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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : MAY 19, 2017

DECIDED ON : MAY 31, 2017.

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CRL.M.C. 844/2017 & CRL.M.A.No.3554/17

ROHIT BANSAL

..... Petitioner

Through : Mr.Sunil K.Mittal, Advocate with
Mr.Harsh Khanna, Mr.Aman Usman,
Mr.Kshitij Mittal & Mr.Anshul
Mittal, Advocates.

versus

STATE & ANR.

..... Respondents

Through : Mr.Amit Gupta, APP with
Insp.Satender Sangwan.
Mr.Sidharth Luthra, Sr.Advocate with
Mr.Tanveer Mir & Mr.Shri Singh,
Advocate for R2.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The instant petition under Section 439(2) read with Section 482 Cr.P.C. has been preferred by the petitioner-Rohit Bansal to challenge the legality and correctness of an order dated 27.2.2017 of learned Additional Sessions Judge in FIR No.1187/2015 registered under Sections 302/308/201/212/34 IPC at Police Station Hauz Khas whereby the

respondent No.2- Anil Yadav (hereinafter referred to as 'the respondent') was granted regular bail. The petition is contested by 'the respondent'.

2. I have heard the learned counsel for the petitioner, learned APP and learned Senior counsel for 'the respondent' and have examined the file. Undisputedly, 'the respondent' is facing trial in case FIR No.1187/2015 registered under Sections 302/308/201/212/34 IPC.

3. Briefly stated the facts as projected in the charge-sheet are that on 22.10.15 on receipt of DD No.10A regarding admission of injured Rupesh Tanwar and Rohit Bansal at Trauma Centre, AIIMS, ASI Dalbir Singh went there and lodged First Information Report after recording petitioner's statement. The petitioner informed that on 21.10.2015, he along with his friends Vinit, Sonu, Rupesh (since deceased) and Monu had gone to Shanghai Club in two cars i.e. Santro and Honda Civic at 12.00-12.15 (night). During dance on the floor of the club, the petitioner's hand stuck with an individual to whom he said 'sorry'. The said individual abused and boosted him if he did not know him. The matter was pacified by the bouncers. Thereafter, they came out of the club and reached IIT Gate in cars. The petitioner further disclosed that he found his mobile to have fallen during quarrel. He along with his friends Rupesh, Sonu and Monu went back in Santro car to the club. When they reached near the club at some distance before it, he found that a Mercedes and EON car had blocked the road; Bolero car was parked on the road-side. When they asked them to remove the car, one of the boys with whom an altercation had taken place in the club, threatened to teach them lesson as they were the individuals who had misbehaved in the club. Thereafter, all the 7/8 assailants started beating them. Out of them, one brought a rod from the car and started hitting

Rupesh. When he intervened to save Rupesh, they also made him to fall on the road. One of the assailants lifted a cemented brick and hit him on his head. They all ran towards different directions to save themselves leaving Santro at the spot. He further informed that when he returned to take back his car, he saw Rupesh lying at the spot unconscious; he had sustained various injuries on the body. He and his friend Sunil put Rupesh in Santro and took him to AIIMS Trauma Centre. The complainant gave description of the assailants in the complaint. A case under Section 307/308/34 IPC came to be registered.

4. During the course of investigation, statements of Sagar Sharma @ Sonu, Jitender, Vinit, Mohinder @ Monu and Sunil conversant with facts were recorded. Statement of Vinod Sharma and Jeyavelu, Managers of the club, were also recorded. CCTV footage of the camera installed at the spot was viewed; footage was obtained and photographs were developed. Rupesh's statement could not be recorded as he remained unfit throughout and finally succumbed to the injuries on 26.10.2015. During investigation, 'the respondent' and his associates were arrested and their disclosure statements were recorded. Certain recoveries were effected at their instance. The respondent and his associates declined to participate in Test Identification Proceedings. Upon completion of investigation, a charge-sheet was filed against all of them including 'the respondent' for commission of offences under Sections 302/308/201/34 IPC; charge-sheet against Siddhant @ Goldy was prepared under Section 201/212 IPC.

5. By a detailed/comprehensive impugned combined order, the Trial Court ordered to frame charge against all for commission of offence

under Sections 302/308/34 IPC; charge under Section 201/212 was framed against Siddhant @ Goldy.

The Trial Court noted in para 35 of the order that at the time of framing of charge, the court has to satisfy itself whether a prima facie case is made out for proceeding further or not. The court at this stage is not meant to meticulously weigh the evidence. Even a strong suspicion founded upon the material is sufficient for framing of charge, it is not open to the court at this stage, to evaluate the material to bring home the guilt of the accused. It is sufficient if the material on the record supports a triable issue. Court is not expected to go into the probative value on record, nor required to discuss every material placed before it by the police along with the charge-sheet.

It was further observed that there were specific roles assigned to the assailants. Various discrepancies in the prosecution case pointed out by the learned counsel for the accused persons regarding the non-disclosure of name of the accused in the FIR recorded after 10 hours of the incident; the non-placement of the CCTV footage of the CCTV installed inside the club to show who was the aggressor to the said scuffle in the club and to show whether infact any mobile phone of injured Rohit Bansal had fallen during that scuffle or not; the CCTV did not also corroborate the statement of the witnesses that the cars of the accused persons were blocking the road and it also did not suggest that A-4 had apparent role in inflicting injuries to the injured as well as to the deceased, could not be appreciated at this stage, despite the fact that these had not been noticed in the CCTV footage. The court further noted that there were categorical statements of eye witnesses and other witnesses regarding the involvement of 'the respondent' besides other accused persons in inflicting injuries to the injured Rohit Bansal and

Rupesh Tanwar (deceased). It was further noted that the statements of witnesses coupled with CCTV footage suggested that the accused persons had shared common intention formed at the spur of moment to kill Rupesh Tanwar and cause injuries to the complainant Rohit Bansal and the said fact also stood corroborated from the MLC where the complainant Rohit Bansal had suffered head injuries and as per post-mortem report, the deceased had sustained multiple injuries on the head. The accused person's contention to frame under Section 304 IPC was declined. It is unclear if the order on charge has been challenged by 'the respondent' or his associates.

6. By the said order, 'the respondent' was, however, granted regular bail. The Trial Court was of the view that crux of CCTV footage was deciphered by the Investigating Officer in the charge-sheet and no role was assigned to 'the respondent' in the crime therein. Besides it, there were other discrepancies as discussed at the time of consideration of charge which were relevant to be taken into consideration for grant of bail. Moreover, 'the respondent' was in custody since 31.10.2015.

7. Learned counsel for the petitioner urged that the impugned order granting bail to 'the respondent' in a gruesome murder cannot be sustained. The petitioner and his friend Rupesh were mercilessly beaten by 'the respondent' and his associates. The incident was witnessed by many eye witnesses who have identified 'the respondent' and his associates to be the perpetrators of the crime. In their statements Sagar Sharma @ Sonu, Jitender, Mohinder @ Monu, Rohit Kumar, Chetan Prakash, Sonu, Praveen and the petitioner Rohit Bansal have categorically implicated 'the respondent' and his friends and have assigned specific and definite role to them in the crime. The crime weapon i.e. baseball bat has been recovered at

the instance of 'the respondent' pursuant to his disclosure statement made. Clothes which the respondent was wearing at the time of crime have been seized and the FSL report is awaited. CCTV footage installed at the place of occurrence, records presence and active participation of all the accused persons including 'the respondent' in the incident. The learned Trial Court did not appreciate the specific allegations, statements recorded under Section 161 Cr.P.C. and the gravity of the offence. The Trial Court granted regular bail to 'the respondent' in haste and discretion was not exercised in judicial manner. The complainant was not given an opportunity to assist the court on the factual matrix of the case.

8. Learned Senior counsel for 'the respondent' urged that as per CCTV footage, 'the respondent's' presence was not found at the spot. The complainant Rohit Bansal in his initial statement dated 22.10.2015 did not name 'the respondent' to be one of the assailants; he did not mention if any baseball bat was used in inflicting injuries to him or the deceased. Subsequently, in his supplementary statement recorded on 1.11.2015, the complainant made vital improvements and attributed a definite role to A-4 to have inflicted injuries with baseball bat. He further urged that as per CDR record, complainant Rohit Bansal's presence was actually at Taj Apartments, Factory Road, Ring Road at 1:37:17 a.m. He further urged that CCTV footage showed that Mercedes car entered the lane only at 1:37:55 a.m. As per CCTV footage, relied upon by the prosecution, the Mercedes car entered the lane of incident at around 1:37:56 a.m. and stood at a distance of 20 meters away from the spot of the brawl. In the Mercedes car, 'the respondent' was seen with a girl. However, the police did not try to identify the said girl. At around 1:39:34 a.m. the said Mercedes car driven

by 'the respondent' was seen exiting the lane of the incident. CCTV footage captured the entire assault and it is clear from the said CCTV footage that no one had used the baseball bat in committing the assault. The Mercedes car allegedly driven by 'the respondent' was recovered at the instance of co-accused Vikas @ Shammi and the baseball bat shown to have been recovered at 'the respondent's' instance did not have blood stains or finger prints. Similarly, clothes allegedly recovered from 'the respondent' did not contain any blood stains.

9. Learned Senior counsel urged that the discretion has been exercised judiciously by the Trial Court and 'the respondent' was in custody for the last about 16 months. The occurrence had taken place at the spur of the moment and there was no preplan to commit Rupesh's murder.

10. 'The respondent' and his associates/co-accused are involved in a very heinous and gruesome murder whereby Rupesh, an unarmed individual, was brutally beaten to death over a trivial issue. After beating, he was disrobed and the body remained lying naked at the crime spot. He became unconscious after sustaining multiple injuries on various body organs and was not fit to make statement. Due to forceful blows, Rupesh, a young boy, finally succumbed to the injuries on 26.10.2015. As per post-mortem examination report, he had suffered 21 injuries on various body parts including vital ones. The occurrence took place on the night intervening 21/22.10.2015. In the complaint forming basis of the FIR, the complainant gave detailed account of the incident and informed the police as to how the assailants, seven to eight in number, had inflicted injuries to him and Rupesh over a scuffle taken place in Shanghai Club. He further disclosed that when they had returned to the spot to search mobile, a

Mercedes, EON car had blocked the road and a Bolero Car was parked on the side of the road. He took the victim to AIIMS Trauma Centre. Presence of the Complainant Rohit Bansal at the spot can't be suspected or doubted, he being injured himself.

11. Soon after the lodging of the FIR, statements of various witnesses were recorded under Section 161 Cr.P.C. Sagar Sharma @ Sonu corroborated the complainant's version and stated that on return to the club to take back Rohit Bansal's mobile, they saw that an EON car and Mercedes Car had blocked their way. When they asked for removal of the car, the occupants started quarreling with them. One of them had a baseball bat and the other was carrying an iron-rod. They were calling each other with the name of 'Maddy', 'Ashish', 'Vishal', 'Shammi', 'Vikas' and 'Anil Bhai'. Specific role was assigned to each of the assailants. Similarly Vineet, Jitender, Mohinder @ Monu and Sunil have supported his version. After considering arguments from the both sides, charges under Sections 302/308/34 IPC were framed against 'the respondent' and the others.

Undisputedly, Mercedes car was seen at the spot at the time of occurrence in CCTV footage. Specific query was raised as to whom the said car belonged. It was fairly informed by the learned Senior counsel that it belonged to 'the respondent'. When inquired as to whether 'the respondent' had reached the spot in the said Mercedes, the answer was in affirmation. Respondent's only contention is that the said Mercedes car was away at a distance of 20 meters from the spot and he did not reach the place of occurrence; did not participate in the quarrel and no role was played by him.

Identity of the girls present in the car has not been disclosed even by 'the respondent' who is expected to know it. All the assailants were

together in the club when the scuffle had taken place over a trivial issue. The complainant and the other eye witnesses in their statements have categorically identified 'the respondent' and others to have participated in the infliction of injuries to the petitioner and deceased Rupesh Tanwar with various weapons/objects. 'The respondent' and the co-accused declined to participate in the Test Identification Proceedings. Certain recoveries are stated to have been effected at the instance of 'the respondent' and others. Nothing is on record to ascertain at this stage if after the initial scuffle in the club, 'the respondent' had left the spot or had not accompanied the co-accused. No explanation has been offered as to why 'the respondent' had arrived at 1:37:55 a.m. in Mercedes car near the spot. It cannot be believed that 'the respondent' after witnessing the horrible crime nearby would not intervene or participate or that he will remain a mute spectator and would not come out of the Mercedes or would conveniently leave the spot without demur or reaction. Statements of eye witnesses cannot be ignored or brushed aside at this stage.

12. The learned Trial Court while granting bail put great emphasis on CCTV footage to conclude that 'the respondent' was not involved in the incident and he did not play any role, whatsoever. The conclusion arrived to grant bail is presumptive. At the stage of granting bail, a minute examination of evidence and elaborate documentation of the merits of the case was not to be undertaken. In *Puran etc.etc. vs. Rambilas & Anr.etc.etc.* MANU/SC/0326/2001; AIR 2001 SC 2023, it was held that at the stage of granting bail, a detailed examination of the evidence and elaborate documentation of the merits of the case has not to be undertaken. What the Additional Sessions Judge had done, in the order dated 11.9.2000, was to

discuss the merits and demerits of the evidence. That was what was deprecated. It was further observed that the High Court has correctly not gone into the merits and demerits of the matter. The High Court has noted that evidence prima facie indicated demand of dowry. The High Court has briefly indicated the evidence on record and what was found at the scene of the offence. The High Court has given very cogent reasons why bail should not have been granted and why this unjustified erroneous order granting bail should be cancelled.

In the instant case, the Trial Court had found ‘the respondent’ and others, prima facie, guilty for committing murder but, strange enough opted to grant bail to ‘the respondent’ relying upon CCTV footage. I have examined/viewd the CCTV footage/CD provided by the learned counsel for ‘the respondent’ in the computer in chamber. Seemingly, the footage recorded in the CCTV did not cover the entire place of occurrence. It was a revolving camera moving horizontally and vertically. Possibly, it could not capture the whole incident from all angles at the same time. In the CCTV footage, Mercedes car is seen to have arrived at the spot at 1:30:26. It remained at the spot subsequent to it. At 1:39:34, the Mercedes is seen leaving the spot by reversing it. ‘The respondent’ is seen entering into the Mercedes. It is, however, not clear as to when the said individual (the respondent) had come out of the said Mercedes. The petitioner has also placed on record photographs developed from the footage recorded in the CCTV. In photographs No.1, 2 and 4, ‘the respondent’ is indicated inflicting injuries to the victim along with others at 1:37:30; 1:37:31; and 1:37:31 respectively.

In photograph No.3, Mercedes is seen at the spot at 1:34:49. In photo No.5 'the respondent' is seen entering the Mercedes at 01:38:29. It belies the respondent's contention that the Mercedes entered for the first time in the lane of the occurrence only at 1:37:56. In photos Mark 'A' and 'B' the respondent's car is seen at the spot at 01:30:41 and 01:31:50 too.

13. This Court is conscious that cancellation of bail is a serious matter. Bail once granted can be cancelled only when there exist very cogent and overwhelming circumstances. It is settled law that parameters for grant of bail and cancellation of bail are different. However, if the Trial Court while granting bail acts on irrelevant materials, bail can be cancelled. The bail can be cancelled even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the Court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court would be justified in cancelling the bail. Such orders are against the well recognised principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to temper with the evidence, to flee from justice etc. would not deter the Court from cancelling the bail (*Kanwar Singh Meena vs. State of Rajasthan & Anr.*, AIR 2013 SC 296).

14. In *Puran etc.etc. vs. Rambilas & Anr.etc.etc.*(supra) also the Supreme Court held that where in a perverse order granting bail is passed in a heinous crime of the nature of causing dowry death ignoring material and evidence on record and that too without giving any reasons, bail can be

cancelled. Such an order would be against the principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected.

15. In *Gobarbhai Naranbhai Singala vs. State of Gujarat and Ors.* (2008) 3 SCC 775, the Supreme Court held that the object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the society by preventing the accused from tempering with the evidence in the heinous crime. When the basic requirements necessary for grant of bail are completely ignored by the High Court, the Apex Court would be justified in cancelling the bail. In the said case, the accused' custody for more than two years was not considered to be tenable ground to grant bail. Sixteen months incarceration, in the present, case was also not a valid consideration to grant bail to 'the respondent' considering the gravity of the offence.

16. During arguments, it was inquired if the other assailants were in custody or on bail. It was informed by the learned counsel for the petitioner that the other assailants/accused have also been granted bail on parity. The impugned order reveals that apprehension was raised that offence committed was heinous in nature and there was every likelihood that 'the respondent' would misuse the liberty of bail and threaten the witnesses. This aspect was not taken into consideration while granting bail.

17. Since the Trial Court, prima facie, found 'the respondent' and others to have committed the offence under Section 302/308 IPC with the

aid of Section 34 IPC, grant of bail to 'the respondent' merely because of certain discrepancies, cannot be justified.

18. Resultantly, the petition is allowed and the bail granted to 'the respondent' is cancelled. 'The respondent' shall surrender and appear before the Trial Court on 19th June, 2017.

19. Observations in the order shall have no impact on the merits of the case. These observations are only for the purpose of ascertaining if the bail granted to 'the respondent' was sustainable or not.

20. Trial Court record (if any) along with the copy of the order for information be sent back forthwith.

(S.P.GARG)
JUDGE

MAY 31, 2017/sa