

4 & 13

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 18.09.2015

BAIL APPLN.689/2015

DEEPAK

..... Petitioner

Through: Mr. Samrat Nigam and Mr. Amit
Punj, Advocates

versus

GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. Rajat Katyal, APP with SI Raj
Kumar, PS- Neb Sarai
Mr. Chandan Malik, Advocate for the
victim

BAIL APPLN.1928/2015

MUKESH KUMAR

..... Petitioner

Through: Mr. Samrat Nigam and Mr. Amit
Punj, Advocates

versus

GOVT. OF NCT OF DELHI

..... Respondent

Through: Ms. Radhika Kolluru, APP with SI
Raj Kumar, PS- Neb Sarai
Mr. Chandan Malik, Advocate for the
victim

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

1. The present are the applications under section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') for grant of regular bail in FIR No.1120/2014, under sections 308 IPC, registered at Police Station- Neb Sarai, New Delhi.
2. The applicants have been in judicial custody since 12.12.2014.
3. Mr. Nigam, learned counsel appearing on behalf of the applicants while inviting my attention to the First Information Report and the charge sheet filed in the subject matter, would urge that there are no eye witnesses in the present case. Mr. Nigam, would then urge that the applicants have, therefore, been falsely implicated in the present case by the officers of Police Station- Neb Sarai, New Delhi. Furthermore, Mr. Nigam invites my attention to the deposition of the alleged eye witness namely Ms. Shama Parveen, PW-4 in the subject FIR to urge that she has not supported the case of the prosecution. Mr. Nigam would lastly urge that that the registration number of the vehicle owned by the father of the applicant Deepak is similar to the registration numbers of numerous other vehicles, however, the IO in

the subject FIR has failed in his duty to investigate and enquire into the ownership of other vehicles bearing similar registration numbers and has only zeroed in on the applicant without any cogent material.

4. The case of the prosecution is that one Mr. Stanley Stephen was found lying unconscious on the IGNOU Road off Mehrauli Badarpur Road in South Delhi on 02.12.2014. Mr. Stanley Stephen was taken to Saket City Hospital where he was declared unfit for statement. The MLC of Mr. Stanley Stephen demonstrates that he suffered a severe head injury. The police officer whilst registering the subject FIR clearly stated that despite attempts, no eye witness was found at the spot. The subject FIR was, therefore, registered against unknown persons and investigation was taken up. According to the prosecution, during investigation it came to their knowledge that a Maruti Esteem Car with the registration No.9972 and its occupants were allegedly involved in the incident. Upon verification from the record of the Road Transport Officer, the vehicle owned by Hawa Singh, father of the applicant Deepak, resident of village Neb Sarai, bearing registration No.DL 2CV 9972 was identified. In response to the notice under section 133 of the Motor Vehicle Act, applicant Mukesh wrote to the I.O. that on the date of the incident he was driving the said car and his friend

Deepak/applicant was sitting beside him. He further stated that a Swift Car dashed his car from behind due to which a quarrel took place. Applicant Deepak slapped the occupant of the Swift Car consequently, the occupant of the swift car fell down and thereafter the applicants fled away.

5. On 12.12.2014, both the applicants were intercepted while driving the said vehicle. It is the case of the prosecution that the present applicants have disclosed their complicity in the commission of the offence in their disclosure statements. During subsequent investigation, statement of the purported eye witnesses Ms. Shama Parveen (PW-4) and Mr. Hari Ram Yadav, son of Mr. Siddeshwar Yadav, resident of IGS Security Services, Anupam Apartment, New Delhi were recorded under section 161 of the Code. It is stated on behalf of the prosecution that the applicants refused to participate in the Test Identification Parade (TIP) proceedings. The medical opinion qua Mr. Stanley Stephen reveals that he could have sustained injuries either owing to a fall or physical assault.

6. In the present case, it is noticed that Stanley Stephen, the victim, is currently incoherent and under constant medical treatment and, therefore, not in a position to understand the questions put to him by the trial court nor able to depose clearly with regard to the incident. However, the other purported

eye witness Mr. Hari Ram Yadav, whose name also figures as an eye witness on behalf of the prosecution in the subject charge sheet, is yet to be examined.

7. In the present case, it is observed that the charge sheet against the applicants has already been filed and charges have been framed against them. The applicants have been charged for the offences punishable under sections 308/34 IPC. Ten out of seventeen prosecution witnesses have already been examined before the trial court. However, the victim Stanley Stephen has not been examined on account of the medical reasons stated above. Insofar as the other purported witness namely, Hari Ram Yadav is concerned, he has not been examined for reasons best known to the official respondent.

8. In *State of U.P. Through CBI v. Amarmani Tripathi*, reported as (2005) 8 SCC 21 the Hon'ble Supreme Court in paragraph 18 observed as follows:-

“18. It is well settled that the matters to be considered in an application for bail 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 the 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[see *Prahlad Singh Bhati v. NCT, Delhi* [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] and *Gurcharan Singh v. State (Delhi Admn.)* [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179]]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in *Kalyan Chandra Sarkar v. Rajesh Ranjan* [(2004) 7 SCC 528 : 2004 SCC (Cri) 1977] : (SCC pp. 535-36, para 11)

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
- (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay v. Sudarshan Singh*[(2002) 3 SCC 598 : 2002 SCC (Cri) 688] and *Puran v. Rambilas*[(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] .)”

9. In **Prahlad Singh Bhati vs. NCT of Delhi** reported as (2001) 4 SCC 281 the Hon’ble Supreme Court reiterated that if a person was suspected of the commission of an offence punishable with death or imprisonment for life then there must exist grounds which specifically negate the existence of reasonable ground for believing that such an accused is guilty of an offence punishable with sentence of death or imprisonment for life. The jurisdiction to grant bail must be exercised on the basis of well-settled principles having regard to the circumstances of each case. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused and reasonable apprehension of witnesses being tampered with.

10. In **Gurcharan Singh vs. State (Delhi Admn.)** reported as (1978) 1 SCC 118 it was observed that if the accused is of such character that his

mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused.

11. In the recent past, denizens of Delhi have demonstrated a growing and alarming tendency to indulge in senseless violence. Even a minor scrape between vehicles driven by two individuals has the effect of enraging them to such an extent that it is common place for one or the other to be physically assaulted and on occasion even threatened with fire arms. The police and the administration are helpless bystanders, and are unable to either uphold the rule of law or investigate scientifically and thoroughly.

12. In the present case, the applicants have been charged under section 308 of the Code, conviction for which could lead to a maximum sentence of seven years. Therefore, the present is not a case for believing that the offence is grave in itself. In the present case, however, the apathy of the populace of the city in the face of a human lying injured on a road is spine chilling. Added to this apathy is the cynical and almost ruthless approach of the perpetrators of such incidents to leave the victims unattended and on occasion facing severe complications and sometimes even death.

13. There is yet another aspect of the public spiritedness of the witnesses of these incidents. They either resile from the statements made by them under section 161 of the Code when called upon to depose before a Court or they conveniently make themselves unavailable, seriously hampering the investigation and trial into the truth behind these incidents. The present case is no exception. PW-4 Shama Parveen has deposed against the prosecution and contradicted her own statement to the police under section 161 of the Code. The other purported eye witness of the incident Mr. Hari Ram Yadav for whom summons have been issued for 09.10.2015 by the trial court, is keeping himself away so far for reasons I would not like to comment upon.

14. The Supreme Court in **State vs. TRPS Lodhi vs. Sanjeev Nanda** reported as **(2012) 12 SCR 881** held as follows:-

“40. Witness turning hostile is a major disturbing factor faced by the criminal courts in India. Reasons are many for the witnesses turning hostile, but of late, we see, especially in high profile cases, there is a regularity in the witnesses turning hostile, either due to monetary consideration or by other tempting offers which undermine the entire criminal justice system and people carry the impression that the mighty and powerful can always get away from the clutches of law thereby, eroding people’s faith in the system. This court in *State of U.P. v. Ramesh Mishra and Anr.* [AIR 1996 SC 2766] held that it is equally settled law that the evidence of hostile witness could not be totally rejected, if spoken in favour of the prosecution or the

accused, but it can be subjected to closest scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. In *K. Anbazhagan v. Superintendent of Police and Anr.* [AIR 2004 SC 524], this Court held that if a court finds that in the process the credit of the witness has not been completely shaken, he may after reading and considering the evidence of the witness as a whole with due caution, accept, in the light of the evidence on the record that part of his testimony which it finds to be creditworthy and act upon it. This is exactly what was done in the instant case by both the trial court and the High Court and they found the accused guilty.”

15. In *Phool Singh vs. State of Haryana* reported as (2012) ILR 2 Punjab and Haryana 809, the Hon’ble Supreme Court expressed serious concern over increase in number of hostile witnesses. The relevant portion of the decision is reproduced herein below:-

“30. In the present case the PW had the courage to state in his cross-examination that whatever was stated by him in his examination-in-chief was not the correct version. He clearly stated that the occurrence did not take place in the manner as written in his statement and as deposed by him in the court in his examination-in-chief. These types of witnesses are required to be dealt with sternly. They cannot be permitted to take the courts for a ride. Legislature measures to emphasis prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the courts have to be seriously and sternly dealt with. Efforts should be to ensure fair trial where the accused and the prosecution both get a fair deal. Public interest in the proper administration of justice must be given as

much importance if not more, as the interest of the individual accused. Witnesses assume a vital role in the Criminal Justice System. The successful working of such system depends critically on the witnesses who assist the court in discovering the truth by tendering evidence. However, the increase in the number of instances of witnesses turning hostile and resiling blatantly from their earlier statements is a matter of serious concern. Once there is complete somersault in the two versions recorded in examination-in-chief and the cross-examination, one of them is certainly false. However, in a case of minor discrepancy, the matter is different. Such a witness should be required to explain his conduct. There are provisions in IPC to take care of such situation. Hon'ble the Supreme Court had also dealt with such a witness in Zahira Habibullah Sheikh's case (supra) popularly known as "Best Bakery case". The learned court below is directed to take appropriate action against the witnesses whose version given in cross-examination is totally different than what was given in their examination-in-chief. The petition stands disposed of."

16. The right to life and personal liberty is a fundamental right enshrined in the Constitution of India. There is no gainsaying the fact that this right can be curtailed only on occasions where the liberty of an individual would conflict with interests of society at large. There is no inexorable formula in matters granting bail. The facts and circumstances of each case govern exercise of judicial discretion in granting or rejecting bail.

17. It is also to be considered that the deposition of witnesses cannot either be weighed nor their credibility and veracity judged at the time of

adjudication of an application seeking bail. In my view, therefore, in the present case, the applicants are not entitled to regular bail at this stage. The present applications are dismissed whilst reserving liberty to the applicants to approach the trial court once the victim as well as the purported eye witness Mr. Hari Ram Yadav have been examined. Since the trial is now listed for conclusion of prosecution evidence on 09.10.2015, the concerned Court is requested to expedite the trial and conclude it within a reasonable period of time, bearing in mind the principle that the right of an accused to expeditious trial is the cornerstone of the criminal justice system.

18. With the above observations, which *prima facie* are not an expression on the merit of the case, the applications are dismissed.

19. *Dasti*

SIDDHARTH MRIDUL, J

SEPTEMBER 18, 2015

dn