

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

+ **CRL.M.C. 1353/2021**

Date of decision: 1st September, 2021

IN THE MATTER OF:

BIJENDER @ BINDER

..... Petitioner

Through Mr. Sunil K. Mittal, Mr. Anshul Mittal, Mr. Sachit Arora and Ms. Aanchal Mittal Arora, Advocates

versus

THE STATE

..... Respondent

Through Ms. Kusum Dhalla, APP for the State. Mr. Sumeet Shokeen, Advocate for the complainant.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition under Section 439(2) read with Section 482 Cr.P.C has been filed by the petitioner seeking quashing of order dated 12.05.2021 passed by learned Additional Sessions Judge-05, North West District, Rohini Courts, Delhi in FIR No. 452/2017 dated 29.12.2017 registered at Police Station Kanjhawala for offences under Sections 302, 207, 201, 120B and 34 IPC and Sections 25/27/54/59 Arms Act.

2. Before proceeding to delve into the merits of the case it would be necessary to allude to the facts of the case, they are as follows:

- a) A complaint was made by one Kuldeep at PS Kanjhawala on 28.12.2017 that two persons namely Himanshu and Nitin had been wounded by bullet injuries. It is stated that he and his relative Sandeep @ Bitoo were drinking liquor at the plot of the

Complainant when the Petitioner's nephew Sandeep @ Sonu arrived and furiously asked the complainant if he had seen Himanshu @ Bantu, who was a property dealer and knew the complainant as a neighbor from the same village. Sandeep @ Sonu left the plot after cussing at Himanshu saying that he would 'kill' him. Thereafter Himanshu@ Bantu called the complainant & told him about his spat with the Petitioner regarding the latter's car. It is stated that after an hour, the Petitioner along with SandeepChillar@ Sonu, Himanshu, Nitin and few unnamed men arrived at the plot of the complainant. It is further stated that the Petitioner and Sandeep@ Sonu wielded their guns and started firing at the Himanshu and Nitin. Both of them fell to the ground unconscious, they were rushed to the hospital by the Complainant and Sandeep@ Bitoo. On the said complaint FIR No. 452 of 2017 for offences under sections 302, 307, 201, 120B & 34 IPC read with sections 25, 27, 54 and 59 of the Arms Act.

- b) The accused was arrested on 11.1.2018 by AATS Staff. Two Licensed firearms and two live cartridges were recovered from his possession. The Police during interrogation of the accused found that the Petitioner's car, a black Porsche bearing number HR-26BW- 0067 was damaged in an accident and one Vikas Jindal, owner of a mechanic garage said the cost of repairing the car after claiming insurance would be approximately 7-8 lakh rupees. It was further disclosed that Vikas Jindal was known to injured Himanshu as they resided in the same locality and suggested to the Petitioner that the balance amount for the repairs could be adjusted

with Himanshu. It was stated on 28.12.2017 that the Petitioner was called by Himanshu to settle the dues, he along with his nephew Sandeep Chillar @ Sonu bearing firearms left for the house of Kuldeep where an altercation ensued and it is stated Sandeep Chillar @ Sonu fired 5 rounds at Himanshu and deceased Nitin. It was further disclosed that before fleeing the premises of Kuldeep the associates of the Petitioner mangled the DVR/CCTV cameras on the said plot.

- c) Sandeep @ Sonu was arrested by the Police on 15.01.2018. and later arrests of other co-accused including CCL Manoj were effected, his proof of juvenility was submitted and other major co-accused were remanded to Judicial custody on the same day. Test Identification Parade of all the accused was carried out
- d) During investigation, the post-mortem report of deceased Nitin opined that the death was caused by bullet injuries on the chest. The post mortem report along with seized material from the scene of crime were sent for Forensic examination and the FSL report is pending submission. Further, CDR of all accused persons was obtained & scrutinized and it was noted that the Petitioner and Sandeep Chillar were in constant communication with complainant Kuldeep and Himanshu.
- e) It was found in investigation that the Petitioner had 9 criminal cases, including the present FIR registered against him, 8 of them were registered at PS- Kanjhawala. The Petitioner was acquitted in three of them, four cases were withdrawn by the complainant after settlement and he was granted bail in one pending case.

- f) The Petitioner was granted interim bail on 01.11.2018 by the Id. Trial Court which he misused by absconding. The Petitioner was declared a Proclaimed Offender on 25.03.2019 and was re-arrested by the Police on 09.07.2020. The Petitioner was granted medical bail for two months by order dated 5.1.2018 of the Trial Court. The Petitioner has been granted custody parole on the direction of this Court on 7.4.2021 for the marriage of his daughter. The Apex Court extended the custody parole of the Petitioner given by this Court vide order dated 19.4.2021.
- g) The petitioner approached the Sessions Court for grant of bail by filing an application for bail. The Id. ASJ, Rohini Court vide order dated 12.5.2021 rejected the bail application of Petitioner for grant of regular bail observing as under :

“I have duly considered the rival submissions and have carefully gone through the record. The foremost argument of the accused was that the main accused Sandeep Chillar has been granted bail. First of all this was a misleading argument made on behalf of the accused when it was submitted the main accused Sandeep chillar has been granted bail. It was rightly refuted by the Id. Addl. PP that Sandeep Chillar was not the main accused but was an associate and accomplice and his bail was granted because of different nature of evidence that has come qua him. Whereas overwhelming evidence has come against the present applicant. Secondly, the accused has a tainted history of misusing the bail to the extent that he was even declared a PO on earlier occasion for jumping the interim bail. So far as the change of circumstances since the dismissal of last regular bail application on 8.10.2018 are concerned is that the future requests are to undergo strictest scrutiny. Lastly, the apprehension

that the main witness Himanshu can be influenced is not completely unfounded, and the circumstances have changed since then keeping in view of the entire facts and circumstances, I'm not inclined to grant the concession bail to the accused. The application is accordingly dismissed.

With these observations, the application stands disposed of. Nothing expressed herein above shall tantamount an expression on the merits of the case."

3. Heard the Parties. The primary grievance of the Petitioner in this petition is that the Trial Court failed to note and consider the arguments and the main contentions of Petitioner and has dismissed the bail application without advertng to them in the order.

4. Mr. Sunil K. Mittal, Learned Counsel appearing for the Petitioner, submits that that the Ld. Trial Court has decided the bail application without advertng to the submissions of the Petitioner. He states that the submissions made by the petitioner have not been recorded, referred and considered in the impugned order. The learned counsel for the petitioner has argued that the points highlighted in the present petition were raised before the Trial Court but there was not any discussion of them in the order of the Trial Court. He contended that the Ld. Trial Court has erred in not granting bail to the Petitioner on grounds of parity with co-accused Sandeep Chillar @ Sonu.

5. The learned counsel for the petitioner contends that the contentions raised by the petitioner in para 8 of the petition before the learned Additional Sessions Judge have not been taken into consideration by the learned Additional Sessions Judge. The contentions, as stated in para 8 of the application, reads as under:

"A. ABSENCE OF MEDICAL RECORD OF THE INJURED HIMANSHU DABAS.

a. That as per the prosecution case, the two persons were injured in the incident dated 28.12.2017 namely Nitin Dabas and Himanshu Dabas, who were initially taken to Savitri Hospital, Kanjhawala.

b. That in Para 5 of bail application filed by the Petitioner before Ld. Trial Court, it was stated that:

"5. That it is also important to mention that as per the endorsement on Rukka, the injured Himanshu was stated to have been taken to some other hospital on the very same day, i.e. 28.12.2017. However, the entire charge sheet is bereft of any details about the medical treatment of Himanshu after 28.12.2017 till 31.12.2017. As per the report dated 06.04.2018 of Sir Ganga Ram Hospital, it was clearly mentioned that Himanshu Dabas S/o Sh. Suraj Bhan was admitted in Sir Ganga Ram Hospital only on 31.12.2017. The aforesaid report dated 06.04.2018 was obtained by the IO vide letter dated 29. 03.2018."

c. That it was also argued on behalf of the Petitioner before the Ld. Trial Court that even as per the Brief Summary submitted by the IO along with the request for conducting Post Mortem of deceased Nitin on 29.12.2017, it was stated therein that "...Second person Himanshu @ Bantu S/o Sh. Suraj Bhan Rio VPO Ladpur was further referred to Balaji Action Agarsen Hospital for further treatment who is under treatment there... "

d. That the IO has not placed on record any material to show what medical treatment was given to injured Himanshu Dabas either at Savitri Hospital or at Balaji Action Hospital or Agrasen Hospital or even at Sir Ganga Ram Hospital. In the absence of any medical record of the injured, the entire story of the prosecution is based merely on conjectures and surmises and on the whimsical theories propounded by the IO and injured Himanshu Dabas.

e. This contention was never disputed by the Ld. APP or by the counsel for the complainant / injured. However, the Ld. Trial Court did not consider this contention at all while as the same was not even mentioned in the impugned order.

B. NON-MATCHING OF BULLET RECOVERED FROM THE BODY OF THE DECEASED

a. That as per the prosecution case, the deceased Nitin Dabas had succumbed to the gunshot injury suffered by him due to the alleged bullets fired by the accused persons in the present case.

b. That the Petitioner had stated in Para 6 of his Bail Application filed before the Ld. Trial Court that

"6. That as per the charge sheet, deceased Nitin and injured Himanshu allegedly sustained gunshot injuries. The bullet from the body of the deceased Nitin has been seized from the SGMH Mortuary, Mangolpuri on 29.12.2017 where the Post Mortem of deceased Nitin was conducted. The said seized bullet was sent for Ballistic Examination and as per the Ballistic Report, the said Bullet did not match with any of the

4 weapons claimed to have been seized by the police. Thus, the gun shot injury to deceased Nitin could not be attributed to the Applicant or any other co-accused It may be added here that the Applicant had nothing to do with the improvised pistols seized by the police. "

c. That the impugned order is completely silent about this contention raised on behalf of the Petitioner, although no contrary contention was raised by the Ld. APP or by the complainant in this regard.

C. SERIOUS DOUBTS REGARDING RECOVERY OF BULLETS FROM THE BODY OF THE INJURED.

a. That as per the prosecution version, the bullet that was allegedly recovered from the body of the injured Himanshu Dabas was found to have been matched with one of the recovered licensed revolvers.

b. That the aforesaid version was nothing but a bundle of lies as was demonstrated by the Petitioner in Para 7 of his bail application before the Ld. Trial Court. The same read as under:-

"7. Similarly, the recovery of the lead I bullet which allegedly caused injury to Himanshu is highly doubtful in the absence of any medical record of his treatment or surgery after he was admittedly shifted from Savitri Hospital, Kanjhawala on 28.12.2017 itself As per the seizure memo dated 11.01.2018, the bullet was allegedly seized from Sir Ganga Ram Hospital whereas, as per the

statement of Himanshu (PW-3), vide his examination-in-chief, he was initially operated in Maharaja Agrasen Hospital after being shifted from Savitri Hospital on 27.12.2017. The IO has not collected any medical record from Maharaja Agrasen Hospital. Thus, the seizure of the bullet which caused injury to Himanshu from Sir Ganga Ram Hospital is a result of big manipulation as Himanshu was admitted in Sir Ganga Ram Hospital only on 31.12.2017. Moreover, the seizure of the bullet pertaining to the injury to Himanshu was done after the arrest of the Applicant on 11.01.2018."

c. That it was also argued before the Ld. Trial Court that it was well within the knowledge of the IO as to where the alleged treatment of Himanshu Dabas was going on. Further, in his statement recorded before the Ld. Trial Court as PW-3, Himanshu Dabas had unequivocally stated that he regained consciousness in Maharaja Agrasen Hospital and he was operated there.

d. That it is very strange that when as per prosecution as well as injured PW-3, he was operated upon in Maharaja Agrasen Hospital between 2. 8-31.12.2017, how the alleged bullet was recovered or could be recovered by the IO only on 11.01.2018 from Sir Ganga Ram Hospital.

e. That it was also categorically pointed out to the Ld. Trial Court that the alleged bullet was shown to have been recovered and seized by the IO only on 11.01.2018, i.e. after the arrest of the Petitioner herein and seizure of his licensed weapons. Therefore, the possibility of

manipulation of the bullet shown to have been recovered and seized by the IO from the body of the injured Himanshu Dabas could not be ruled out.

f. However, the Ld. Trial Court simply ignored such glaring discrepancies highlighted by the Petitioner and chose to not even make a mention thereof in the impugned order. This contention was also not disputed or opposed by the Ld. APP or the counsel for the complainant / injured.

D. INCONSISTENCY AND CONTRADICTION IN RECORDING OF STATEMENT OF INJURED HIMANSHU DABAS BY THE POLICE.

a. That as per the prosecution case, the injured Himanshu @ Bantu S/o Sh. Suraj Bhan was examined by the IO for the first time only on 12.01.2018 while the incident in question had taken place on 27.12.2017.

b. That during the course of arguments, it was categorically contended on behalf of the Petitioner, the prosecution has not placed any document on record to showing the reasons for not recording the statement of Himanshu @ Bantu earlier, which was recorded for the first time only after the arrest of the Petitioner herein on 11.01.2018.

c. The entire prosecution case is absolutely silent as to when the injured Himanshu was declared FIT / UNFIT for making Statement prior to 12.01.2018. It is also not mentioned anywhere as to by whom such opinion was sought. No document has been placed on record in this regard.

d. However, yet again the contentions of the Petitioner were not considered at all by the Ld. Trial Court while passing the impugned order dated 12.05.2021 despite not being opposed by the Ld. APP or the Counsel for the Complainant / Injured.

E. THE DISPUTE ALLEGED BY THE PROSECUTION WAS ABSOLUTELY MISCONCEIVED

a. That the prosecution has not been able to explain in any manner whatsoever as to what was the role of Himanshu and / or Nitin in the entire transaction / dispute alleged to have been going on between the Petitioner herein and one Vikas Jindal.

b. That the Para 13 and 14 of the bail application of the Petitioner before the Ld. Trial Court read as follows:

"13. That the JO has tried to set up a story that the Applicant Bijender and one Vikas Jindal had certain disputes regarding settlement of accounts pertaining to the damage caused by Vikas to the Porsche car of Bijender and Himanshu and Nitin sought to intervene in the matter by claiming that the compensation claimed by Bijender should be set-off/adjusted. The said intervention was absolutely unjustified because admittedly, Himanshu or Nitin had no previous financial transaction or any other dealing with Bijender. Neither Bijender owed any amount to Himanshu and Nitin nor Bijender ever claimed any amount from Himanshu and/or Nitin. Further, there is

nothing on record showing any financial transaction of any nature between Himanshu / Nitin and Vikas Jindal. Thus the intervention of Himanshu and Nitin was totally unwarranted and uncalled for. It was only an attempt by both of them to bully Bijender and to pressurize him to forgo his claims against Vikas Jindal. Himanshu and Nitin clearly had oblique motives and this aspect of the case has not been investigated by the Police. 14. That moreover, the alleged claim of Himanshu against Sandeep @ Sonu is also unsubstantiated as there is nothing on record to show that the claim of Himanshu against Sandeep was on what basis. Himanshu has not stated anything in this regard either in his alleged statement U/s 161 of Cr. P.C. made to the police nor in his examination-in-chief, which was recorded before this Hon'ble High Court."

c. As a matter of fact, the alleged disputes were only some figment of imagination of the prosecution as no incriminating evidence has been placed on record to support this.

d. That the Ld. Trial Judge simply overlooked this serious discrepancy in the prosecution case and did not even deal with the same in any manner in the impugned order. Apparently, the Ld. Trial Court proceeded on the belief that it was for the accused to prove his innocence and not for the prosecution to prove its case beyond reasonable doubt.

F. LACUNAE IN THE PROSECUTION CASE

a. That the Petitioner had also categorised and listed the various specific lacunae in the prosecution case in his bail application before the Ld. Trial Court. In fact, Para 16 of the Bail Application read as follows:-

"16. That from the aforesaid factual matrix, it is clear that the police has not carried out true and proper investigation in the present case. The same can be summarized from the following facts and circumstances:-

- IO I Police took its own time in preparation of Rukka, i.e. almost 1. 5 hours which makes it probable that the Rukka was prepared after deliberation and manipulation;*
- Police has failed to investigate and place on record relevant record about the medical treatment received by Himanshu as it is completely unknown that where and what treatment was given to the injured from 28.12.2017 till 31.12.2017;*
- The Police has failed to collect relevant medical record from Maharaja Agrasen Hospital, where, as per the statement of PW- 3 Himanshu, his operation was conducted Similarly, the medical record from Sir Ganga Ram Hospital has also not been placed on record;*
- The Police has failed to answer as to which weapon was used to cause injury to the deceased in. as much as the bullet recovered from the body of the*

deceased did not match any of the 4 weapons seized and claimed by the police to have been used in the commission of offence;

- The manipulation regarding the recovery of bullet which allegedly caused injury to Himanshu cannot be ruled out due to the various lacunae, which are apparent from the record of the present case;*

- The police has failed to explain the non-seizure of DVR of the CCTV installed at the place of incident. Although, it was alleged in the charge sheet that DVR was taken by the accused person, but there is absolutely no evidence on record that DVR was removed by the Applicant or any other accused;*

- No evidence to substantiate any claim of Himanshu against Sandeep @ Sonu and no previous financial transaction of Himanshu / Nitin with Applicant Bijender or Vikas Jindal;*

- Himanshu and Nitin themselves were the perpetrators and aggressors since it was them who were calling the Applicant and other persons and trying to bully the Applicant; It is clear from the above stated facts and circumstances that the prosecution case has various lacunae, which shall be thoroughly demonstrated and exposed during the trial."*

b. The Petitioner could demonstrate the aforesaid discrepancies, inconsistencies and fallacies in the prosecution case but none of them were considered by the Ld. Trial Court while passing the impugned order on the bail application of the Petitioner."

6. The learned counsel for the petitioner states that even though while granting or denying bail, the Trial Court is not expected to conduct a mini trial but before making observations that there is overwhelming evidence against the applicant some reasoning has to be given as to how the Trial Court has arrived at this conclusion. He states that the learned Additional Sessions Judge has not given any reason to come to this conclusion. The learned counsel for the petitioner, therefore, prays that the matter should be remanded back to the Trial Court.

7. *Per contra*, Ms. Kusum Dhalla, learned APP for the State, has taken this Court through the order and has contended that the order is well reasoned. She contends that the fact that the petitioner abused the bail granted to him on 01.11.2018, by absconding and the petitioner had to be re-arrested in another case on 09.07.2020, is itself sufficient to reject the bail of the petitioner specially when the petitioner is accused of a heinous crime i.e. murder. She further states that the learned Additional Sessions Judge has recorded the facts of the case and has given cogent reasons as to why the petitioner was not granted bail.

8. The short issue which arises for consideration in this case is as to whether the order impugned herein should be set aside and should the matter be remanded back to the Trial Court for further consideration on the ground

that the learned Additional Sessions Judge has not dealt with the points raised by the petitioner. The order of the learned Additional Sessions Judge does not reflect as to whether the points raised by Mr. Sunil Mittal, the learned counsel for the petitioner, were argued before the learned Additional Sessions Judge or not.

9. Unlike the Code of Civil Procedure, which provides for a review where a litigant is entitled to come to a Court and contend that points raised by him have not been dealt with by the Court, there is absence of such a provision in the Cr.P.C. This Court, is therefore, handicapped to find out as to whether these points were actually argued by the learned counsel for the petitioner before the Additional Sessions Judge or not.

10. It is trite that in bail jurisprudence that an order granting or rejecting bail has to be a reasoned order. There has to be a reasoned analysis of why the Court is inclined or disinclined to grant or not bail, however it does not need to be a prolix examination of facts, circumstances, evidence, depositions and other material that are matters of Trial. In Puran V. Rambilas, **2001 6 SCC 338**, it was held as follows-

“8. ...We see no substance in this contention. Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken.”

11. However, it is equally well settled that reasons are the bridge between the thought process of the Judge and the final conclusion arrived at by the Judge while deciding a case. The Supreme Court *vide* its judgment dated 05.04.2021, titled as Sonu V. Sonu Yadav, **(Criminal Appeal**

No.377/2021) emphatically stated the importance of a reasoned judicial order as follows –

“11. An order without reasons is fundamentally contrary to norms which guide the judicial process. The administration of criminal justice by the High Court cannot be reduced to a mantra containing a recitation of general observations. That there has been a judicious application of mind by the judge who is deciding an application under Section 439 of the Code of Criminal Procedure must emerge from the quality of reasoning which is embodied in the order granting bail. While, the reasons may be brief, it is the quality of reasons which matters the most. That is because the reasons in a judicial order unravel the thought process of a trained judicial mind. We are constrained to make these observations because the reasons indicated in the judgment of the High Court are becoming increasingly familiar in matters which come to this Court. It is time that such a practice is discontinued and that the reasons in support of orders granting bail comport with a judicial process which brings credibility to the administration of criminal justice.” (emphasis supplied)

12. Since the learned counsel for the petitioner herein submits that these points have been raised by the petitioner before the learned Additional Sessions Judge and they have not been dealt with, this Court has no other option but to remand the matter back to the Trial Court and to the same Judge who had decided the bail application. In case these points had not been raised by the petitioner during the arguments, the learned Additional Sessions Judge would be well within his rights not to take them into account. But if the petitioner had raised those points in his arguments then the learned Additional Sessions Judge has to deal with them.

13. After considering the facts of the case and after taking into account the fact that the petitioner has absconded while on bail, the learned Additional Sessions Judge has to decide whether the petitioner should be granted bail or not.

14. This Court is not making any observations on the merits of the case and is remanding the matter back to the Trial Court to consider the objections raised by the learned counsel for the petitioner before the learned Additional Sessions Judge at the time of hearing the matter and pass orders in accordance with law. Liberty is granted to the petitioner to mention before the learned Trial Court for fixing a date of hearing.

15. With these observations, the revision petition is disposed of with these observations.

SUBRAMONIUM PRASAD, J.

SEPTEMBER 01, 2021

Rahul

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