

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

Judgment delivered on : April 19, 2016

+ **BAIL APPLN. 1552/2015**

JITENDER @ JATIN @ AJJU Petitioner
Through: **Mr.V.K. Mishra, Advocate.**

versus

STATE (GOVT OF NCT OF DELHI) Respondent
Through: **Mr.M.P. Singh, Additional Public
Prosecutor for the State
Mr.Brijender S. Dhull, Advocate for
the Complainant.**

**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. 562/2013 under Section 302/34 of Indian Penal Code, at Police Station Narela, Delhi.

2. The present case was registered at the instance of Mr. Gyanender (hereinafter referred to as the complainant), who is the father of the deceased victim – Pradeep. It is submitted by the complainant in his statement before the police that at about 11.30 AM, he was going to his plot for doing some house job and when he reached in front of the plot of Kapur Singh, he heard cries of help

coming from inside the said plot. It is submitted that the complainant saw his son who was caught by three boys namely Neeraj, Jitender and Vishnu and all of them were holding knives in their hands and inflicting injuries upon his son Pradeep with the help of knives. He cried for help and entered in the plot. Thereafter, all the three boys started running but the complainant caught hold of Neeraj and the other co-accused Vishu and the petitioner herein ran away leaving their bike. Thereafter, the complainant called at 100. The victim was taken to Delhi Hospital from where he was taken to the SRHC Hospital, where he was declared brought dead.

3. Investigation was conducted, accused Neeraj was apprehended on the spot. Inspection of the site was conducted and MLC of the victim was obtained and in view of the circumstances in totality, the present FIR under Section 302/34 of IPC was registered. The accused – Neeraj who was apprehended on the spot was stated to be of 17 years of age. The blood stained shirt of Neeraj was taken into possession. A motor cycle allegedly belonging to the petitioner herein was also recovered.

4. On 25.08.2013, the petitioner was apprehended and he told his age as 17 years and got recovered a knife from the grass in the plot. He also pointed out the shop from where he purchased the knives. The petitioner was declared major. Another co-accused Vishal surrendered before the Court on 29.08.2013 and was arrested in the Court. He also got recovered the knife with which he attacked the deceased from the

Nali (drain). Post mortem of the deceased was got conducted. The doctor opined that the injuries could have been caused by the weapons of offence examined or similar weapons.

5. Mr. V.K. Mishra, the learned counsel for the petitioner contended that the statements of most of the material witnesses were recorded and co-accused Neeraj was granted bail by the Juvenile Justice Board. Co-accused Vishal @ Vishu was also granted bail by the Trial Court vide order dated 07.04.2015. It is the contention of the counsel for the petitioner that the petitioner had applied for bail on the ground of parity, which was declined vide order dated 29.05.2015.

6. It is contended that it has come in the evidence of PW-4, that he was not present at the alleged scene, however the case of the prosecution is that the complainant was present on the spot, therefore, the whole prosecution story comes under the shadow of doubt. Apart from the aforesaid contentions, learned counsel for the petitioner contended about contradictions in the prosecution story regarding the timings, facts, making call to PCR and the time of occurrence of the incident in question. It is contended that the prosecution has not proved any motive behind the commission of the crime.

7. Lastly, it is contended that the investigation of the case is complete, evidence of 18 out of 24 witnesses has been recorded and the material / star witnesses of the prosecution have not supported the version of the prosecution. PW-2 and PW-3 have refused to identify the petitioner and from their evidence, it is clear that the complainant

(PW-4) was not present at the spot. To substantiate the fact that the complainant was not present at the spot, it is contended that the complainant was neither found by the police officials at the spot nor at Delhi Hospital and the complainant had not removed the deceased either to Delhi Hospital or to SRHC Hospital. Further, the complainant has not made any PCR call pertaining to incident, while the complainant himself stated that he had made a PCR call from his mobile and even DD No.49-B and 50-B admits that no call was made from the mobile phone of the complainant.

8. It is further contended that the co-accused of the case have already been released on bail and the petitioner is in custody since 25.08.2013. Raising many other contradictions in the statements recorded in the case, it is contended that the petitioner ought to be granted bail in the present case.

9. Mr. M.P. Singh, Additional Public Prosecutor appearing on behalf of the State contended that the petitioner is charged with the offence punishable under Section 302 IPC, which is a grievous offence and the victim has been given knife injuries and the injuries caused are also opined to be by weapon of offence, i.e., knife. So far as the parity of the co-accused is concerned, it is contended that the co-accused have not been identified by Mohd. Ayub (PW-1), however the petitioner has been categorically identified by PW-1, who had purchased the weapon of offence, i.e., knives. The State has also raised apprehension in the status report stating that there is a strong

possibility of the petitioner jumping the bail or approaching the remaining witnesses. In these circumstances, the state has opposed the grant of bail to the petitioner.

10. 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 statements of the prosecution witnesses are going on.

11. Apart from the aforesaid, this Court further observes that there is a recovery of motor cycle which belonged to the petitioner and he has also been identified by Mohd. Ayub (PW-1), from whom the petitioner had purchased the weapon of offence, i.e., knives, however PW-1 did not identify the other co-accused persons. In such a situation, in the considered opinion of this Court, the petitioner cannot seek parity with the other co-accused persons who have been granted bail in this case.

12. With regard to the contentions regarding contrary statements of the witnesses about the timings of occurrence, etc., this Court need not to go into the details of the facts, especially when the trial is pending adjudication before the Trial Court.

13. 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.*

14. Considering the aforesaid facts and circumstances of the present case; the fact that the case is pending trial; the petitioner is charged with heinous offence punishable under Section 302/34 of IPC; the motor cycle of the petitioner was used in commission of offence and that the petitioner is identified by PW-1, this Court is not inclined to grant bail to the petitioner at this stage.

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

16. 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.

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

(P.S.TEJI)
JUDGE

APRIL 19, 2016
pkb