

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

Judgment delivered on : January 27, 2016

+ BAIL APPLN. 2564/2015

OM PRAKASH @ PANDEY Petitioner

Through Mr.Gaurav Sharma, Adv.

versus

THE STATE (NCT OF DELHI) Respondent

Through Mr.Amit Chadha, APP with SI Uma
Dutt, PS Mangol Puri.

AND

+ BAIL APPLN. 2379/2015

SUBHANG @ SUBHANKAR Petitioner

Through Mr.Rakesh Kumar Sharma, Adv.

versus

THE STATE (NCT OF DELHI) Respondent

Through Mr.Amit Chadha, APP with SI Uma
Dutta, PS Mangol Puri.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. By this common order I propose to dispose of the aforesaid two
petitions filed under Section 439 of Code of Criminal Procedure, 1973

(hereinafter referred to as the Cr. P.C.), wherein the petitioner – Om Prakash was initially charged with the offence punishable under Section 365 of Indian Penal Code (hereinafter referred to as ‘IPC’) vide FIR No. 2306/14 registered at Police Station Mangolpuri, Delhi and the petitioner – Subhang @ Subhankar was charged with the offence punishable under Section 279/304A of IPC vide FIR No. 1566/14 registered at Police Station Narela, Delhi. Ultimately, both the FIRs were clubbed together and the charge sheet was filed under Section 364/302/34 of IPC against the accused persons and the both the petitioners were charged with the offences punishable under Section 302/34 of IPC. Accused Om Prakash @ Pandey was also charged for the offence punishable under Section 364 IPC.

2. The facts of two incidents made a chain for consolidating the two registered FIRs into one trial. In brief, the prosecution case is as under:-

“On 05.12.2014, Smt. Kamla, mother of one Manoj (since deceased) lodged a missing report of his son Manoj vide DD No.11B with Police Station Mangol Puri, Delhi, and accordingly FIR No. 2306/2014 under Section 365 IPC was registered. On 15.12.2014, Shri Mohan Lal, father of the

deceased Manoj had given a statement to the police suspecting the role of the petitioner – Om Parkash @ Pandey in the kidnapping of his son and hiding him at some unknown place. Simultaneously, on 05.12.2014 upon an information regarding an injured person lying at Mansha Devi Road, Near Singhu Border, Narela Road, Narela, Delhi, another FIR 1566/2014 under Section 279/304A of IPC was recorded in Police Station Narela. After the demise of the injured – Manoj, the petitioner - Om Parkash @ Pandey was arrested.

As per prosecution, the petitioner - Om Parkash @ Pandey was last seen with the deceased by one Smt. Padma at Mangol Puri.

Upon disclosure statement of petitioner – Om Parkash @ Pandey, two co-accused persons namely Bhavnesh @ Bhima and Subhang @ Subhankaran were also arrested.

During investigation, recovery of weapon of offence, being plug pana was recovered from the petitioner - Om Parkash @ Pandey and a knife was recovered at the instance of petitioner – Subhang @ Subhankar from the Railway Fatak.

Post Mortem Report of deceased Manoj was conducted and the body was found with two incised wound on his person which were caused by sharp edged weapon and one reddish colour bruise on the left side of the forehead of the deceased and the said forehead injury, consequent upon blunt force impact to the head, was opined to be

sufficient to cause death in ordinary course of nature.”

3. Let us first deal with the petition filed by the petitioner - Om Parkash @ Pandey.

4. Mr. Gaurav Sharma, counsel appearing for the petitioner vehemently argued the case and contended that there is no incriminating evidence against the petitioner - Om Parkash @ Pandey and he has been charged for the offence punishable under Section 365 IPC only on the mere suspicion raised by the father of deceased on 15.12.2014. As regards the prosecution witness – Smt. Padma, it is contended that she has been fabricated by the prosecution as a last seen evidence, who had stated in her statement that she had last seen the present accused with the deceased in Mangolpuri. It is further contended that the said witness – Smt. Padma has made representations to the higher police officers stating that she had never seen the petitioner with the deceased on 04.12.2014. It is further contended that the Investigating Officer had recorded the statement of other family members of the deceased only after recovery of dead body of the deceased Manoj and upon coming to know about the registration of FIR No. 1566/2014 under Section 279/304A of IPC,

Police Station Narela, Delhi. To buttress his argument, counsel for the petitioner submitted that no witness had stated that the present petitioner was seen with the deceased, talking to him or kidnapping him. Counsel for the petitioner further argued that the recovery of a car and plug pana from the petitioner is false and fabricated as the same was recovered in a park in Gurgaon, which is hit under Section 166 of Cr. P.C. Absence of ingredients of Section 302/365 IPC has also been urged. It is further argued that the petitioner is a permanent resident of Delhi and runs a workshop for repairing vehicles to earn his livelihood.

5. On the other hand, Mr. Rakesh Kumar Sharma, counsel for the petitioner – Subhang @ Subhankar contended that the petitioner has been falsely implicated by the police officials of Police Station Mangolpuri, Delhi on the basis of disclosure statement of co-accused Om Prakash @ Pandey. On the point of recovery, counsel for petitioner – Subhang @ Subhankar submitted that the knife was recovered after three months of the incident from an open place which is accessible to public i.e. near Railway Fatak. Counsel for the petitioner – Subhang @ Subhankar contended that the prosecution has

registered the case against the petitioner on the basis of circumstantial evidence and the chain of events is not properly connected. It is submitted that the dead body of the deceased was found on the road side and the FIR No. 1566/2014 under Section 279/304A of IPC was registered at Police Station Narela, Delhi on 05.12.2014. Counsel further submitted that as per observation of Dr. Rajesh Kumar in the MLC No.3958 of unknown person on 05.12.2014, it was his opinion that no injury was caused by a sharp edge weapon and such injuries can be caused in a Road Transport Accident. It is further contended that the dead body of the deceased was disposed of without identification by closed relatives though both the FIRs are registered in the same District under the jurisdiction of the same Deputy Commission of Police i.e. Outer District and no scientific samples were preserved as the post mortem was conducted on the basis of FIR No. =, treating it as a road side accident. On the point of weapon of offence, it is argued that the same was not sent to the laboratory as the recovery is a planted one and the same is not connected to the injury of the deceased. Counsel for petitioner – Subhang @ Subhankar further urged that there is no eye witness and no last seen witness

against the petitioner. In a case based on circumstantial evidence, the 'motive' has a prime role and the prosecution has not succeeded in disclosing any motive or intention to kill the deceased. Lastly, it is contended that the petitioner is a permanent resident of Delhi and there is no chance of his absconding or tampering with the prosecution evidence.

6. To represent the prosecution case, Mr. Amit Chadha, Additional Public Prosecutor vehemently opposed the contentions raised by counsel for the petitioners. It is submitted that the petitioner - Om Parkash @ Pandey has himself disclosed about his involvement in the commission of the said crime and not only this, he has also disclosed the names of his associates – Shubhang @ Shubhankar and one Bhuvnesh. It is only thereafter that all the three accused were arrested on the same day, i.e. 15.03.2015. Learned Additional Public Prosecutor for the State has also submitted that as per the Post Mortem Report, the deceased Manoj was found having two incised wounds on his person which were caused by a sharp edged weapon besides head injury and the weapon of offence, i.e., a knife was recovered at the instance of petitioner – Shubhang @ Shubhankar and

in subsequent opinion, the Autopsy Surgeon opined that the injuries found on the person of deceased Manoj were possible with the knife recovered at the instance of the petitioner- Shubhang @ Shubhankar.

7. As regards, petitioner - Om Parkash @ Pandey, learned Additional Public Prosecutor for the State submitted that during investigation, it was revealed that he wanted to grab the house of his sister-Nathi situated at Dausa, Rajasthan but he was not able to do so because Manoj was residing in the said house. Thus, he hatched a plan to kill Manoj and he got the chance to execute his plan on 01.12.2014 when all the family members including Manoj and Om Prakash gathered together on the occasion of marriage of Rajni, cousin sister of the deceased Manoj and niece of accused - Om Prakash. There is also a recovery of weapon of offence, i.e. Tyre Panna with the help of which deceased was attacked and the car in which deceased was taken at the instance of Petitioner - Om Parkash @ Pandey. It is further submitted that the Autopsy Surgeon opined that the injuries found on the forehead of deceased Manoj were possible with the Tyre Panna recovered at the instance of petitioner.

8. Learned Additional Public Prosecutor for the State further
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submitted that the charge sheet was filed under Section 364/302/34 of IPC against all the accused and finally both the petitioners have been charged under Section 302/34 of IPC vide order dated 06.10.2015, apart from accused Om Prakash @ Pandey who was also charged for the offence punishable under Section 364 IPC. It is further argued that both the petitioners have been charged with the serious offence and in the facts and circumstances of the present case, the petitions filed by the petitioners deserve to be dismissed.

9. I have heard the arguments on behalf of both the petitioners and also the submissions made by learned Additional Public Prosecutor for the State.

10. After careful perusal of the record of this case and the facts and circumstances of the present case, this Court notes that initially the case was registered under Section 365 of IPC against an unknown person but later on father of deceased Manoj, raised a suspicion on petitioner - Om Parkash @ Pandey. Simultaneously, another FIR under Section 279/304A of IPC vide FIR No. 1566/14 was registered at Police Station Narela, Delhi, which was later on clubbed with the

FIR No. 2306/2014 and during investigation, petitioner - Om Parkash

@ Pandey had himself disclosed about his involvement in the commission of crime and not only this, he also disclosed the names of his associates – Shubhang @ Shubhankar and one Bhuvnesh. After conclusion of investigation, the charge sheet was filed under Section 364/302/34 of IPC against all the accused and finally the petitioners were charged with the offence punishable under Section 302/34 of IPC vide order dated 06.10.2015. Accused Om Prakash @ Pandey was also charged for the offence punishable under Section 364 IPC.

11. This Court also records that there is recovery of a plug panna at the instance of petitioner - Om Parkash @ Pandey and a knife at the instance of petitioner – Subhang @ Subhankar. So far as the motive part is concerned, during investigation, the status report filed on behalf of the State clearly revealed that the deceased Manoj was residing at the house of his mausi namely Nathi at Dausa, Rajasthan and petitioner - Om Parkash @ Pandey wanted to grab the house of his sister but due to the fact that the deceased Manoj was in possession of the said house, he hatched a plan to kill Manoj.

12. In light of the aforesaid facts and circumstances, recoveries effected from both the petitioners at their own instance and the motive

of petitioner - Om Parkash @ Pandey to grab the house of his sister Nathi are self sufficient and this Court need not to go into the facts of the case, as the same are subject matter of trial.

13. In view of the aforesaid discussion, this Court is of the opinion that the petitioner - Om Parkash @ Pandey and petitioner – Subhang @ Subhankar do not deserve the concession of bail in this case, especially when the petitioners are charged with the serious offence, under Section 302/34 of IPC apart from charge under Section 364 IPC against accused Om Parkash @ Pandey, at this stage. Accordingly, the present petitions filed by the petitioner - Om Parkash @ Pandey and petitioner – Subhang @ Subhankar are dismissed at this stage.

14. Before parting with this order, it is made clear that the expression of any opinion made hereinbefore shall not have any bearing on the merits of the case.

15. In view of the aforesaid observations, both the petitions stand disposed of.

(P.S.TEJI)
JUDGE

JANUARY 27, 2016
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