

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 31.07.2015

BAIL APPLN. 1537/2015

PAWAN @ CHACHI

..... Petitioner

versus

THE STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Pradeep Khatri, Mr. Praveen Khatri and Mr. Munender

For the Respondents : Mr. Rajat Katyal, APP
Inspector Dheeraj Singh, P.S. Narela

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

Crl. MA No. 10842/2015 (Exemption)

1. Exemptions allowed subject to all just exceptions.
2. The application stands disposed of.

Bail Application No. 1537/2015

1. The present is an application under Section 439 Cr. P.C., 1973 seeking regular bail in FIR No. 58/2012 under Sections 302/120B/34 IPC and 25/27 of the Arms Act registered at Police Station- Narela.
2. It is an admitted position that the applicant has been in judicial custody since 25th February, 2012.

3. To encapsulate the story of the prosecution as per the charge sheet, it is alleged that on 1st February, 2012 at about 9.30 A.M., two boys had fired a bullet at Suresh while he was sitting in his bus. Thereafter, the boys are alleged to have fled towards the Main Road. It is alleged that there was another boy standing on the main Road with a motorcycle and all three of them made good their escape from the spot.
4. The gunshots which killed Suresh are alleged to have been heard by the people in the area who stated that they would be able to identify the perpetrators of the shootout.
5. The subject FIR came to be registered under Section 302/120B/34 IPC and 25/27 of the Arms Act.
6. The post mortem report opined that the death of the victim Suresh was due to hemorrhagic shock consequent upon fire arms injuries which were anti mortem and caused by a bullet.
7. It is further alleged in the charge sheet that during investigation, Constable Ashok/PW-15 identified the applicant and reported to the I.O. of the subject FIR that the applicant was the same person seen by him on 1st February, 2012 at about 9.30 A.M. present at the place of the occurrence along with one of his accomplices.
8. Constable Ashok/PW-15 further deposed that upon seeing him, the applicant and his accomplices ran away from the site and could not be apprehended despite a chase.
9. At this stage, it has been pointed out by learned counsel appearing on behalf of the applicant that Constable Ashok/PW-15 failed to identify the applicant in Court at the time of recording of his testimony.

10. It is further alleged that during investigation Smt. Sushma, the wife of the victim stated that her husband was frightful of his safety for a few weeks prior to the date of the incident. On persistent enquiry from his wife, the victim is stated to have disclosed that his nephew Naveen had been arrested in the murder of one Sushil and that the members of the latter's gang were seeking to take the revenge for the said murder.

11. The victim is further alleged to have stated that his nephew Praveen was also killed by the gang of Sushil. The victim was a witness in Praveen's murder case and also helped Naveen in his trial and that is why, Sushil's gang wanted to eliminate him. Consequently, the victim feared that he too would be targetted for assassination.

12. Smt. Sushma/PW-3 has deposed along these lines in her examination before the trial Court. (At this stage, it must be pointed out that the testimony of Smt. Sushma/PW-3 has not been placed on record on behalf of the applicant and has been handed over to me only on a direct enquiry in Court).

13. A perusal of the examination of Smt. Sushma/PW-3 reveals that she had identified the assailants/accused namely Ashu Malik and Ajay. She has also identified the co-accused namely Amit @ Jhabe who is alleged to be the boy who was standing near the motorcycle. The witness was able to identify the two assailants in Court.

14. The testimony of PW-3 has not been shattered during cross-examination.

15. Learned counsel appearing on behalf of the applicant states that in the testimony of Smt. Sushma/PW-3, there is no hint or allegation of the complicity or participation of the present applicant in her husband's murder.

16. It is trite to state that the Supreme Court in *Sanjay Chandra vs. CBI* reported at **AIR 2012 SC 830** has expounded that bail should not be withheld as pre-trial punishment and that there is a presumption of innocence of an accused unless proved guilty in a Court of law.

17. However, the Hon'ble Supreme Court in the said decision has referred to its previous decision in the matter of *State of U.P. vs. Amaramani Tripathi, (2005) 8 SCC 21* while discussing the relevant factors which should be taken into consideration at the time of determining an application for bail moved by an accused.

18. It would be profitable at this juncture to refer to the parameters of bail as enunciated by the Supreme Court in *Amaramani (supra)*. They are:-

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the charge;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of accused absconding or fleeing if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being tampered with; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

19. In this behalf, it would also be relevant to consider the decision of the Supreme Court in *Prahlad Singh Bhati vs. NCT, Delhi (2001) 4 SCC 280* wherein it was observed that if the accused is of such character that his mere presence at large would intimidate the witnesses, then bail should be refused.

20. In the present case, it is observed that there are serious allegations in respect of offence under Section 302/120B IPC against the applicant. As

stated by the trial Court, it would not be appropriate at this stage of the trial to deal with the respective contentions of the parties as that may cause prejudice.

21. In view of the facts of the case and the circumstance that the trial itself seems to be at the fag end (Re: *Sidharth Vashisth @ Manu Sharma v. State of Delhi*, 2003 (3) JCC 1846) and noticing the nature of allegations, gravity of offence and severity of punishment in the event of conviction, I do not think that this is a fit case for grant of bail to the applicant herein.

22. However, as I have repeatedly observed, it is the constitutional right of every convict to be tried expeditiously. In my view this is one of the cardinal tenets of criminal jurisprudence.

23. The accused has been in judicial custody since 25th February, 2012.

24. Accordingly, without commenting upon the merits of the present case, I request the trial Court to expeditiously conclude the trial and render a decision, without granting any unwarranted adjournments to counsel appearing on behalf of the parties, preferably within a period of six months from today.

25. The application is disposed of accordingly. However, liberty is reserved to the applicant to move this court afresh in the event the trial is not concluded expeditiously.

SIDDHARTH MRIDUL, J

JULY 31, 2015

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