



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

% **Reserved on : 31.01.2022**
Pronounced on : 08.03.2022

+ **BAIL APPLN. 317/2020 and CRL.M.A. 11134/2020**

VIJAY @ BHURIPetitioner

Through: Mr. Gaurav Sharma, Advocate.

Versus

STATERespondent

Through: Mr. K. K. Ghei, APP for the State.
Mr. Joel and Mr. Amit Dwivedi,
Advocates for Complainant.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. This is a petition filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in FIR No. 188/2019 under Sections 302/34 IPC registered at Police Station Vivek Vihar, Delhi.
2. In brief the facts of the case are that a PCR call vide DD No. 48A was received on 19.05.2019 at 11.20 PM at P.S. Vivek Vihar from Max Hospital, Parpaganj regarding death of Sh. Rajkumar S/o Sh. Laxman Dass R/o 28/88 Kasturba Nagar, Delhi. The I.O, ASI Devidarshan reached the hospital and collected the MLC No. 9115/2019, time 10.10 PM with alleged history of



"Pt. was brought dead to ER, alleged history of assault near Jhilmil area. Pt. was hit by someone as per history given by attendant then patient came back home and then took scooty and went out and then fell down from scooty. He suddenly collapsed and was unresponsive since then." Three injury marks were present on deceased's chin, left cheek and chest. The daughter of deceased Ms. Rajni Bal met the I.O in hospital and she alleged that his father had gone for evening walk after having dinner but he returned and told her that he was standing outside Dr. Verma's clinic in Kasturba Nagar where accused Vijay @ Bhuri (petitioner herein) and his associates gave beatings to him with fists and blows and also, hit him with scissors. It is alleged that Vijay @ bhuri stated that this policeman complaints against him so he would kill him. Thereafter, when Rajkumar and Rajni were going to hospital on scooty, Rajkumar fell down, so Rajni took him to Max Hospital, where he expired before the treatment. Later on, the instant case was registered vide FIR No. 188/19 dated 20.05.2019, under Sections 302/34 IPC at P.S Vivek Vihar. The statement under Section 161 Cr.P.C of Rajni Bala was recorded on 20.05.2019, wherein she stated that when her father returned home after the incident, he told her that the accused persons Vijay @ Bhuri and Vinod @ Pahari had beaten him with fist-blows and accused Vijay @ Bhuri also attacked him with scissors.

3. I have heard the learned counsel for the petitioner and the learned APP for the State and perused the status report filed by the state.

4. It is submitted by the learned counsel for the petitioner that petitioner has been falsely implicated in this case and is in judicial custody since



20.05.2019. It is further submitted that as per the MLC bearing no. 9115 dated 19.05.2019, there were only three noted visible injuries on the body of the deceased, i.e., abrasion on chin, abrasion on left cheek and abrasion on chest, however, when the post mortem of the deceased was conducted the doctor who conducted the post-mortem, observed that there were six injuries on the body of the deceased. It is further submitted that the said glaring contradiction between two medical documents should not have been ignored by the Ld. Trial court, as the said contradictions are extremely material in establishing the falsification of the present case. It is further submitted that in the Post Mortem Report, which was prepared by PW Dr. A.S. Bajwa, the opinion of the doctor clearly stated that the cause of death was "syncope as the result of myocardial infraction in a case of pre-existing coronary artery disease" and it was further opined that all the six alleged injuries which were caused to the deceased, were not sufficient in ordinary course of nature to cause death either individually or collectively. It is further submitted that there are material contradictions in the statements of the eye-witnesses, especially in the statement of PW Rajni and PW Vaishali, who are the daughters of the deceased, and the statement of both these witnesses is contradicting on material aspects, thereby increasing the probability of false implication of the petitioner in the present case. Learned counsel for the petitioner submitted that PW Rajni, who took the deceased to Max Hospital, submitted in her statement to the I.O, that she knew the names of the assailants who had allegedly attacked and assaulted her father (the deceased), however, in the MLC No. 9115 of 2019 of the deceased, the present PW did not mention the name of the petitioner to the doctor and if



the present PW was aware about the involvement of the petitioner in the alleged assault, she would have definitely mentioned the name to the doctor who would have then eventually noted them down in the MLC. It is further submitted that the petitioner is the only bread earner in his family, which consists of his old widowed mother and his wife with no one else to look after them. It is further submitted that the investigation in the present case is complete and chargesheet has been filed, thus, no purpose shall be served by keeping the petitioner in judicial custody.

5. Learned counsel for the petitioner has relied upon *Thukchuk Lachungpa vs. State of Sikkim* (SLP No. 3207/2000, order dated 01.11.2000) and *Satish Kumar vs. State of Haryana* (Criminal Appeal No. 1835/2010) decided by the Hon'ble Supreme Court on October 03, 2019.

6. In *Thukchuk Lachungpa vs. State of Sikkim* (SLP No. 3207/2000, order dated 01.11.2000), in paragraph 3, it is observed and held as under:

“3. Learned Senior Counsel then invited our attention to the post-mortem report and contended that since none of the injuries was neither fatal nor even sufficient in the ordinary course of nature to cause death, there is no possibility, even if the prosecution succeeds in establishing the case to the hilt, for the offence to go beyond Section 304, Part II of the Indian Penal Code. In answer thereto Mr. V.R. Reddy contended that injuries will cumulatively be sufficient to cause death and that would bring the offence within the purview of Section 299 of the IPC, whether it would amount to murder or not is a matter to be established at the trial stage.”



7. In *Satish Kumar vs. State of Haryana (Criminal Appeal No. 1835/2010)*, decided by the Hon'ble Supreme Court on October 03, 2019, in paragraph 8, it is observed and held as under:

“ 8. Clearly, therefore, there is inconsistency between the dying declaration, medico-legal report Ex-PC and the post mortem report Ex-PG. Further, cross-examination of Dr. R.K. Nandal (PW-4) exposit contradiction as to whether the injury in question was sufficient to cause death in normal course of nature. Benefit of doubt in view of the ambiguity and contradictions must go to the appellant.”

8. On the other hand, learned APP for the State has vehemently opposed the bail application and has argued on the lines of the status report. It is submitted that the allegations are grave and serious in nature and that the petitioner herein is the BC of P.S. Vivek Vihar and has previous involvements in seventeen cases of robbery, theft and Arms Act. It is further submitted that there are total 31 witnesses in the instant case and the material witnesses are the daughters of the deceased who are yet to be examined and possibility of them being threatened by the petitioner if released on bail, cannot be ruled out. It is further submitted that on 22.07.2019, subsequent opinion was obtained from the autopsy surgeon by putting up the question that, "Whether the Intentional physical trauma caused by two persons to the deceased has any direct role in triggering/aggravating myocardial infraction and Immediate death of the deceased, whose heart was already compromised?", to which the autopsy surgeon had opined that "Yes, it is possible". It is further submitted that the



FSL result of the CCTV footages of the day of incident has been received in a Pen Drive and in one of the footage marked as CH_01_19-05-2019_220000_19-052019_230000_IDO1160. AVI, which is about 5,72,812 KB, it can be seen that at 22.00.50 Hrs., victim RajKumar was coming towards CCTV Camera and at about 22.00.59 Hrs., he was assaulted by the accused persons. It is further submitted that the petitioner has influence and fear in the area and owing to his reputation, being the BC of the area, no one came forward to help the deceased even, when accused persons were brutally beating the deceased. Lastly, it is submitted by Ld. APP for the state that the witnesses and accused persons are residents of the same locality and if the petitioner is released on bail, he can threaten, influence or harm the witnesses and family members of the deceased. Learned APP for the State has placed reliance upon *Sumit @ Kala vs. State (BAIL APPLN. 396/2020, Judgment dated 07.07.2020)*.

9. In *Thukchuk Lachungpa vs. State of Sikkim (SLP No. 3207/2000, order dated 01.11.2000)*, the post-mortem report showed that none of the injuries were neither fatal nor sufficient in the ordinary course of nature to cause death, whereas, in the present case, the subsequent opinion dated 22.07.2019, obtained from the autopsy surgeon, clearly opines that the possibility of accused persons playing a direct role in triggering/aggravating myocardial infraction and immediate death of the deceased, whose heart was already compromised due to intentional physical trauma caused to the deceased by accused persons, cannot be ruled out. Ld. counsel for the petitioner has also placed reliance upon *Satish Kumar vs. State of Haryana (Criminal Appeal No. 1835/2010)*, in which the order was passed after BAIL APPLN. 317/2020



conviction at stage of appeal and as we are dealing with the bail matter, the same is also not applicable to the present case, moreover the contentions raised in this regard is a matter of trial.

10. In the instant case, the allegations are grave and serious in nature and the petitioner herein is the BC of P.S. Vivek Vihar and has been previously involved in seventeen cases. The statement under Section 161 Cr.P.C of Rajni Bala, daughter of deceased was recorded on 20.05.2019 and perusal of her statement shows that there are specific allegations against petitioner of beating deceased with fist-blows and also, attacking him with scissors.

11. Keeping in view the fact that the testimonies of the material witnesses who are the daughters of the deceased are yet to be recorded and considering that the petitioner is the BC of the area and has prolonged history of previous involvements in seventeen heinous crimes, the possibility of petitioner threatening the material witnesses cannot be ruled out at this stage. Also, taking into account the subsequent opinion obtained from the autopsy surgeon dated 22.07.2019, wherein, it was opined that the possibility of accused persons playing a direct role in triggering/aggravating myocardial infraction and immediate death of the deceased, whose heart was already compromised due to intentional physical trauma caused to the deceased by accused persons, cannot be eliminated, coupled with specific allegations against the petitioner of beating deceased with fist-blows and also, attacking him with scissors, no benefit can be given to him at this stage and the bail application is, therefore, dismissed and CRL.M.A. 11134/2020 is also disposed of accordingly.



12. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of the case.

RAJNISH BHATNAGAR, J

MARCH 8, 2022

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