



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3595/2021**

Order reserved on :16.12.2021

Date of decision : 08.03.2022

GAUTAM

..... Petitioner

Through: Mr.N.S. Dalal, Mr.Devesh
Pratap Singh, Mr.Raja Panda,
Mr.Akash Bansal, Mr.Alok
Kumar &Ms.Rachana Dalal,
Advocates

versus

THE STATE

..... Respondent

Through: Ms.Aashaa Tiwari, APP for
State with Inspector Vijay
Kumar PS Govind Puri

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

ANU MALHOTRA, J.

1. The applicant Gautam s/o Sh. Dulare, who is in judicial custody in relation to the FIR No. 340/2020, Police Station Govind Puri under Sections 302/201/34 of the Indian Penal Code, 1860 since 11.8.2020 seeks the grant of bail in relation thereto in terms of Section 439 of the Cr.P.C., 1973, submitting to the effect that

- that investigation in the matter is complete;
- that the Charge sheet has already been filed;
- that the applicant cannot be detained in custody by way of a penalty and cannot be presumed to be guilty till held so;



- that the applicant has clean antecedents and that there are no allegations against the petitioner by the brother of the deceased in relation to any overt act committed by the applicant;
- that even as per the prosecution version there was no weapon of offence allegedly used by the petitioner nor was there any recovery effected from him or at the behest of the applicant during investigation;
- that no custodial interrogation of the applicant is required and no useful purpose would be served by his further incarceration and
- that there is no scope of the applicant tampering with or influencing the witnesses nor is there any apprehension of any threat to the witnesses of the prosecution as most of the witnesses cited by the prosecution are official witnesses;
- inter alia, it has been submitted on behalf of the applicant that the examination of the prosecution witnesses would take ample time and that there is no scope of the applicant fleeing from justice;
- that the applicant has a family of five minor children, i.e. four daughters and a son, who are completely dependent on him and;
- that even if the prosecution version is accepted as a gospel truth, no offence punishable under Section 302 of the Indian Penal Code, 1860 is made out and at the most only a charge under Section 304A of the Indian Penal Code, 1860 can be framed against the applicant.

2. The notice of the application was issued to the State.

3. The status reports dated 27.10.2021 and 13.11.2021 under signatures of the SHO Police Station Govind Puri have been submitted. The copy of the post mortem report conducted on the body of the deceased at the Department of Forensic Medicine and Toxicology, AIIMS, New Delhi, indicates the date of conducting of



the autopsy as being 10.8.2020 and copy of the FSL result dated 15.12.2020 as well as of the RFSL, Biology Division result dated 27.11.2020 have been placed on record by the State along with the copies of the statements under Section 161 of the Cr.P.C., 1973 of the witnesses named Haseen S/o Jalish Ahmad and Saleem S/o Jalish Ahmad.

4. The prosecution version as set forth through the status report and the FSL and RFSL reports and the statements of prosecution witnesses examined under Section 161 of the Cr.P.C., 1973 is to the effect that on 6.8.2020 an information in relation to a dead body of an unknown male person found in a decomposed manner lying at the Tughlakabad Village was received at the Police Station Govind Puri, as a consequence of which the police reached the spot and found the decomposed male dead body in the Tughlakabad Forest near the Balmiki Colony Road wrapped in a plastic gunny bag with a bamboo stick inserted on the top of it to carry the same in the area of Police Station Govind Puri. It is further submitted thereby that on the right hand of the forearm of the deceased, a tattoo mark as Heena or Reena and Durga Devi was seen, no eyewitness was found and the case was registered vide FIR No. 340/2020, Police Station Govind Puri under Sections 302/201 of the Indian Penal Code, 1860. Efforts are stated to have been made for identification of the deceased which however could not be done and as the dead body had been decomposed, the post-mortem was got conducted from the AIIMS Mortuary on 10.8.2020.



5. As per the prosecution version on 11.8.2020, Baliram, the brother of the deceased came to the Police Station stating that he had seen the hue and cry pamphlet of the dead body in the area and stated that the dead body could be that of his brother Jhinak @ Jheena and he identified the photos of the deceased as being his brother Jhinak @ Jheena. He further informed that his brother used to collect the garbage from the Greater Kailash area and that 12 to 13 days ago one Ramji r/o Tughlakabad Delhi, with whom Jhinak @ Jheena used to work had come to enquire about Jhinak @ Jheena but that he Baliram could not provide any information to Ramji about Jheena as he lived separately. It was however informed by Baliram that Ramji had also informed him that Jheena, i.e., the deceased had borrowed Ramji's rickshaw and had been refusing to return it and that the day after that Kaushal s/o Ramji had also come to Baliram and ask him about Jheena and both Ramji and Kaushal had expressed their anger against Jheena over the dispute qua the rickshaw.

6. As per the status reports submitted on record by the State, both Ramji and Kaushal were apprehended and interrogated and allegedly confessed about their involvement in the crime and disclosed that on 3.8.2020 (Raksha Bandhan) at about 8:30 pm to 9:30 pm they met Jheena at Durga Mandir, Bengali Colony, Tughlakabad, Delhi and they had taken the deceased to their house in the Tughlakabad Village and on enquiry from him the deceased had informed them he had sold the rickshaw on which they got angry and started beating Jheena and that whilst they were beating the deceased their neighbours Gautam (the applicant herein) and Bhagirath also joined them in beating the



deceased and that due to their beatings the deceased became unconscious.

7. As per the disclosure statement of Kaushal s/o Ramji, Jheena, the deceased was intoxicated and when Kaushal and Ramji had enquired from Jheena about their rickshaw, when Jheena informed that he had sold his father's rickshaw and he did not have the rickshaw, he, Kaushal and his father Ramji got angry and started beating Jheena with sticks and Bhagirath and Gautam (the applicant herein) who lived in their neighbourhood, who were also intoxicated, who were also informed by Kaushal that the deceased had sold the rickshaw and was not telling where it was, then Bhagirath and Gautam (the applicant herein) along with Kaushal and Ramji started beating Jheena and when Jheena fell on the ground, Kaushal hit hard on his face and then the head of Jheena hit the stone buried in the ground and that he became breathless, so they picked him up but he did not wake up, as he was dead, they were scared and the mobile phone which Kaushal had picked up from Jheena's pocket fell down and then Kaushal brought a sack of a plastic bag and a bamboo stick to pick up garbage from his slum and he with the help of his father and Bhagirath and Gautam,(i.e. the applicant herein) put Jheena's dead body in that plastic bag and tied the same and then he, i.e., Kaushal, Bhagirath and Gautam (the applicant herein), took the bag in which Jheena's dead body was brought from their house and went to the forest to throw the dead body, and as there was a sound of someone coming on the way, they got scared and ran away leaving the bag.



8. As per the charge sheet the said Kaushal got recovered the mobile phone make 'Samsung Colourful white keypad' from a table placed on the left side of the slum gate inside his slum which mobile phone was also identified by Baliram, the brother of Jhinak @ Jheena, as belonging to the deceased which was seized by the Investigating Agency.

9. As per the prosecution version, the applicant herein Bhagirath, the neighbours of Ramji, the rickshaw owner, and Kaushal his son, had beaten the deceased along with Ramji and Kaushal, on being informed that the deceased was not returning the rickshaw of Ramji Lal.

ANALYSIS

10. The statements under Section 161 of the Cr.P.C., 1973 of Haseen and Saleem, who also work as Kabadis, just as Ramji Lal and the deceased worked, stated that they had seen Ramji Lal, Kaushal s/o Ramji Lal, Gautam (i.e. the applicant herein) and Bhagirath, assaulting a man that is beating the deceased because he was not returning the rickshaw of Ramji Lal. Significantly both these witnesses through their statements under Section 161 of the Cr.P.C., 1973, contents of which are yet to be established in accordance with law, stated that when they asked those persons to stop beating the deceased, those persons had stopped beating the deceased and these two persons Haseen and Saleem had gone back to their houses and that the incident was of the date 3.8.2020 at about 9 to 9:30 p.m. and after 3 to 4 days they learnt of a dead body having been recovered in the jungle being that of Jhinak @ Jheena.



11. The Post Mortem report of the post-mortem conducted on the body of the deceased on 10.8.2020 states that the cause of death was shock as a result of head injury due to the blunt force trauma.

12. Apparently beatings, prima facie, do not amount to blunt force trauma which could result in head injury which head injury, as per the Post Mortem report, shows in relation to the skull to the effect:

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(B) HEAD & NECK

1.Scalp & Sub Scalp

Hair is coming out in clumps with skin of scalp peeling off

2.Skull

Base of skull fracture is present with fracture line running from left to right over the middle cranial fossa. Two linear undisplaced fractures are present over the occipital bone measuring 5.2 cm and 8.5 cm respectively, the longer fracture line running perpendicularly and diagonally from the middle of the shorter fracture line which is present horizontally.

3.Brain Meninges

and Cerebral Vessels

Decomposed and liquified.

4.Orbital Nasal and Aural Cavities

(Examine if special indications present)

As mentioned

5.Mouth Tongue

As mentioned

6.Neck Larynx Thyroid

and Other Neck Structures

Neck is covered with Maggots. Skin Peeling of at places”

13. The said injury being of a fracture on the skull appears to be consistent with the alleged disclosure statement of Kaushal s/o Ramji Lal that the head of the deceased had struck against the stone buried in the ground.



14. The FSL result examination report dated 15.12.2020 also corroborates the version put forth by Kaushal S/o Ramji Lal that the deceased was intoxicated in as much as Ex.A-3, the blood sample of the deceased, was found to contain ethyl alcohol to the extent of 251.2mg/100ml of blood. No poison is indicated to have been administered to the deceased, in as much as Ex.A-4 the preservative sample of the deceased, gave negative tests for common poison. The RFSL Biology Division Result dated 27.11.2020 also does not speak in relation to any act of any kind attributable to the applicant.

15. In the circumstances, thus where the only allegations against the applicant relate to his having assaulted the deceased by beating him when another person named Bhagirath was also beating the deceased along with Ramji Lal and his son Kaushal who had been beating the deceased since inception and the factum that Bhagirath and Gautam (i.e. the applicant herein) had allegedly, as per the statements under Section 161 of the Cr.P.C., 1973, of the witnesses Haseen and Saleem, who are yet to be examined, had left beating the deceased when they had intervened not to beat, coupled with the factum that as observed herein above that the cause of death of the deceased is blunt force trauma caused to the head of the deceased, the assaults by beatings on the deceased allegedly by the applicant do not appear, prima facie, to have been the cause of death of the deceased. In the said circumstances, the applicant, who is in custody since 11.8.2020 with no previous adverse antecedents against him is allowed to be released on bail on his furnishing a personal bond in the sum of Rs.1,00,000/- with one surety in the like amount to the satisfaction of the Trial Court



subject to his not leaving the country, with directions to appear before the Trial Court as and when directed, and that he shall make no attempt to influence the prosecution witnesses and shall keep his mobile phone on at all times and drop a pin on the Google map to ensure that his location is available to the Investigating Officer.

16. Nothing stated hereinabove, shall however amount to any expression on the merits or demerits of the trial, if any, that takes place in relation to FIR No. 340/2020, Police Station Govind Puri under Sections 302/201/34 of the Indian Penal Code, 1860.

MARCH 08, 2022
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ANU MALHOTRA, J.



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