

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

Judgment delivered on : April 19, 2016

+ BAIL APPLN. 410/2016
PRAMOD KUMAR

..... Petitioner

Through: Mr.R.D.Rana, Mr.Ambreesh V.,
Mr.Saurabh Kamra and Ms.Sarita,
Advocates.

versus

THE STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through: Mr. Kamal Kumar Ghei, Additional
Public Prosecutor for the State

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. By this petition filed under Section 439 of Cr. P.C., the petitioner seeks bail in a case registered as FIR No. 530/2014 under Section 186/353/307/34 of Indian Penal Code and under Section 27/54/59 of Arms Act, at Police Station Sarita Vihar, District South East, Delhi.

2. The facts of this case in brief are that on secret information about the persons coming on Pulsar bike in Aali Jungle, carrying with stolen mobile phones and laptops, SI Dinesh Kumar, Ct. Udham Singh and Constable Bijender reached at Aali Jungle. Sub-Inspector Dinesh

Kumar gave signal to three boys coming on a pulsar bike to stop, at the instance of the informer but the boys tried to flee away by turning back their bike. Two boys were caught hold by Sub-Inspector Dinesh Kumar and Constable Bijender and Constable Udham Singh tried to catch hold the third boy, who had assaulted him with a knife with intention to murder him and Constable Udham Singh received stab injury on his stomach. The said boy was apprehended and identified as Promod, i.e., the petitioner herein. One boy out of three boys fled away. Knife used by the accused was taken into possession. Other co-accused Ravi Sehdev was carrying a bag and during checking of bag, six stolen mobile phones, one laptop and one Gulel were found. MLC of Constable Udham Singh was collected by Sub-Inspector Dinesh Kumar. Thereafter, the present case was registered. Investigation commenced, both the accused were arrested, after completion of investigation, charge sheet was filed.

3. Mr. R.D. Rana, the learned counsel for the petitioner primarily contended that the wife of the petitioner is suffering from seizure disorder (epilepsy) and has suffered with attack of multiple seizures on 03.12.2015 and admitted in AIIMS Hospital, New Delhi where she was admitted with critically red position. It is further contended on behalf of the petitioner that the wife of petitioner could not go to hospital for certain tests, as directed by the doctors and she suffered with another attack on 03.01.2016 and was taken to hospital in an unconscious state. It is further contended that the wife of petitioner requires constant care and protection, besides this, the petitioner has

two years old daughter and nobody is there in family, to take care of her.

4. Apart from the aforesaid, the learned counsel for the petitioner contended that the right hand of the petitioner was crushed in machine while he was in jail, his fingers were fractured and stitches were applied and his right hand has been permanently disabled and the petitioner cannot hold even a glass of water.

5. It is further contended on behalf of the petitioner that the injured was not removed to hospital by the Investigating Officer, rather he was allowed to remain lying on the road as if the injured had received serious and grievous injuries. The Investigating Officer called two constables from the Police Station and one of them had taken the injured constable to the hospital. The medical record of the injured also shows that he had suffered with simple injuries.

6. On merits, the learned counsel for the petitioner contended that the knife which was taken into possession has not been sent to forensic laboratory for ascertaining any blood on its blade and the Investigating Officer has not even produced the said knife before the doctor for getting the opinion as to whether the injury caused to the constable Udham Singh could have been possibly inflicted by that knife or otherwise. To draw the attention of the court towards the petitioner's bonafide, it is contended that the petitioner was earlier granted interim bail on the demise of his father and he had surrendered in time after expiry of the interim bail as granted by the Trial Court.

7. Lastly, it is contended that the investigation of the case is complete, charge sheet has been filed and the co-accused has already been granted bail in this case, therefore, the petitioner ought to be granted bail in the present case on parity as well.

8. Mr. Kamal Kumar Ghai, Additional Public Prosecutor appearing on behalf of the State vehemently opposed the aforesaid contentions raised on behalf of the petitioner. It is submitted that the petitioner is charged with the offence under Section 307 of IPC by giving a stab wound to Constable Udham Singh, who is a public servant and was discharging his duty at the time of incident and that the learned Additional Sessions Judge had rejected his bail applications finding no merit therein.

9. So far as the contention of the learned counsel for the petitioner for seeking bail on the grounds of serious illness of his wife is concerned, learned Additional Public Prosecutor for the State has contended that the documents attached with the applications have been verified from the doctor, who has stated that the wife of the petitioner was under treatment in AIIMS Hospital and she visited the hospital twice on 03.12.2015 and 03.01.2016 and that thereafter she had not visited hospital and therefore the doctor was not in a position to give an opinion about the seriousness of her condition as it was difficult for the doctor to comment on the seriousness of the seizure episodes in the absence of neurology review and NCCT brain as the patient did not visit the hospital after 03.01.2016.

10. It is further contended that the petitioner cannot seek parity with the co-accused of the present case, as the petitioner is attributed with the role of inflicting a stab wound to Constable Udham Singh. Apart for the aforesaid, the petitioner is involved in six other cases registered in various police stations of New Delhi. The petitioner had caused a stab wound to the constable and obstructed him from discharging his official duty, therefore, in the facts and circumstances of the present case, the bail application of the petitioner be rejected.

11. I have heard the submissions made by learned counsel for the petitioner and the learned Additional Public Prosecutor for the State. After hearing the submissions made by counsel appearing for both the sides, this Court observes that the investigation in this case has been completed, charge sheet has been filed, and the case is pending trial before the Trial Court.

12. Apart from the aforesaid, this Court further observes that the petitioner has inflicted a stab wound on Constable Udham Singh, while discharging his duties, and due to which the constable got injuries. In the status report, as filed on behalf of the State, it is apprised to this court that the petitioner is involved in six different cases in various Police Stations of New Delhi. The weapon of offence being a knife used by the petitioner was also recovered from the petitioner.

13. With regard to the contention of the learned counsel for the petitioner seeking bail on the grounds of serious illness of his wife, an

ailment of wife of the accused cannot be made a ground for release of the accused on regular bail, especially when the accused/petitioner is involved in six other different cases registered at different Police Stations.

14. Considering the aforesaid facts and circumstances of the present case and the fact that the petitioner is charged with a heinous offence punishable under Section 307 of IPC which is pending trial before the Trial Court. Therefore, while considering the gravity of offence, this Court is not inclined to grant bail to the petitioner at this stage.

15. In ***Prasanta Kumar Sarkar v. Ashis Chatterjee (2010) 14 SCC 496***, the Hon'ble Supreme Court dealt with the basic principles laid down in catena of judgments on the point of granting bail. The Court proceeded to enumerate the factors:

9. ... among other circumstances, the factors [which are] to be borne in mind while considering 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 accusation;*
- (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 influenced; and*
- (viii) *danger, of course, of justice being thwarted by grant of bail.*

16. Resultantly, in the considered opinion of this Court, the facts emerging from the record culminate into the dismissal of the present bail application. Accordingly, the present bail application filed by the petitioner is dismissed at this stage.

17. Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

18. With aforesaid direction, the present bail application, filed by the petitioner stand disposed of.

(P.S.TEJI)
JUDGE

APRIL 19, 2016
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