

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

Reserved on : 23.10.2019
Pronounced on : 14.11.2019
%
+ **BAIL APPLN. 46/2019**

ANIL KAURA @ SACHIN Petitioner

Through: Mr. Sunil K. Mittal, Adv.

Versus

THE STATE Respondent

Through: Mr. Amit Ahlawat, APP for
State with Insp. Sushma
Saxena, P.S. Mehrauli.
Mr. Ramesh Gupta, Sr. Adv.
with Mr. Bharat Sharma and
Mr. Kapil Tanwar, Advs. for
complainant.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

1. This is an application filed under Section 439 Cr.P.C. read with Section 482 Cr.P.C. on behalf of the petitioner for grant of regular bail in case FIR No. 181/2018 dated 17.03.2018 under Sections 302/307/34/120-B/201 IPC and Sections 27/54/59 of Arms Act, registered at Police Station Mehrauli.

2. In brief, the above said FIR was registered on the statement of the complainant Rakesh Kumar. According to the complainant, he is the President of A, B, C Block Chattarpur

Enclave and one Jaidev is the Vice President. According to him, Sandeep Gupta and Ashish Kochar are the builders of the area and violate the building plan and they also do not agree to the request of the complainant to keep the ground floor portion of the properties reserved for parking. According to the complainant, because of this, both Sandeep Gupta and Ashish Kochar are inimical towards him and Jaidev and they had even threatened them many times. According to the complainant, on the night of 16.03.2018, when he along with his son Nitin and Jaidev was coming from F2B Farm Fatehpur Beri after attending a party and when at about 11:30 p.m. they reached at the corner of C-14, Chattarpur Enclave, to drop Jaidev, he saw Sandeep Gupta, Ashish Kochar and Sachin Gupta (petitioner) present there. When Jaidev got down from the car, he was caught by Sandeep Gupta and Ashish Kochar and they started abusing him and also started giving him beatings. In the meanwhile, on hearing the noise, Sumit, son of Jaidev and Gaurav Chaudhary, son of the complainant, came at the spot.

3. According to the complainant, accused Sandeep Gupta started saying that since they all create hurdle in building the properties so they should be taught a lesson. In the meanwhile, Ashish Kochar took out a gun from his pant and accused Sandeep Gupta tried to catch the complainant and exhorted to Ashish that all these people should be shot. Hearing this, according to the

complainant, accused Ashish fired at the complainant but he was saved by his son Nitin as he pushed him. In the meanwhile, accused Ashish Kochar shot Nitin, son of the complainant, who received injury on his head and hand. Thereafter, when Sumit, son of Jaidev, tried to stop them, then accused Sandeep Gupta caught hold of his hand and exhorted Ashish Kochar to shoot him. On this, accused Ashish Kochar shot Sumit in his chest who fell down and at the same time gun of Ashish Kochar also fell on the ground. Accused Sachin (petitioner), who is the brother-in-law of co-accused Ashish Kochar, picked up the gun and they all escaped from the spot in a car. According to the complainant, he along with Jaidev and other public persons removed Sumit and Nitin in a private car to Fortis Hospital where Sumit was declared dead and his son Nitin was admitted for treatment.

4. I have heard the Ld. counsel for the petitioner and Ld. APP or the State and given my thoughtful consideration to the matter.

5. It is urged by the Ld. counsel for the petitioner that the petitioner has been falsely implicated and as per the supplementary charge sheet the petitioner was not even present at the place of occurrence at the relevant time. It is further urged that the only role assigned to the petitioner is that he was present at the spot and picked up the gun which had allegedly fallen on

the ground after the incident and fled away from the spot alongwith the other two accused persons in a car. He further urged that no overt act has been attributed to the petitioner and in the circumstances of the case he cannot be said to have shared common intention with the co-accused persons in committing the crime as alleged by the prosecution.

6. He further urged that the complainant, other witnesses and the mother of the deceased they all have given different versions and there are contradictions in their statements. He further urged that complainant Rakesh Kumar had made a call to the PCR and had detailed about the incident but he has not mentioned the name of the petitioner which clearly shows that the name of the petitioner has been introduced later on after due deliberation as the FIR was lodged after the unexplained delay of 12 hours. He further urged that according to the mother of the deceased some persons in a black Safari car came from the jungle side and opened fire on his son which is also in contradiction to the case of the prosecution. He further urged that by recording the supplementary statements a new case was introduced and Nidhi Kochar w/o Ashish Kochar was also made an accused who was lateron discharged by the Trial Court which further goes to show that the case of the prosecution is a false case. He further urged that no blood stains and empty cartridges were found at the spot which shows that the incident had not taken place as projected by

the prosecution. He further urged that the weapon of offence i.e. the pistol which is alleged to have been used in the incident and taken away by the petitioner has also not been recovered. He further urged that PW Nitin Baisla is not a trustworthy witness because as per the case of the prosecution he had sustained gunshot injury but as per the MLC the nature of injuries suffered by him are simple and blunt and the doctor has opined that these injuries could not be caused by a bullet. He further urged that the non mentioning the name of the assailant in the MLC strongly suggest that the injured was not present at the spot otherwise injured Nitin would have definitely named the accused persons. Counsel for the petitioner has relied upon ***Rangaswami Vs. State of Tamil Nadu***, Criminal Appeal No. 60 of 1983, MANU/SC/0461/1989.

7. On the other hand, it is urged by the Ld. APP for the state that the petitioner has actively participated in the crime and he shared common intention with other co-accused persons which is evident from his conduct which shows that he alongwith other co-accused persons was waylaying and waiting for the complainant and other persons to come and after the shooting incident he picked up the gun and escaped with other co-accused persons. It is further urged by the Ld. APP for the state that this is not the stage of threadbare analysis of the testimony of the witnesses and

to discuss the contradictions in order to see whether they are trustworthy or not.

8. It is submitted by the Ld. APP for the State that the judgment relied upon by the counsel for the petitioner is not applicable to the facts of the case as the case relied upon is after the stage of conviction in which when the entire evidence was recorded final judgment was passed on the basis of evidence which had come on record.

9. As far as the question of delay in lodging the FIR is concerned, it is submitted by the Ld. APP for the state that the delay in the instant case is not for a long period and there is a delay of only 12 hours and moreover, the delay in registration of the FIR cannot be a ground for bail to the petitioner.

10. The argument of the counsel for the petitioner that there are contradictions between the statements of the witnesses cannot be sustained at this stage because the detailed analysis of the evidence of the witnesses at this stage might prejudice the case of either of the parties i.e. the petitioner or the prosecution. The contention of the Ld. counsel that the names of the assailant were not mentioned in the MLC cannot be said to be a ground to disbelieve the case of the prosecution because it is seen that doctors are much more interested in treating the patient rather than making enquiry about the name of the assailants.

11. According to the petitioner, he was not present at the place of incident when it took place. This plea of alibi can be proved by the petitioner during the course of trial and as far as the contention that no cartridge or blood stains were found at the spot, it is evident from the case of the prosecution that the injured was immediately removed to the hospital and it is nobody's case that he was lying on the ground after receiving injury and only in that circumstances the blood could have been found at the place of incident. Non recovery of the cartridges from the place of incident on which also much stress has been laid down by the counsel for the petitioner cannot be a ground at this stage to belie the entire case of the prosecution and its effect on the case of the prosecution would be seen once the entire evidence comes on record.

12. The allegations against the petitioner are grave and serious in nature and public witnesses are under examination, so at this stage, I am not inclined to grant bail to the petitioner, the application is, therefore, dismissed.

13. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of the case.

RAJNISH BHATNAGAR, J

NOVEMBER 14, 2019

Sumant