



IN THE HIGH COURT OF DELHI AT NEW DELHI

Order reserved on: 30.05.2022

Order delivered on: 02.06.2022

+ BAIL APPLN. 1319/2021
VISHAL BALGUER

..... Petitioner

Through: Mr.Tanmaya Mehta, Mr.Pranshu
Gosain and Mr.Lalit Valecha,
Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Ms. Rajni Gupta, APP for the State
along with SHO/Inspector Shivani and
Inspector Satinder Sangwan.
Mr. Aman Usman, Advocate for the
victim.

CORAM:
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

ANOOP KUMAR MENDIRATTA, J.

1. This is an application filed under Section 439 Cr.PC for grant of bail in FIR No.1187/2015 registered at Police Station Hauz Khas under Sections 302/308/201/212/34 IPC.

2. In brief, as per the case of the Prosecution, the FIR was registered on the complaint of Rohit Bansal, who alleged that in the intervening night of 21/22.10.2015, he along with his friends namely Vineet, Sonu, Rupesh and Monu had visited Shanghai-30 Bar and Restaurant, E-Block Market, Hauz Khas. About 12:30 AM, a quarrel took place between the complainant and accused party on the issue of dancing on the floor in the Bar which was



sorted out by the bouncers. Thereafter, the complainant along with his friends left the Bar. Meanwhile, since the complainant realized that he had forgotten his mobile phone in Shanghai Bar, he along with his friends returned back and saw that the persons who had clashed with him in the Bar were standing near the Bar blocking his way. A quarrel took place in which the complainant and his friend Rupesh (deceased) were brutally assaulted by cement bricks, rod and baseball bat. Rohit Bansal suffered head injuries as mentioned in the MLC while Rupesh expired in the hospital on 26.10.2015. As per postmortem report, deceased Rupesh sustained 21 injuries and the cause of death was opined as "Craneocerebral damage due to head injury". The case was initially registered under Sections 307/308/34 IPC and on the death of Rupesh, Sections 302/201/212 IPC were invoked.

3. It is further the case of the prosecution that during the course of investigation, Anil Kumar Yadav was identified on the basis of CCTV footage. Remaining accused namely Tarun @ Maddy, Ashish Balguer, Vishal Balguer, Vikas Balguer and Vikas @ Shammi were also arrested, who refused TIP. The CCTV footage of the incident was also collected.

4. Learned counsel for the petitioner submits that statement of about 12 material witnesses, including eye-witnesses has been recorded out of 45 witnesses and the accused is in custody for more than six years. It is also urged that co-accused Anil Kumar Yadav has already been released on bail vide order dated 12.03.2021 and bail is also sought on the grounds of parity. It is further submitted that all the material/public witnesses have already been examined and there is no possibility of influencing the other witnesses in any manner. Reliance is also placed upon orders passed by Hon'ble



Supreme Court in *Indrani Pratim Mukerjee Vs. Central Bureau of Investigation & Anr.* S.L.P. (Crl.) No(s) 1627/2022 wherein in a murder case, the benefit of bail was extended to the petitioner therein considering the long period of custody in jail.

5. Learned counsel for the petitioner has also vehemently pointed out the discrepancies and omissions in the statements recorded during the course of trial and submits that the role of accused has not been supported. It is also emphasized that it was a sudden quarrel on a trivial issue which was not premeditated and the offence at the best falls under Section 304-II IPC. It is also pointed out that on earlier occasion when the applicant was admitted to bail, the same was not misused and was only cancelled in view of cancellation of bail of co-accused Anil Kumar Yadav. It is also submitted that the orders passed by the Hon'ble Supreme Court in S.L.P. (Crl.) No. 1938/2017 merely reflect in para 29 that the trial Court was yet to record the testimony of the material witnesses at the relevant time and bail was not granted, only to ensure fair trial and the witnesses may be in a position to freely depose. The CCTV footage collected during course of trial is also stated to be of little value as the footage was unclear.

6. On the other hand, learned APP for the State has vehemently opposed the bail application and submits that the attack had been carried out in a brutal manner, which is duly supported by the CCTV footage. It is further urged that inconsistencies in the statement of eye-witnesses are not material enough to disbelieve the role of applicant. It is also contended that co-accused Anil Kumar Yadav's role is distinct in the entire incident and, as such, he was extended the benefit of bail. Reference is also made to the



observations of the Hon'ble Supreme Court in para 22 of aforesaid order.

7. I have given considered thought to the contentions raised. At the stage of bail, the *prima-facie* case needs to be considered, without delving deep into the merits of the testimony of the witnesses, lest it may prejudice the case of the parties. The contradictions may be only considered for limited purpose of assessing the role of applicants/accused and to assess if the discrepancies are vital and material to extend the benefit of bail. The Court also needs to keep in consideration, the nature of seriousness of the offence, character of other evidence and the peculiar circumstances qua the accused, likelihood of the accused fleeing from justice and tempering.

8. It may be observed that the incident also stands recorded in the CCTV footage though it has been pointed out during the course of examination of the witnesses that CCTV footage was not clear and some of the witnesses also appear to have been identified by the witnesses after viewing the CCTV footage. However, it cannot be ignored that the present case, apart from the CCTV footage, is based upon ocular evidence and FSL results. The evidence of PW Rohit Bansal supports the involvement of the petitioner. The assault was admittedly on unarmed victims who merely returned back to the spot to collect the mobile. The accused acted in a premeditated manner and did not show any mercy while attacking the deceased with baseball bat, iron rod and cement bricks. The attack was clearly in furtherance of common intention which continued, resulting in grievous injuries to PW-1 and about 21 injuries on the person of deceased Rupesh. Even the Hon'ble Supreme Court in para 26 of aforesaid order observed that the manner in which the deceased was allegedly attacked and the number of injuries inflicted, *prima-*



facie indicate premeditation. I am of the considered opinion that it may be preposterous to comment in detail on the discrepancies in the statement of witnesses relied by learned counsel for the petitioner as they do not dent the modality of attack and role of the applicants/accused to disbelieve the prosecution version.

In the facts and circumstances, mere incarceration for six years itself is not a sufficient ground to enlarge the accused on bail. Further, no grounds of parity are made out since the role of co-accused Anil Kumar Yadav has been observed to be distinct.

For the aforesaid reasons, considering the gravity of offence and brutal nature of attack, the application is dismissed. Nothing stated hereinabove shall tantamount to an expression on the merits of the case.

A copy of this order be forwarded to learned trial court for information and with directions to conclude the trial expeditiously in a time bound manner, within a period of nine months.

(ANOOP KUMAR MENDIRATTA)
JUDGE

June 02, 2022/A