

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on : September 09, 2016

+ BAIL APPLN. 1663/2016

ALADIN @ LIP LIP

..... Petitioner

Through Mr.Devinder Khatana, Mr.Jitender
Bidhuri and Mr.Dinesh, Advocates.

versus

STATE (NCT OF DELHI)

..... Respondent

Through Mr.Amit Chadha, Additional Public
Prosecutor for the State with Inspector
Sanjay Sharma (SHO) and Sub-
Inspector Pankaj Kumar, Police
Station Vasant Kunj (South), New
Delhi.

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. 115/2014 under Section 302/395/412/482/34 of Indian Penal Code, at Police Station Vasant Kunj South, New Delhi.

2. The brief facts of the prosecution case are that the complainant alongwith other persons who worked for caterer, were returning on

18.01.2014 at about 1 AM from Nitish Kunj. At about 1.05 AM they reached near D Mart Hotel where a Maruti Swift Car came from their behind. Five young persons of ages between 20-25 years came out of the car and started beating them. Complainant and other people tried to save themselves and ran away in different directions including service lane. But after sometime they re-gathered. It is alleged that the accused persons came back again in the car with intention to kill them and hit all of them with moving car, which caused the injuries to two persons namely Ram Dev and Raju. It is further alleged that one of the accused persons robbed the mobile phone of one of the victims. Thereafter they fled away in the car, which was chased by one Pajero. Driver of Pajero noted the registration number on plate of the car as DL 9 CX 1531.

3. During investigation, it was found that the car was a stolen property belonging to one M/s. Gautam Jewellers. Upon surveillance of a robbed mobile, five accused persons were apprehended out of which two were JCL (*Juveniles in conflict with law*). Investigation completed, the accused persons (except JCL) were charge sheeted for the offence punishable under Section 302/395/482/34 of IPC. Trial commenced and 11 out of 55 prosecution witnesses have been examined. Petitioner was arrested in this case on 30.01.2014 and since then he is in custody. He filed bail application before the learned Additional Sessions Judge-01, Patiala House Court, New Delhi, which was rejected vide order dated 09.07.2016. Now the petitioner has filed the instant application before this court.

4. Learned counsel for the petitioner contended on behalf of the petitioner that the petitioner is 20 years of age and belongs to a poor family, and he is in judicial custody since 30.01.2014. It is further contended that the charge sheet in this case has been filed and material witnesses have been examined and the allegation of beating and hitting by the car are against the co-accused Surrender. More so, the eye witness to the case has clearly identified Mr. Surrender as the person who hit the victims with Danda and further as the driver of who crushed the two deceased. It is further contended that nothing incriminating has been found to connect the petitioner with the commission of the alleged offence. More so, investigation of the case is complete, charge sheet has been filed and no material is required to be recovered from the possession or at the instance of the petitioner. It is further contended that only 11 out of 55 witnesses have been examined and the conclusion of the trial may take a considerable amount, therefore the petitioner be granted bail in the present case.

5. Learned Additional Public Prosecutor appearing for the State opposed the aforesaid contentions raised on behalf of the petitioner. It is submitted that the accused persons have been using the stolen car and that too by using a false registration number and accordingly they have been charged with Section 482 of IPC. One of the accused persons has robbed the mobile of Manoj Kumar @ Peter and Section 395 of IPC is also added. As per the post mortem report of the deceased Raju and Ramdev, the doctor has opined and gave the cause of death to be head injuries of which sequel consequent to blunt

force/surface impact in respect of both the deceased persons.

6. It is further submitted on behalf of the State that during the scuffle between the accused persons with the catering workers, the petitioner had sustained injuries and the report of the CFSL expert reveals that the DNA profiling of exhibit lifted from the swift car matched with the blood of the petitioner. It is further stated that the accused persons had deliberately hit catering workers with common intention, which caused death of the two persons and the petitioner was part of the said gang and actively participated in the crime.

7. The petitioner and other accused persons have been duly identified by the public witnesses during their examination and cross-examinations before the court. At last, it is stated that two more public witnesses are required to be examined and there is strong apprehension that if the petitioner is released on bail he may tamper with the evidence. In such a situation, the petitioner be not granted bail in this case.

8. I have heard the submissions made by learned counsel for the petitioner and the learned Additional Public Prosecutor for the State. I have also gone through the impugned order as well as depositions of the witnesses.

9. Admittedly, the charge sheet in this case has been filed and 11 out of 51 witnesses have been examined. Apart from the aforesaid, the petitioner has been charged with the offence punishable under Section

302/395/412/482/34 of IPC, which are grievous in nature.

10. 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.*

11. This court further notes that several contentions have been raised by learned counsel for the petitioner stating that nothing incriminating has been found against him and he has been falsely

implicated in this case. So far as those contentions, explanations, reasoning, contradictions and discrepancies are concerned, this court is of the conscious view that the matter is pending adjudication before the trial court and it is the concerned court which would decide as to whether the petitioner is guilty for the offence or not by leading cogent evidence. However, for the purpose of deciding the present bail application, this Court need not go to look into all such facts which are the subject matter for the trial court. What this Court is required to consider at this stage is, as to whether or not the petitioner has been able to make out any prima facie case for grant of bail in the present case.

12. This court observes that the blood stains found from the car used by the accused found to be matching from the blood of the petitioner, which clearly shows that petitioner was the part of the gang, who was involved in the incident of crime in question, due to which two persons lost their lives. The victims were hit by the car used by the accused persons. From the status report filed on behalf of the State it is revealed that the accused person for the third time, came from the wrong side and deliberately hit the victims by the car. It is further informed that the car used for the offence was a stolen car and that too with a false registration number. Medical evidence also corroborates the cause of death as being head injury, consequent to blunt force/surface impact. This court further observes that only 11 out of 55 witnesses have been examined and two more public witnesses are yet to be examined.

13. In light of the aforesaid facts and circumstances and the aforesaid legal principles, this Court is not inclined to grant bail to the petitioner at this stage. Resultantly, in the considered opinion of this court, the facts emerging from the record culminate into dismissal of the present bail application. Accordingly, the present bail application filed by the petitioner is dismissed at this stage.

14. 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.

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

(P.S.TEJI)
JUDGE

SEPTEMBER 09, 2016
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