



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

% **Reserved on : 31st March, 2022**
Pronounced on: 27th April, 2022

+ **BAIL APPLN. 410/2022**

AKSHAY @ GOLU

..... Petitioner

Through: Mr. Mir Akhtar Hussain, Ms.
Sonia Goswami and Mr. Rakesh
Kumar Pant, Advocates

Versus

STATE NCT OF DELHI

..... Respondent

Through: Ms. Kusum Dhalla, APP with Insp.
Chhatter Singh, P.S. Khyala.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant application has been filed under Section 439 of the Code of the Criminal Procedure, 1973 (hereinafter "Cr.P.C.") on behalf of the applicant seeking regular bail in FIR No. 07/2021 under Section 302/147/148/149/34 of the Indian Penal Code, 1860 (hereinafter "IPC") registered at PS Khyala, New Delhi.

2. Brief facts of the matter are that the complainant, Jitender Kumar Mehta, is the brother of the deceased, Satender @ Bhola, and he lodged the instant FIR against the instant applicant and his associates who have been accused of killing the deceased.



3. On the day of the incident the complainant was returning from his Café when he received a phone call, at about 1:30 am, from one Nitin @ Lussy, a friend of the deceased, who informed him that the deceased had a money issue with one Vicky who was making excuses to pay back money to the deceased. Both the deceased and Nitin went to the house of the accused Vicky to take back the said money and found Vicky consuming alcohol outside his house alongwith two other people. When the deceased asked for his money, accused Vicky started abusing him and conversation between them became heated.

4. Thereafter, accused Vicky called upon three-four other boys and all of them together starting assaulting the deceased and his friends. Accused Vicky picked up a baseball bat and started hitting the deceased on his head and kept hitting him repeatedly till he became unconscious. When the complainant reached the spot of the incident, he found the deceased lying of the road with his head torn and blood scattered in the street. The complainant took the deceased to the hospital where he was declared 'brought dead'. Subsequently, FIR No. 07/2021 was lodged by the complainant. The instant applicant was arrested at the instance of one Pankaj Mehta on 2nd September, 2021.

5. Learned counsel appearing on behalf of the applicant submitted that the instant applicant is innocent and has been falsely implicated in the case only on the statements of the co-accused. There is no evidence against the applicant connecting him, directly or indirectly, to the assault and the consequent murder of the deceased.

6. It is submitted on behalf of the applicant that the instant FIR was lodged on the basis of hearsay statement and the same does not name



him. Further, the prosecution witnesses Nitin and Pradeep @ Mannu @ Manish, in their statement, did not name the applicant and would not have been able to identify him had they had been confronted. The statements of the prosecution witnesses do not reveal any role or over act of the applicant in the entire incident. It is submitted that even the CCTV footage of the incident does not show that the applicant had assaulted the deceased. There are serious and material contradictions between the oral evidence and the footage of CCTV.

7. Learned counsel for the applicant submitted that the applicant is a student and has no criminal history and he is not required for the investigation as the challan against him has already been filed. The learned counsel for the applicant, on instructions, undertakes that the applicant shall abide by all conditions that may be imposed upon him.

8. *Per Contra*, Ms. Kusum Dhalla, learned APP for the State vehemently opposed this instant application and submitted that the applicant was present on the spot at the time of the incident and was actively involved in the murder of the deceased. He was duly identified by the eye-witness Nitin.

9. It is submitted that the applicant brought accused Arun @ Rikki and accused Shahnawaz with him to the scene of crime. It is further submitted that the co-accused Hemraj and other accused persons named the applicant, stated his active involvement and specified his role in the murder of the deceased.

10. Learned APP for the State informed the Court that proclamation proceedings under Section 82 of the Cr.P.C. were initiated against the applicant since he was absconding. It is submitted that if granted bail, the



applicant may tamper with the evidence, influence/threaten the witnesses, jump the bail and may not join the trial. In light of the aforesaid submissions, the instant bail application be dismissed.

11. Heard learned counsel for the parties and perused the record, including the FIR, chargesheet and the Status Report.

12. The incident leading up to the lodging of the FIR is extremely serious and grave in nature. The accused persons in collusion have assaulted the deceased to the extent of causing his death. The instant applicant had been apprehended by one of the relatives of the deceased, Pankaj Mehta, who had identified him while he was roaming around their neighbourhood.

13. To understand the role of the applicant in the incident and his inclusion in the matter, it is significant that the statements of the sources who named him be considered. As per the statement of co-accused Hemraj, the applicant herein, attacked the deceased with sticks (*Danda*) when he was lying unconscious. His statement also reveals that the applicant, alongwith co-accused Rikki had also attacked the friends of the deceased, who ran away from the spot thereupon. The relevant portion of his true translated statement as per the chargesheet is reproduced hereinunder:-

“At Madipur, I became friend of Golu @ Akshay and his brother Ricky @ Arun S/o Satish-Dimple. Through him I also became friend of his aunt's son Vicky @ Himanshu.....From Madipur sons of Vicky's aunt Golu @ Akshay S/o Dimple-Satish, Ricky @ Arun S/o Dimple-Satish and Shahanawaz etc. were also came. Out of them 1-2 persons have dandas in their hands....Vicky and I started beating Bhola with dandas.



He fell down on the ground. His head started bleeding and he became unconscious. Then Vicky, Golu with bricks, Golu & Ricky of Madipur with dandas and brick and their friend Shahanawaz with dada repeatedly hit injured Bhola on his head and body. Deepak & Golu @ Akshay also gave beatings to associates of Bhola. Golu hit them with danda and I hit them with brick and they ran away.”

14. The fact of the applicant possessing a stick (*Danda*) was corroborated by the statement of the co-accused Deepak Ahirwal who stated that the applicant also came to the spot alongwith Rikki and Shahnawaz and one or two persons amongst them were having the sticks (*Danda*) in their hands. He also stated that the applicant assaulted the deceased with stick (*Danda*) and his associates.

“From Madipur sons of Vicky's aunt Golu Akshay S/o Dimple-Satish, Ricky Arun S/o Dimple-Satish and Shahanawaz etc. were also came. Out of them 1-2 persons have dandas in their hands.... Kalu hit on the head of Bhola with a small stick then his friend tried to intervene, I and son of Vicky's aunt of Madipur hit' him by taking danda from Hemraj and by brick due to this, he ran away. Vicky and Hemraj were beating Bhola with dandas. He fell down on the ground. Kalu and Vicky were hitting on the head of Bhola by dandas resulting into bleeding from his head and became unconscious. Then Vicky, Golu with bricks, Golu & Ricky of Madipur with dandas and brick and their friend Shahanawaz with dada repeatedly hit injured Bhola on his head and body. At the same time Vicky, Golu with brick, Golu and ricky of madipur with dandas and bricks and their friend Shahanawaz hit injured Bhola on his head and body repeatedly. I and Golu. @ Akshay also gave beatings to associates of Bhola. Golu hit them with danda and I hit them with



brick and they ran away.”

15. As per the statement of Nitin, who was examined as prosecution witness, the applicant was present at the spot at the time of the incident and was involved in the murder of the deceased. The relevant portion of the true translated statement under Section 161 of the Cr.P.C. is reproduced hereinunder:-

“I state that I confirm my earlier statement. Today I was informed by the family members of Bhola that they have got arrested Vicky's Madipur aunt's son Akshay by the police. After that I went to P.S. Khyala where I saw and identified one boy Akshay @ Golu involved in the murder of Bhola. I told the police that this boy was also involved in the beating incident during the murder of Bhola on 03.01.2021. Today you interrogated me and recorded my statement which I read and is correct.”

16. Investigation revealed that in the CCTV footage, the applicant can be seen to be present at the spot of the murder on the intervening day and his involvement in the said murder was also corroborated by the statement of the co-accused as well as the prosecution witnesses and the eye witnesses.

17. The offences under which the applicant has been accused are serious offences. The law regarding grant of bail and the grounds to be considered while deciding such applications is definite and clear. In ***Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana, (2021) 6 SCC 230***, the Hon'ble Supreme Court observed as under:-

“23. The first aspect of the case which stares in the face is the singular absence in the judgment of the High Court to the nature and gravity of the crime. The incident which took place on 9-5-2020 resulted in five



homicidal deaths. The nature of the offence is a circumstance which has an important bearing on the grant of bail. The orders of the High Court are conspicuous in the absence of any awareness or elaboration of the serious nature of the offence. The perversity lies in the failure of the High Court to consider an important circumstance which has a bearing on whether bail should be granted. In the two-Judge Bench decision of this Court in Ram Govind Upadhyay v. Sudarshan Singh [Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598] the nature of the crime was recorded as “one of the basic considerations” which has a bearing on the grant or denial of bail. The considerations which govern the grant of bail were elucidated in the judgment of this Court without attaching an exhaustive nature or character to them. This emerges from the following extract : (SCC p. 602, para 4)

“4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always



to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

24. The principles governing the grant of bail were reiterated by a two-Judge Bench in Prasanta Kumar Sarkar v. Ashis Chatterjee [Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765] : (SCC p. 499, para 9)

“9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- 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, behaviour, 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.”*

18. It is evident that the nature and gravity of offence is one of the principal considerations while deciding the issue of grant of bail. A specific role of beating the deceased with sticks (*Danda*) has been assigned to the applicant in multiple statements of the co-accused. the statement of the co-accused also stated that the applicant, alongwith the other co-accused, continued to assault the deceased using the sticks and bricks even after he had fallen on the ground and was in a defenseless position.

19. After the incident, the applicant alongwith co-accused ran away from the spot and had been absconding till he was ultimately arrested. This conduct of the applicant after the incident is also fairly relevant. Several of the co-accused are still absconding. There is a likelihood of the applicant also jumping the bail and flee from justice since many of his associates are yet to be apprehended. Moreover, the chances of tampering of evidence, by influencing and threatening witnesses, are also considerably high.

20. Keeping in view the facts, circumstances, contentions of the parties, contents of the Status Report, gravity of the offence, statements of the witness and the co-accused, this Court does not find any cogent reason to grant bail to the applicant.

21. The bail application is dismissed for the reason of being devoid of any merit.



22. Pending application, if any, also stands disposed of.
23. The judgment be uploaded on the website forthwith.
24. It is made clear that any observations touching merits of the case are purely for the purpose of deciding the question of grant of bail by this Court and shall not be construed as an expression of final observation in the proceedings pending before Trial Court.

(CHANDRA DHARI SINGH)
JUDGE

APRIL 27, 2022

Aj/Ms

नित्यमेव जयते