

\$~

\*

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

***Reserved on: 29.04.2021***

***Pronounced on: 07.05.2021***

+ **BAIL APPLN. 1236/2021**

AKSHAY KANOTRA

..... Petitioner

Through: Mr. Manu Sharma, Mr. Kartik  
Khanna, Mr. Vijay Singh &  
Mr. Abhyuday Sharma, Advocates

Versus

STATE

..... Respondent

Through: Mr. Amit Chadha, Additional Public  
Prosecutor for State with SI Ashok  
Ahlawat & SI Hemant

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

**JUDGMENT**

1. Petitioner is in judicial custody since his arrest on 27.02.2018. He has been charged for the offences under Sections 307/328/364/379 IPC by the learned trial court in FIR No. 89/2018, registered at police station Vikas Puri, New Delhi and is facing trial for the same.

2. Petitioner has approached this Court seeking bail while claiming that he has been falsely implicated and no offence as alleged, is made out against him. Further ground taken is that main charge sheet as well as

supplementary charge sheet in this case have been filed, which casts a doubt on the involvement of petitioner in the instant case.

3. The present case has been registered on the statement of injured/complainant - *Rahul Malik*. In his complaint, he has stated that he is working as Property Dealer and he knew petitioner/accused since his school days, who was working as Agent for purchase and sale of second hand cars. Transaction of money between the two was common and as such, he had lent Rs.7.00 Lacs to the petitioner. Further stated in the complaint that on 25.02. 2018 he received two three calls from the petitioner saying that petitioner had received amount of Rs.2.5 Lacs in his account and wanted to return to him. Since complainant /injured had to go to Green Park to collect his payment from one Panna Lal, he asked petitioner to accompany him. They both went together and on the way, petitioner offered him *maaza* drink, which he had bought from a pan shop and after some time, injured/complainant's head started spinning badly and he got into semi-conscious stage. Petitioner offered to drive home and asked injured/complainant to sit on conductor seat. After some time, when injured/complainant gained consciousness, he found himself in a deserted place and realized that petitioner was attacking him with a paper cutter kind

knife on his neck. According to injured/complainant, he tried to handle himself but petitioner made a second attempt to strike cutter on his neck and while he tried to defend himself by putting his left hand forward, petitioner hit the cutter in his hand. Thereafter, petitioner tried to hit him on his head with a stick kept in the car but injured/complainant opened the door of the car and started running on the road. Petitioner again attempted to hit injured/complainant with a stone but he escaped and ran towards the road and asked the men standing on the road to call the police and ambulance.

4. As per the prosecution, Constable Sandeep took the injured/complainant to U.K. Nursing Home and public standing on the spot informed that the vehicle of the injured was parked at Chanson Motors near Keshopur Industrial Area and the injured himself had come running. HC and SI reached there and found one Maruti Swift White Colour car bearing No. DL 2C AS 9332. There were blood stains on the top of the vehicle and the conductor seat was in rest position. A paper cutter with blood stains was found lying on the rear seat. Upon further inspection of car, neither amount nor any bag of papers nor mobile of injured could be found. Two bottles of petrol were found lying inside the car. A sample was also drawn from the blood-stained seat of the car as also from the gear of the car.

5. Other team members of the police team, shifted the injured/complainant from U.K.Nursing Home to Mata Chanan Devi Hospital and further to Venketeshwar Hospital, Dwarka, where his MLC was prepared. Thereafter, statement of injured was recorded and the FIR in question was registered. The blood-stained clothes of the injured and the samples drawn were sent to Forensic Science Laboratory (FSL).

6. Petitioner/accused was arrested on 27.02.2018 and his disclosure statement was recorded on 27.02.2018, wherein he stated that he had borrowed Rs.7.00 Lacs from complainant/injured- *Rahul Malik* and since he used to embarrass him time and again, he planned to eliminate him and that is why the incident had happened. As per prosecution case, petitioner/accused had also disclosed that after the alleged incident, he had handed over the bag containing money and mobile phone to his brother *Ankit Kanotra*.

7. Further investigation in this case was carried out and charge sheet for the offences under Sections 307/328/392/397 IPC was filed before the trial court against the petitioner. Vide order dated 03.10.2018, charge under Sections 307/328/364/379 IPC was framed against him and matter proceeded for trial. Upon receipt of two FSL reports, supplementary charge

sheet was filed in this case on 28.06.2019.

8. The petitioner has primarily challenged the case of prosecution on the ground that the allegation of injured/complainant that petitioner had made him drink *maaza* cold drink having sedatives is disproved in the view of FSL report No. FSL/2018/ B- 3753 dated 11.06.2019, which establishes relevant para of which relied upon reads as under:-

*"On Chemical, Microscopic & TLC examination: Metallic poisons, ethyl and methyl alcohol, cyanide, phosphide, alkaloids, barbiturates, tranquillizers and pesticide could not be detected in exhibits S1a, S1b, S1c, S1d, S1e, S1f, S2, S3a, S3b, S4a & S-5."*

9. At the hearing, Mr. Manu Sharma, learned counsel for petitioner submitted that even in the MLC of the injured/complainant, which was prepared within 1½ hours of the alleged incident, does not mention any symptoms or influence of sedatives upon the injured/complainant. He next submitted that there is undue delay in obtaining the MLC and why the injured was made to shift from one hospital to another and to the third and why his father, who was present throughout, has not been made a witness to the case, casts a doubt upon the prosecution case. He submitted that in view of lack of scientific and medical evidence, charge under Section 328 IPC cannot sustain against the petitioner.

10. Learned counsel also submitted that the allegations are of injured/complainant having received severe injuries on his neck, still he was discharged from the hospital the very next day and this also casts a doubt upon the medical examination of the petitioner.

11. Further submitted that the assertion of injured/complainant having cash of Rs.2,71,500/- and a bag of documents in the car, is baseless as nothing has been recovered at the instance of petitioner and therefore, charge under Section 379 IPC, cannot be invoked against him. In support of this submission, learned counsel relied upon testimony of Panna Lal (PW-4) recorded on 28.01.2020, who in his cross examination has specifically stated that *Rahul Malik (injured/complainant)* remained seated in his car when he met him on 25.02.2018 and categorically denied having seen any danda, bag, petrol bottle, diesel bottle, kerosine bottle, paper cutter or bag inside the car.

12. Learned counsel for petitioner also drew attention of this Court to testimony of injured/complainant to show various contradictions and that he is not a reliable witness. He submitted that in view of material contradictions in the testimonies of material witnesses i.e. the injured/complainant and Panna Lal (PW-4), charge under Section 364 IPC is not sustainable.

13. Attention of this Court was also drawn to the testimony of Dr. Vinay Gupta (PW-5) wherein he has stated that injuries could be self-inflicted and has also stated that the depth of the wounds of injured/complainant were not exactly measured but were rather a “measure of guess” and therefore, it casts a doubt upon the entire prosecution story.

14. Learned counsel further submitted that no witness has been cited to prove that the *maaza* and petrol bottle were purchased by the petitioner. It was also submitted that the prosecution has not produced any fingerprint evidence to show that the alleged paper blade used during the incident was used by the petitioner.

15. Learned counsel submitted that one more FIR was registered against the petitioner but the same stands already quashed by the High Court of Punjab and Haryana. He emphatically submitted that petitioner has not misused the concession of interim bail granted to him and also that out of 13 prosecution witnesses, 05 have already been examined and only public witnesses remain to be examined, that too one of them, namely, Sanjay, is not appearing despite issuance of multiple summons by the trial court. It was, therefore, urged that petitioner be released on bail during pendency of trial.

16. On the contrary, the present petition has been vehemently opposed by Mr. Amit Chadha, learned Additional Public Prosecutor appearing on behalf of respondent/State by submitting that petitioner has committed a heinous crime of attempt to murder and his previous bail applications have been dismissed by the trial court as well as this Court and there is no change of circumstances and so, this petition deserves to be rejected.

17. He submitted that the FSL report filed along with the supplementary charge sheet mentions that the DNA profile generated from the samples S2, S4a, S4b and S5, were found to be similar from source of exhibits S1a, S1b and S1c. Learned Additional Public Prosecutor also submitted that the urine report of injured/complainant from Venketeshwar Hospital showed presence of Barbiturates & Benzodiazepine.

18. He also submitted that out of the 14 witnesses, 05 prosecution witnesses examined so far, have supported the case of prosecution and if released on bail, there are chances of petitioner influencing and threatening the public witnesses.

19. The arguments advanced on behalf of both the sides were considered in the light of material place on record.

20. During the course of arguments, counsel representing both the sides

sailed this Court through testimonies of witnesses so far examined as well as scientific and medical evidence brought on record. Though at the time of consideration of bail amidst trial, in depth analysis of testimonies of witnesses and scientific and medical evidence on record is not to be done, however, while considering an application for bail a *prima facie* opinion has to be formed and for doing so, a number of factors have to be borne in mind such like nature of offence, seriousness of the charge and whether continued detention of accused in judicial custody during trial shall meet or defeat the ends of justice. On this aspect, the pertinent observations of the Hon'ble Supreme Court in ***Mahipal Vs. Rajesh Kumar, (2020) 2 SCC 118*** are as under:-

*“12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there*

*is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused subserves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.”*

21. In the case in hand, the allegations levelled against the petitioner are of brutally attempting to murder his childhood school friend by mercilessly cutting his throat not just in a semi-conscious state but also in his consciousness and when he could not succeed and injured tried to escape, he followed and tried to hit him with stone with an intention to kill him.

22. Learned counsel for petitioner has assailed the FSL report on the ground that it stands mentioned therein that upon chemical, microscopic & TLC examination, metallic poisons, ethyl and methyl alcohol, cyanide, phosphide, alkaloids, barbiturates, tranquillizers and pesticide could not be detected in exhibits S1a, S1b, S1c, S1d, S1e, S1f, S2, S3a, S3b, S4a & S-5., whereas as prosecution has relied upon the FSL report wherein it is stated that the result of biological examination mentioned in the FSL report is that the source of exhibits S2, S4a, S4b, S5, S1a, S1b, S1c, were found to be

similar generated from the source of exhibits S1a. Hence, the FSL report does not fully support the case of petitioner.

23. Further, the urine test report of complainant/ injured showed presence of Barbiturates & Benzodiazepine and it also negates the assertion of petitioner's counsel that after injured/complainant was brought to Venketeshwar Hospital, he was in conscious state of mind and not under the influence of any sedatives at the time or preparation of MLC.

24. The assertion of petitioner is that prosecution witness Panna Lal (PW-4) in his cross-examination has stated that he did not see any danda, bag, petrol bottle, diesel bottle, kerosine bottle, paper cutter or bag inside the car. However, he has also stated that it was after 07:00 PM when injured/complainant along with petitioner met him and further stated that he could not see any revolver, as it was evening time. He has also stated that he met them only for five minutes. But fact remains that in such a short time, that too in the evening of winters in Delhi after around 07:00 PM, what this witness could notice lying inside the car, has to be analysed.

25. Dr. Vinay Gupta (PW-5) in his cross-examination has stated that the injured was in conscious state and able to narrate the incident. In fact, it is the case of prosecution that the injured/complainant was in semi-conscious

state when petitioner hit him and as he gained consciousness, he tried to save his life by revolting against petitioner's attack and running towards the road to seek public help.

26. The statement of doctor that the injuries could be self-inflicted, does not appeal to the court, because no prudent person would put his life in danger by inflicting such grievous injuries to self and putting own life in danger and thereafter, running on a road to seek public help for calling PCR and ambulance and even if this argument of petitioner is accepted, petitioner has to bear the burden to prove it during trial as to in what circumstances injured/complainant did so and it is not for this Court to form an opinion at this stage.

27. Further assertion of petitioner that Dr. Vinay Gupta (PW-5) in his statement has stated that in the MLC depth of injuries were mentioned on guess and exact depth was not measured, does not come to rescue of petitioner as the same shall be analysed at the conclusion of trial and onus is upon the prosecution to establish how the MLC demolishes the case of petitioner.

28. Considering the bail application of petitioner, it would be too soon to comment upon the testimonies of the witnesses so far examined. The

Hon'ble Supreme Court in ***Mahipal Vs. Rajesh Kumar (Supra)***, has further held as under:-

*"14. The provision for an accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a prima facie view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case-by-case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a prima facie or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the*

*court to examine in detail the evidence on record to come to a conclusive finding.”*

29. The learned trial court vide order dated 03.03.2020 has rightly dismissed petitioner's application for bail observing *that evidence is not to be appreciated mid-way and moving bail application every now and then, shall not dilute this settled law.*

30. Pertinently, before this Court also, this is the fourth bail application filed by the petitioner. His first bail application [BAIL APPLN 53/2020] was dismissed as withdrawn on 10.01.2020 with liberty to seek interim bail before the trial court. His second bail application [BAIL APPLN. 100/2020] was also dismissed as withdrawn vide order dated 07.02.2020 with liberty to file fresh before the trial court. His third bail application [BAIL APPLN. 726/2020] was dismissed on 10.08.2020 in view of the fact that he was granted interim bail by the trial court on 07.07.2020. Hence, the last resort to bail adopted by the petitioner that he is languishing in jail since the day of his arrest i.e. 27.02.2018 also does not appeal to this Court, as by virtue of order dated 07.07.2020 petitioner was enlarged on interim bail to attend marriage of his brother and thereafter, due to Covid 19 pandemic, his interim bail stood extended under various orders of Hon'ble Supreme Court as well as this Court and he has surrendered only on 26.03.2021.

31. This Court also cannot lose sight of the fact that out of 13 witnesses, only 05 witnesses have been examined so far and testimony of public witnesses is yet to be recorded and apprehension of influencing or threatening the witnesses has been expressed by the prosecution.

32. Keeping in mind the pertinent observations of the Hon'ble Supreme Court in *Mahipal Vs. Rajesh Kumar (Supra)* and facts and circumstances of this case, this Court is not inclined to release petitioner on bail at this stage.

33. A copy of this order be transmitted to the Trial Court and Jail Superintendent concerned for information.

**(SURESH KUMAR KAIT)**  
**JUDGE**

**MAY 07, 2021**

r