

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on : 11 March 2016

+ BAIL APPLN. 1915/2015
SATBIR RANA @ GHENTA

..... Petitioner

Through: Mr. Ramesh Gupta, Senior Advocate
with Mr. Anil Rana, Mr. Ashish
Pratap Singh, Advocates

versus

STATE (GOVT OF NCT DELHI)

..... Respondent

Through: Mr. Rajat Katyal, Additional Public
Prosecutor for the State with Inspector
A.K. Singh, Police Station Ghazipur,
Delhi

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

%
P.S. TEJI, J.

1. By this petition filed under Section 439 of Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr. P.C.) the petitioner seeks bail in FIR No.507/2014 under Section 302/34 of IPC, at Police Station Gazipur, Delhi.

2. In nutshell, the prosecution case is that the complainant – Sanjay Kumar on 21.07.2014 received the information that his brother Vinod Kumar was murdered. Sanjay Kumar, the complainant lodged a

case expressing suspicion over Nazim and Shakir. The reason for suspecting them for murder was that earlier also, the aforesaid persons namely Nazim and Shakir had caused injuries to another cousin of the complainant namely Lala @ Rajveer. During the course of investigation of the case, one Ravi Chopra made a statement before the police that some days prior to the date of incident, one Nikhil Rana was spotted near the place of occurrence. Due to of the suspicion veering around Nikhil Rana, he was arrested. After his arrest, Nikhil Rana made a disclosure statement that it was at his instance that the deceased was killed. Other materials which have been brought on record against the petitioner are that the petitioner had misled the complainant by raising suspicion against others and he was bearing grudge against the deceased as he suffered a loss in the elections for the post of Pradhan at the hands of the deceased.

3. Mr. Ramesh Gupta, learned Senior Counsel for the petitioner contended that in the FIR recorded at the instance of Sanjay Kumar, it is stated that there was enmity between the deceased Vinod with Nazim and Shakir who are resident of Gazipur Dairy Farm and they had caused injuries in the past to his cousin brother namely Lala @ Rajveer, in respect of which a criminal case No.437/2014 with Police Station Gazipur, Delhi was also registered. But still the petitioner as well as Nikhil Rana, Satbir and two other persons were charged for the offence punishable under Section 120-B read with Section 302 of IPC and whereas Nazim, Shakir and Rashid were discharged despite they were named by the complainant in the FIR.

4. The petitioner had also filed two separate revision petitions against the order on charge dated 23.04.2015, whereby the learned Additional Sessions Judge had discharged the persons, who were named by the complainant in the FIR and framed the charge against three accused namely, Satbir Rana, Parth Sharma and Nikhil Rana, under Section 120-B read with section 302 IPC. In addition, the petitioner is also charged with the offence punishable under Section 201/202 of IPC. However, during the course of arguments, the learned counsel for the petitioner, on instructions, withdrew the revisions petitions and confined his arguments on the present bail application of the petitioner.

5. Learned Senior Counsel for the petitioner contended that the petitioner was arrested on 15.10.2014 and there is no material on record, prior to the arrest and disclosure of Nikhil Rana, about the petitioner's involvement in the matter. While pressing for bail, learned counsel for the petitioner submitted that assuming the aforesaid allegation to be ex facie true, the petitioner could only be said to have committed an offence under Section 201 of the IPC. At best, the petitioner could be said to be a conspirator, regarding which also the evidence, as has been alleged, is highly deficient.

6. Learned Senior Counsel for the petitioner also contended that the case of the prosecution is based purely on circumstantial evidence and there is no direct evidence against the petitioner. The further contention raised on behalf of the petitioner is that the prosecution has not filed any CDR in respect of mobile phone being used by the

deceased Vinod and in such a situation the prosecution cannot reach to the conclusion that the alleged persons were involved in the conspiracy to kill Vinod. Apart from the above, it is further contended that no statement of any witness from the Gym such as Manager, Instructor or other trainees has been recorded to the effect that the deceased Vinod had actually attended the Gym classes on 21.07.2014 in the evening.

7. Apart from the aforesaid contentions, during the course of arguments, learned Senior Counsel for the petitioner relied upon the judgments in *Baliya alias Bal Kishan vs. State of Madhya Pradesh*, 2012(9)SCC696; *Saju vs. State of Kerala*, 2001 SCC Cri 160; *Indra Dalal vs. State of Haryana*, 2015 (3) JCC 1893; *In re: Mottai Thevar vs. State of Madras*, AIR 1952 MAD 586; *Pulukuri Kottaya and others vs. Emperor*, AIR 1947 PC 67; *Prashant Bhaskar vs. State* 2014 (1) JCC 750; *Yogesh vs. State of Maharashtra* 2009 (1) SCC Cri 51 on the point of charge and conspiracy.

8. At last, learned counsel for the petitioner contended that in the facts and circumstances of the present case, the petitioner can be held guilty only for the offence punishable under Section 201/202 of IPC, which are bailable offence, therefore, the petitioner ought to be granted bail in the present case.

9. Mr. Rajat Katyal, learned Additional Public Prosecutor for the State vehemently opposed the aforesaid contentions raised on behalf of the petitioner and submitted that the charge sheet in this case has

been filed and charges against the petitioner alongwith other co-accused persons are of serious nature, and not only this, the petitioner is also charged with the offences punishable under Section 201 and 201 of IPC. Therefore, the petitioner be not granted bail in the present facts and circumstances of the case.

10. Learned Additional Public Prosecutor for the State referred to the status report filed in the present case, in which it is submitted on behalf of the State that one Ravi Chopra made a statement before the police that some days prior to the occurrence, one Nikhil Rana was spotted near the place of occurrence. Due to the suspicion veering around Nikhil Rana, he was arrested. After his arrest, Nikhil Rana made a disclosure statement and supplementary disclosure statement to the effect that he had strong apprehension that deceased Vinod may kill his father Satbir Rana and he hatched a plan for murder of Vinod Pahalwan. He also disclosed that in conspiracy with his father and his friend Parth Sharma and his cousin brothers (mama ke ladke) Rupesh and Brijesh, he planned to kill Vinod. He brought the pistol and five live cartridges from his cousin brothers Rupesh and Brijesh about two months ago from the day of incident and gave the pistol and 5 live cartridges to his father. His father tracked the activities of deceased Vinod and when he saw that Vinod was going to Gym alone on 21.07.2014, his father gave the pistol and 5 live cartridges to him and told him to finish Vinod and he will manage the situation. He also disclosed that after committing murder, he gave the pistol to his father (petitioner herein) who kept it in the almirah under the cloths. The

petitioner also asked him to cut his hair short and destroy the CCTV footage and DVR.

11. Thereafter, the investigation proceeded in this direction and motor cycle used in the offence was recovered at the instance of co-accused Parth Sharma and weapon of offence i.e. Pistol alongwith two live cartridges were recovered from the house of Nikhil Rana. During investigation, one led (bullet head) was recovered from the body of the deceased during PME, one empty cartridge (khali khol) and two led (bullet head) were recovered from inside the vehicle used by the deceased. All the seized ammunition and weapon of offence were sent to CFSL for expert opinion.

12. The State has further informed that the ballistic expert vide his report dated 16.02.2015 opined that two 7.65 bullets recovered from the vehicle in which the murder took place and one 7.65 mm bullet found in the dead body of the deceased had been fired from 7.65 mm country made pistol recovered at the instance of Nikhil, son of Satbir Rana. It is further informed that the complainant Sanjay Kumar has stated in his supplementary statement that it was the petitioner who instigated him to give the statement against Nazim, Shakir and Rashid and to lodge an FIR by name against those three persons, who, however, are discharged by the learned Additional Session Judge.

13. The State has further informed that there was a pardhani issue and Gazipur Dairy issue, due to which the petitioner had grudge against the deceased for having suffered a loss in the elections for the

post of Pradhan. The Status report further discloses that there are total 37 witnesses (16 public witnesses, 21 government/police officials) out of which three witnesses have been partly examined and all the witnesses supported the prosecution case and the other material witnesses are yet to be examined.

14. I have heard the submissions of learned Senior Counsel appearing on behalf of the petitioner as well as the submissions of learned Additional Public Prosecutor for the State and also gone through the material placed on record.

15. For careful scrutiny of the case, this Court has gone through the contents of the petition as well as FIR, the disclosure statements made by the petitioner, the impugned order rejecting bail to the petitioner and the order on charge, and this Court observes that the petitioner has been charged with the offence punishable under Section 120-B read with section 302 of IPC. He is also additionally charged with the offence punishable under Section 201 and 202 of IPC.

16. This Court further observes that in the disclosure statement, the petitioner had admitted that the deceased Vinod was his cousin in relation and he had enmity with Vinod, as Vinod had defeated him in election of Pradhan and family members of Vinod insulted him and threatened to kill him. The petitioner also admitted that on 21.07.2014, his son Nikhil, shot dead Vinod. The petitioner also confessed that to save his son, he got the hair of his son cut and also deleted the recording of CCTV so that the footage of Parth Sharma arriving at our

residence could not be found. The pistol used by his son was concealed and he also misguided the police. The pistol used by his son was kept under the cloths in Almirah in his room, which he could get recovered.

17. In the charge sheet filed on behalf of the State, it is specifically mentioned that the post mortem of the deceased Vinod was conducted at LBS Hospital and Dr. Vinay Kumar Singh, Forensic Medicine, LBS Hospital had opined the cause of death being 'shock due to fire arm injuries'. This Court further observes that the investigation regarding involvement of Rupesh and Brijesh is still pending and NBWs have been issued against them.

18. So far as the judgments relied upon by the learned Senior Counsel for the petitioner are concerned, all the judgments relate to the cases determined at the final stage. The fact is that the charges have been framed against the petitioner and material witnesses are yet to be examined and at this stage, when the petitioner has been charged with the offence punishable under Section 120-B read with section 302 of IPC and in addition, charged with the offence punishable under Section 201 and 202 of IPC, what the court is required to see is, as to whether the prima facie case is made out for grant of bail to the petitioner or not.

19. 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.

20. In light of the facts and circumstances of the present case, this Court is of the view that the allegations against the petitioner are very serious in nature, in which the petitioner's involvement is to instigate the complainant to lodge FIR against Nazim, Shakir and Rashid, and also kept the weapon of offence in the almirah under the cloths, he also suggested the co-accused (his son) to cut his hair short and destroy the CCTV footage and DVR. Besides this, the material witnesses are yet to be examined, therefore, this Court is not inclined to grant bail to the petitioner – Satbir at this stage. Accordingly, the

bail application filed by the petitioner is hereby dismissed. However, the Trial Court is directed to examine all the material public witnesses expeditiously preferably within a period of four months and the petitioner would be at liberty to apply for his bail afresh before the Trial Court after the expiry of the period of four months.

21. 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.

22. With aforesaid observations, the present bail application stands disposed of.

MARCH 11, 2016
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P.S.TEJI, J