Pawan and one of his associate, i.e. accused Sumit were beating Anil and were giving fist blows on the chest of Anil. Then Pawan and his friend took out a revolver from their vehicle and threatened them. He and his brother requested Pawan and Sumit with folded hands, but they went on giving filthy abuses and even called their associates namely Vikas and Parveen on phone. As they all were abusing, extending threats, the complainant requested them Anil is medically not well and would not be able to bear the beatings, but they continued abusing and threats. As the people from the locality started pouring in, the accused person left the spot. After some time, injured Anil – brother of the complainant had some chest pain and was taken to MV Hospital, Pooth Khurd from where he was referred to Baba Saheb Ambedkar Hospital, Rohini, Delhi and then to Saroj Hospital where he was declared *brought dead*.

4. The Postmortem report of deceased Anil notes the following external injures:-

- "1. Contusion, reddish in color, 16 cm x 6 cm, vertically aligned, present over the lower part of back of chest and extending to the upper part of back of abdomen, from 2 cm to the left of middle upto 4 cm right of midline. On dissection, extravasations of blood present in the subcutaneous tissues and muscles of back beneath and surrounding the injury.*
- 2. Contusion, reddish in color, 12 cm x 3 cm vertically aligned, present over the upper and middle part of back of abdomen 5 cm to the right of midline. On dissection, extravasations of blood present in the subcutaneous tissues and muscles of back beneath and surrounding the injury."*

5. The opinion qua his death is as under:-

"Death was due to coronary artery blockage caused by injury no 1. All injuries were ante-mortem, fresh before death, caused by blunt force and injury no.1 along with the internal injuries was sufficient to cause death in the ordinary course of nature. Viscera and tissues have been preserved at the request of the I.O."

6. It is the submission of the learned senior counsel for the applicant *firstly* there was no intention to cause death of Anil as the accused were never aware about his medical condition; as his medical condition was told to accused only on arrival of co-accused Vikas and Parveen. Further, it is also argued the cause of death was *100%* artery blockage which cannot simply be a result of blows on the chest and rather the postmortem report show injuries on the back of chest and abdomen and not in the front of chest. Lastly, it was argued no TIP was conducted.

7. Reference was also made to the following findings in the postmortem report of the deceased:-

"X. Internal Examination

a. and b. xxx

c. Chest:- Coronary ostia were patent. 100% blockage present in the left anterior descending artery about 1 cm from origin. About 20% of the blockage was with atherosclerotic patch and rest of the blockage was with fresh thrombus. Patency, present at places in rest of the various segments of the coronary tree. Diaphragm was intact."

8. I have examined the statement of the witnesses. All of them in one voice say both accused Pawan and accused Sumit were quarrelling and giving fist blows on the chest of Anil and that co-accused Vikas and Parveen came later when the beating was over, hence, no parity can be drawn from the role of accused Vikas and Parveen to that of accused Sumit.

9. Rather, the applicant was at the spot taking active part in the beating of Anil at the time of incident. Though argument is made *viz an artery cannot be blocked 100% in a day only due to beating*, per general medical record filed, hence, injury No.1 cannot be the basis of *100%* blockage of artery of the deceased, however, the para referred to in the

postmortem report of deceased and relied upon by the learned senior counsel clearly mention *about 20% of the blockage was with atherosclerotic patch, but whereas 80% of the blockage was with fresh thrombus*. Thus, the artery had only 20% blockage, but 80% was because of injury No.1 caused by the accused person.

10. Here, I would also like to refer to a subsequent opinion No.060/2020 dated 22.06.2020 qua the postmortem report No.752/2019 dated 09.08.2019 of Dr.Vijay Dhankar, MD (Forensic Medicine), Specialist and HOD and it read:

"The blunt force injuries as mentioned in the PM report, were on an area of chest directly over the position of heart. Such injuries can lead to rupture of the atherosclerotic plaque already present in the coronary arteries which then leads to thrombus formation, total occlusion of the lumen of the artery and causing sudden death.

With the presence of these injuries on the body, it can be concluded that the 80% blockage by thrombus was caused by the injuries mentioned in the PM report. These injuries were the cause of death of the deceased by causing thrombus formation in the coronary arterial branch."

11. The above opinion leaves us no doubt that *prima facie* the cause of death was injury No.1 caused by the accused person as stated above, as such the role of accused cannot be segregated from the accused Pawan, at this stage. The test identification parade, primarily, is conducted only to verify if *the investigation is going in right direction* and admittedly accused Sumit was a friend of accused Pawan and that co-accused Pawan only had led the Investigating Officer apprehend Sumit, hence at this stage, no benefit on such count can also be given to the accused for grant of bail. The regular bail application deserves dismissal, hence dismissed.

12. Copy of this order be sent electronically to the learned Trial Court and the petitioner through the Jail Superintendent for information

Crl.M.(Bail) No.6393/2020

13. List for hearing on 31.07.2020.

YOGESH KHANNA, J.

JULY 07, 2020

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