



\$~

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

% Reserved on: 20.01.2022

Pronounced on: 21.03.2022

+ BAIL APPLN. 3189/2021

AKASH KUMAR Petitioner

Through: Mr. Manoj Singh and Mr. Abhay
Singh, Advs.

versus

STATE (NCT OF DELHI) Respondent

Through: Mr. Amit Ahlawat, APP for the State.

CORAM:**HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****ORDER**% **21.03.2022**

1. This is a petition filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case FIR No. 74/2020 under Sections 302/34/120B IPC registered at Police Station Ghazipur, Delhi.

2. The case of the prosecution is that on receipt of DD No. 98 dated 09.03.2020, during night emergency duty ASI Sher Singh along with Ct. Shobharam reached at LBS Hospital where they found admitted Raj Kumar and his MLC obtained, on which doctor has mentioned "*A/H/O Assault as a result of injury U/O. patient unconscious. Unfit for statement.*" It is further alleged that one Deepak Kumar met ASI Sher Singh who told Raj Kumar was found lying in front of Ashirwad Apartment, outside H.No. A-73 in an unconscious state to whom he got admitted in LBS Hospital. ASI Sher Singh along with Ct. Shobha Ram and Deepak Kumar reached in front of H.No. 72, Gharoli Dairy where he found one pair of slipper and one Hero



Honda Splendor Bike No. DL-6SAG 0895 in a locked condition regarding which Deepak Kumar disclosed the same belonging to Raj Kumar. It is further alleged that vide DD No.03A dated 10.03.2020 ASI Sher Singh received an information through Ct Rajesh that during treatment Raj Kumar has died in the hospital. Thereafter, ASI deputed Ct Rajesh to preserve the spot and he himself along with Ct Shobha Ram reached LBS Hospital where dead body of deceased Raj Kumar was got preserved in the mortuary of LBS Hospital. In the hospital, younger brother of Raj Kumar namely Sonu met ASI Sher Singh, whose statement was recorded by ASI Sher Singh, which is as follows:- *"Statement of Sonu S/o late Dharampal Ro E-G3G, Gali No. 9, West Vinod Nagar, Delhi aged 30 years. I state that I am residing at the above mentioned address and is preparing for the Govt. Job. Raj Kumar was my elder brother and was providing home tuitions. About two years ago, my brother has taught one lady named Jyoti and since then they were knowing each other and my brother used to visit Jyoti's house off and on, Sometime ago, husband of Jyoti named Sachin had seen my brother Raj Kumar with Jyoti and thereafter, he picked up a quarrel with my brother Raj Kumar many times. My brother usually used to receive phone calls from Jyoti and on 09 03.2020 in the afternoon, when my brother was ready to go out of the house, I asked him where he was going and he told that Jyoti has called him and he is going to meet her. Late night, I received an information that brother Raj Kumar has been admitted in an injured condition in Lal Bahadur going on, but he was not in a position to talk anything was in an unconscious state and expired during treatment. I am fully sure that Jyoti and her husband Sachin have caused death of my brother by causing beatings to him as a result of which he sustained injuries on his person and*



died Legal action be taken against Jyoti and her husband Sachin You have recorded my statement, which I have read and found to be correct." ASI Sher Singh again reached at the spot along with Ct. Shobha Ram, where spot inspection was got conducted by Crime Team and one pair of slipper and one parked Hero Honda Splendor Bike No. DL 6SAG 0895 were taken into police possession through seizure memo. From the statement, circumstances and DD entries of MLC, an offence u/s 302/34 of IPC was found to have been committed. Therefore, a case vide FIR No. 74/2020 dated: 10.03.2020 u/s 302/34 IPC registered at PS-Gazipur, Delhi and investigation was taken up by Insp. Rajeev Kumar Vats.

3. I have heard the learned counsel for the petitioner, learned APP for the State and perused the record.

4. It is submitted by the counsel for the petitioner that petitioner has been falsely implicated in this case solely on the basis of the disclosure of the accused persons and the CDRs of petitioner's mobile which are in contradiction with each other. It is further submitted by the counsel for the petitioner that analysis of the CDRs of all the accused persons would show that conspiracy theory put forward by the prosecution is belied as the petitioner was present in the vicinity of Ashirwad Apartment between the time 8:27 hours to 20:29 hours, and it is imperative that if he would have in the company of the other accused persons from 4.30 pm onwards then he would have called accused Vijay at 18:27 hours. It is further submitted that charge-sheet in the instant case has already been filed and the petitioner has satisfied the triple tests i.e he is not at flight risk, there are no chances of tampering of evidence or influencing the witnesses. It is further submitted by the counsel for the petitioner that petitioner is in judicial custody since



28.8.2020, and trial is likely to take time. It is further submitted by the counsel for the petitioner the main accused in this case namely Jyoti who is the wife of co-accused Sachin has been granted bail by this Court vide order dated 4.8.2021. It is further submitted that on the date of the incident, the applicant had left for his native place to celebrate Holi by taking bus from Anand Vihar Bus Station, and a copy of the ticket has also been annexed with the bail application.

5. On the other hand, learned APP has argued on the lines of the status report.

6. At the outset, it is submitted by learned APP that petitioner herein cannot claim parity with co-accused Jyoti because she was a lady and a mother of two children and her husband is also in judicial custody. Therefore, it is contended by learned APP that this consideration should not be available to the petitioner. It is further submitted that death of deceased Raj Kumar has been a result of injuries given by the petitioner in association with other co-accused. It is further submitted by learned APP that in his statement under Section 161 Cr.P.C Sonu who is the brother of the deceased has stated that co-accused Jyoti was taking tuitions from the deceased Raj Kumar which was not liked to co-accused Sachin who is the husband of Jyoti and in order to put an end to this, the deceased Raj Kumar has been eliminated. It is further submitted by learned APP that place of incident i.e Ashirwad Apartment was taken on rent by the petitioner, and this fact has been confirmed by the statement given by the landlord of Flat No. 313, Ashirwad Apartment where murder has taken place. It is further submitted by learned APP that the CDR records of all the accused persons show that they are in the vicinity and close contact with each other.



7. In the instant case, as per the prosecution, deceased Raj Kumar was called by the co-accused Jyoti to Ashirward Apartment, and after leaving the victim Raj Kumar at Ashirwad Apartment she left the place. According to the prosecution, all the accused persons including the present petitioner Akash gave severe beatings to Raj Kumar in the Flat which was taken on rent by the petitioner, and it would be for the petitioner to explain during the course of trial as to why the keys of the Flat were given by him to the co-accused persons. According to the prosecution, deceased Raj Kumar was found lying injured and unconscious condition in front of the House no. A 73, Ashirward Apartment, and thereafter he was removed to the hospital where he succumbed to injuries. As per the post-mortem report cause of death reported reads as follows:-

“Later on, the PM report of deceased Raj Kumar vide no 104/2020 was received and cause of death of deceased Raj Kumar was given by autopsy surgeon as “HYPOVOLUMIC AND NEUROGENIC SHOCK DUE TO ANTEMORTEM BLUNT FORCE IMPACT. ALL INJURIES ARE ANTEMORTEM IN NATURE AND FRESH IN DURATION AND POSSIBLE TO BE CAUSED/PRODUCED BY LINEAR OBJECT. ALL INJURIES OR SUFFICIENT TO CAUSE DEATH COLLECTIVELY IN ORDINARY COURSE OF NATURE AND ARE HOMICIDAL IN NATURE.”

8. It has been mainly argued by the counsel for the petitioner that petitioner has no role to play in the conspiracy, and he has left for his native place from Anand Vihar at around 8.29 pm, and the call record would only show that petitioner was near the place of occurrence from 6.27 pm till 8.29 pm. According to the counsel for the petitioner, petitioner left for his native place by boarding bus at 9.00 pm. The case is based on circumstantial



evidence. In the present case, the place of incident is the flat which was taken on rent by the petitioner and it is not that the said flat was lying open and accessible to all or that the petitioner had no control over the same. As per the case of the prosecution, the keys of the said Flat, which is place of incident, has been recovered from the co-accused Sachin, so obviously, the keys were given by the petitioner to co-accused Sachin. More so, petitioner has been found for about 2 hours near the place of incident, and his contention that he was at some other place around 2 meters from the place of incident would show his presence at the place of incident would be taken care of during the course of trial. In the present case, according to the prosecution, and the statement of Sonu, recorded under Section 161 Cr.P.C, co-accused Jyoti was having affair with the deceased which was not to the likings of the husband i.e co-accused Sachin who is the friend of co-accused Vijay and the present petitioner had also come on record as observed hereinabove, that the accused Sachin was having the keys of the Flat of the petitioner, where deceased Raj Kumar dropped by Jyoti. The allegations against the petitioner cannot be simply brushed aside, as they are serious in nature.

9. Having analyzed *prima facie* the circumstances in which the offence was committed and the nature of the allegations, it will be useful to refer to the precedents of this Court governing the grant of bail. A two-judge Bench of this Court in **Ram Govind Upadhyay v. Sudharshan Singh (2002) 3 SCC 598** has listed the considerations that govern the grant of bail without attributing an exhaustive character to them. This Court has observed:

“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."

This Court has further elucidated on the power of the court to interfere with an order of bail in the following terms:

"3. Grant of bail though being a discretionary order -- but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained."

The above principles have been reiterated by a two judge Bench of this Court in **Prasanta Kumar Sarkar v. Ashis Chatterjee (2010) 14 SCC 496**:

"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.

In **Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana 2021 (6) SCC 230** , a two judge Bench of this Court of which one of us (Justice DY Chandrachud) was a part, has held that the High Court while granting bail must focus on the role of the accused in deciding the aspect of parity. This Court observed:

“26....The High Court has evidently misunderstood the central aspect of what is meant by parity. Parity while granting bail must focus upon the role of the accused. Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance. The High Court has proceeded on the basis of parity on a simplistic assessment as noted above, which again cannot pass muster under the law.”

10 Therefore, having due regard to the seriousness and gravity of the crime, and also keeping in view that at this stage when the Court is called upon to evaluate whether a case for the grant of bail has been made out, it is inappropriate to enter upon matter which would form the subject of the trial when evidence is adduced by the prosecution. Therefore, in these circumstances, no ground for bail is made out, the bail application is accordingly dismissed.

RAJNISH BHATNAGAR, J

MARCH 21, 2022/ib