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

\+ BAIL APPLN. 1240/2020

VINOD @ SONU @ GANJA ..... Petitioner

Through: Mr. Vineet Jain, Advocate.

versus

STATE ..... Respondent

Through: Mr. Sanjeev Sabharwal, APP for State.

Mr. Dinesh Rohilla, Advocate for complainant.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>O R D E R</u>

% **15.07.2020**

1. The hearing was conducted through video conferencing.
2. The petitioner seeks Regular Bail in case FIR No. 283/19 registered at Police Station: Patel Nagar under sections 307/323/324/341/201/34 IPC, 1860 & section 25 of Arms Act, 1959. Chargesheet has been filed. According to the FIR and Chargesheet, the petitioner did not stab or cause injury to the victim. He is stated to be the part of a group of persons who assaulted the victim. The other eye-witness-Shail Luthra also has not identified the complainant, as being the one who had stabbed or beaten the victim. The petitioner has only been identified as being the part of a group of persons who caused grievous injuries ot the victim but no individual role of the petitioner assaulting the victim has been attributed or alleged. Neither is there any criminal antecedent of the petitioner. This issue has been dealt with by the dicta of the Supreme Court in *Sonu @ Sunil vs State of Madhya Pradesh* 2020 SCC OnLine

SC 473 decided on 29.05.2020, which held , *inter alia,* as under:

> *36. In Arun v. State by Inspector of Police, Tamil Nadu[7], this Court, dealing with the case where Section 34 of the IPC was sought to be invoked against the appellant in the matter of committing the offence of murder. No doubt, it was a case where there was no charge or evidence that he committed the murder. This Court referred to the tests laid down in the decision in Dharam Pal v. State of Haryana[8] and we would refer to paragraphs 14 and 15 of the said judgment. The same reads as under:*
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> > *"14. It may be that when some persons start with a pre-arranged plan to commit a minor offence, they may in the course of their committing the minor offence come to an understanding to commit the major offence as well. Such an understanding may appear from the conduct of the persons sought to be made vicariously liable for the act of the principal culprit or from some other incriminatory evidence but the conduct or other evidence must be such as not to leave any room for doubt in that behalf.*
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> > *15. A criminal court fastening vicarious liability must satisfy itself as to the prior meeting of the minds of the principal culprit and his companions who are sought to be constructively made liable in respect of every act committed by the former. There is no law to our knowledge which lays down that a person accompanying the principal culprit shares his intention in respect of every act which the latter might eventually commit. The existence or otherwise of the common intention depends upon the facts and circumstances of each case. The intention of the principal offender and his companions to deal with any person who might intervene to stop the quarrel must be apparent from the conduct of the persons accompanying the principal*

culprit or some other clear and cogent incriminating piece of evidence. In the absence of such material, the companion or companions cannot justifiably be held guilty for every offence committed by the principal offender."

(Emphasis Supplied)

37. As far as the presumption being drawn of common intention, we notice the judgment of this Court in Brijlal Pd. Sinha v. State of Bihar[9]:

"11……..The liability of one person for an offence committed by another in the course of a criminal act perpetrated by several persons will arise under Section 34 of the Penal Code, 1860 only where such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. Direct proof of common intention will, of course, be difficult to get and such intention can only be inferred from the circumstances. But the existence of a common intention must be a necessary inference from the circumstances established in a given case. A common intention can only be inferred from the acts of the parties. Unless a common intention is established as a matter of necessary inference from the proved circumstances the accused persons will be liable for their individual act and not for the act done by any other person. For an inference of common intention to be drawn for the purposes of Section 34, the evidence and the circumstances of the case should establish, without any room for doubt, that a meeting of minds and a fusion of ideas had taken place amongst the different accused and in prosecution of it, the overt acts of the accused persons flowed out as if in obedience to the command of a single mind. If on the evidence, there is doubt as to the involvement of a particular accused in the common

intention, the benefit of doubt should be given to the said accused person. ....”

38. In Girija Shankar v. State of U.P.[10]*, this Court made the following observations:*

“9. …… In order to bring home the charge of common intention, the <u>prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of minds of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be it pre-arranged or on the spur of the moment; but it must necessarily be before the commission of the crime</u>. ....”

3. The learned APP for the State submits that the petitioner was a part of a gang and was spreading terror in the area. The petitioner is stated to have threatened the victim. The said allegation is denied by the learned counsel for the petitioner. In any case, it is for the State to accord due protection to the victim and/or witnesses. The petitioner has been in custody since 29.08.2019. Charges are yet to be framed. However, simply because the petitioner was on that occasion keeping company with known trouble makers of the area or who were people with criminal antecedents, is no reason to deny him bail. Admittedly the petitioner himself has no criminal antecedents and the role attributed to him, ex facie, is not of direct or active participation in a heinous criminal act. The petitioner has roots in society.
4. In the circumstances, the petitioner is granted bail, on his furnishing a personal bond in the sum of Rs.1 lac with two sureties of the like amount, one of whom shall be of a close relative, to the satisfaction of the Duty MM/Jail Superintendent concerned, subject to the following

conditions:

(i) The petitioner shall keep the SHO/IO concerned informed of his whereabouts every Friday between 11:00 a.m. and 11:30 a.m. or between 5 p.m. and 6 p.m., through video call and if a video call is not possible, he may send SMS apropos his whereabouts, as well as "drop-a-pin" on location app to indicate his location. The IO's telephone number shall be provided to the learned counsel for the petitioner.

(ii) The petitioner shall not leave the territory of NCT of Delhi.

(iii) The petitioner shall not contact the complainant(s) in any manner and shall not do anything which will prejudice the case of the prosecution.

(iv) The petitioner shall provide his contact number to the IO/SHO concerned and shall ensure that such number is reachable at all times.

5. Nothing stated in this order shall be deemed to be an adjudication on the merits of the case. The Registry is directed to e-mail a copy of this order to the Jail Superintendent concerned for due compliance.
6. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through e-mail.

NAJMI WAZIRI, J

JULY 15, 2020
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