

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

Date of decision: 27th September, 2021

IN THE MATTER OF:

+ **BAIL APPLN. 2865/2021**

ROHIT SHARMA

..... Petitioner

Through: Mr. N. Hariharan, Sr. Adv with Mr.
Vaibhav Sharma, Mr. Tarun Sharma
& Mr. Himanshu Kumar, Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Through: Ms. Meenakshi Chauhan, APP for
the State with SI Krishan, P.S. Hari
Nagar.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition under Section 439 Cr.P.C is for grant of bail to the petitioner in FIR No.325/2021 dated 22.06.2021, registered at Police Station Hari Nagar for offences under Sections 186/353/307 IPC.

2. The instant FIR was registered on the statement of Head Constable Vinod, No.3443/T, who stated that on 22.06.2021, he along with ASI Vishram Singh and Constable Anup were on routine checking at RGC-10 traffic circle, Harinagar Ghanta Ghar, Junk Market, on the road from Mayapuri to Harinagar Ghanta Ghar. It is stated that ASI Vishram Singh and Constable Anup were stopping the vehicles and the complainant, who was standing about 10-15 yards away from them, was giving signal to the suspected vehicles to stop. It is stated that at around 4:30 PM, one white

colored car, having tinted glasses, driven by the petitioner herein, came towards them from red light of Junk Market, Mayapuri. It is stated that ASI Vishram & Constable Anup signalled the driver to stop the vehicle. It is stated that the driver initially slowed down the car but suddenly sped away, as a result, the car hit ASI Vishram and he fell on the side of the road. It is stated that Constable Anup somehow saved himself by moving on to the side. It is stated that the complainant tried to stop the car from front and he jumped on the bonnet of the car but the petitioner did not stop the car. It is stated that the complainant got hold of the wipers of the car and kept on trying to stop the vehicle but petitioner did not stop the car. It is stated that at jail road, outside DTC Bus Depot, the petitioner applied brakes as another car was coming from the opposite side and the complainant fell from the car. It is stated that the complainant hit his elbow on the windshield of the car and the windshield cracked. It is stated that the petitioner sped away towards Lajwanti Flyover and fled. The car was identified as a Volkswagen Polo bearing No. DL 14 CF 8787. The injured and the complainant were taken to DDU hospital for treatment and the instant FIR was registered.

3. The petitioner filed an application under Section 438 Cr.P.C before the Sessions Court seeking anticipatory bail and the same was dismissed by the learned Additional Session Judge, Tis Hazari Courts *vide* order dated 29.06.2021.

4. Thereafter the petitioner approached this Court by filing an application under Section 438 Cr.P.C. On 06.07.2021, during hearing, the learned counsel for the petitioner, on instructions, stated that the petitioner will surrender on 13.07.2021 and the application was dismissed as withdrawn with liberty to the petitioner to file an application for regular bail

before the appropriate Court.

5. The petitioner surrendered on 12.07.2021.

6. The petitioner filed an application under Section 439 Cr.P.C for grant of regular bail before the learned Additional Session Judge. The learned Additional Session Judge, Tis Hazari Courts, dismissed the said application *vide* order dated 14.07.2021.

7. The petitioner refused to participate in the TIP proceedings. On 23.07.2021, police custody of the petitioner was sought and one day police custody of the petitioner was granted. The offending car has been recovered.

8. The petitioner thereafter approached this Court by filing the instant application.

9. Notice was issued on 05.08.2021. Status Report has been filed.

10. Mr. N. Hariharan, learned Senior Counsel appearing for the petitioner, submits that the petitioner surrendered on 12.07.2021. He states that the investigation is more or less over. He further states that the charge-sheet will be filed on or before 10.10.2021. He states that the statements of most of the witnesses have already been recorded. He further states that the injured is a Police Constable and other eye-witnesses are also police men. He, therefore, contends that there is no possibility of the petitioner influencing the witnesses or tampering with the evidence. He therefore states that no useful purpose would be served in keeping the petitioner in custody.

11. *Per Contra*, Ms. Meenakshi Chauhan, learned APP for the State, vehemently opposes the bail application of the petitioner by contending that it is not a simple case of accident. She states that the petitioner hit a Police man and when the other Police man tried to stop the vehicle and jumped on the bonnet of the car, the petitioner chose not to stop the vehicle and instead

increased the speed of the car and the car was stopped only when another car came from the opposite side. She states that the petitioner had to take several turns before stopping the car. She states that the petitioner should not be granted bail looking at the gravity of the offence.

12. Heard Mr. N. Hariharan, learned Senior Counsel appearing for the petitioner and Ms. Meenakshi Chauhan, learned APP for the State and perused the material on record.

13. A perusal of the site map shows that the petitioner hit the victim and drove a considerable distance before stopping the vehicle as another car came in front of him from the other side. The site map shows that the petitioner was not driving on the straight road but took at least four turns before stopping the vehicle. Be that as it may, the investigation is more or less complete. Most of the witnesses are police witnesses and their statements have been recorded. Charge-sheet will be filed on or before 10.10.2021.

14. The Supreme Court laid down the parameters for granting or refusing the grant of bail which are as under:

- “i. whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- ii. nature and gravity of the accusation;*
- iii. severity of the punishment in the event of conviction;*
- iv. Danger of the accused absconding or fleeing, if released on bail;*
- v. character, behavior, means, position and standing of the accused;*
- vi. Likelihood of the offence being repeated;*
- vii. Reasonable apprehension of the witnesses being influenced; and*

viii. Danger, of course, of justice being thwarted by grant of bail.”

15. The Supreme Court has laid down a number of times that a man is innocent until he is found guilty and bail is rule while jail is an exception.

16. In Gurcharan Singh v. State (Delhi Administration), (1978) 1 SCC 118, the Supreme Court has observed as under :

“24. Section 439(1), Cr.P.C. of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike under Section 437(1) there is no ban imposed under Section 439(1), Cr.P.C. against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment of life. It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1), Cr.P.C. of the new Code. The over-riding considerations in granting of bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1), Cr.P.C. of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as its investigation and other relevant grounds

which, in view of so many valuable factors, cannot be exhaustively set out.”

17. The law laid down in Gurcharan Singh (supra) has been followed in a number of judgments. Applying the law laid down by the Supreme Court to the present case, no doubt the petitioner is charged with an offence under Section 307 IPC and if convicted, the petitioner may be sentenced for life, but that alone cannot be a factum to keep the petitioner in incarceration. The petitioner is an engineering graduate having roots in the society. Most of the witnesses are police witnesses and the petitioner would not be able to influence them. The evidence has already been collected and the charge-sheet shall be filed shortly. In view of the above, this Court is of the opinion that no useful purpose would be served in keeping the petitioner in custody. Accordingly, this Court is inclined to grant bail to the Petitioner on the following conditions:

- a) The Petitioner shall furnish a personal bond in the sum of ₹75,000/- with two sureties of the like amount, one of them should be a relative of the petitioner, to the satisfaction of the Trial Court/Duty Magistrate.
- b) The Petitioner shall not leave NCT of Delhi without prior permission of this Court.
- c) The Petitioner shall report to the concerned Police Station every Tuesday and Friday at 10:30 AM and should be released after completing the formalities within half an hour.
- d) The Petitioner is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.

- e) The petitioner has given his address in the memo of parties as House No. RZ C-10, Street No.22, Sadh Nagar-II, Palam Colony, New Delhi-110045. The Petitioner is directed to continue to reside at the same address. In case there is any change in the address, the Petitioner is directed to intimate the same to the IO.
- f) The Petitioner shall not, directly or indirectly, tamper with evidence or try to influence the witnesses.
- g) Violation of any of these conditions will result in the cancellation of the bail given to the Petitioner.

18. It is made clear that the observations made in this Order are only for the purpose of grant of bail and cannot be taken into consideration during the trial.

19. Accordingly, the bail application is disposed of along with the pending application(s), if any

SUBRAMONIUM PRASAD, J

SEPTEMBER 27, 2021

Rahul