

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

% Reserved on: 21st March, 2023

Pronounced on: 11th April, 2023

+ **BAIL APPLN. 88/2023**

VISHAL @ JOHNY

..... Petitioner

Through: Mr. Joginder Tuli, Ms. Joshini Tuli,
Ms. Kirti Goyal and Mr. Vishal
Gupta, Advs.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms. Richa Dhawan, APP for the State
with Insp. Omvir Dabas and SI
Krishan, PS Bawana.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. By this application, the petitioner seeks regular bail in FIR No.430/2018 registered at PS Bawana under Sections 302/120B of the IPC and Sections 25/27 of the Arms Act. The petitioner has been in judicial custody since 20th November, 2018, the charge-sheet has been filed and the trial is in progress.

2. As per the case of the prosecution, information was received on 29th October, 2018 that a lady on a scooter had been shot. On reaching the place of incidence, it was revealed that the injured had been shifted to M.V. Hospital where Sunita aged 41 years was found admitted. As per the MLC, the doctor had mentioned a history of gunshot and declared her dead on arrival. No eyewitness was found and the FIR was registered under Section

302 IPC and Sections 25/27 of the Arms Act. During investigation, it was discovered that the deceased was a school teacher in a Government Middle School in Sonipat. The brothers of the deceased stated that there was an illicit relationship between Manjit (husband of the deceased) and Angel Gupta and suspected that they were involved in the incident. Further, information was revealed through e-mails which was sent from Angel Gupta to Manjit and through the mobile phones of various accused persons and witnesses. References to Angel Gupta were found in the diary written by the deceased where she had recorded her apprehension of an untoward incident which may take place with her. Statements under Section 164 Cr.P.C. were also recorded of the daughter of the deceased who had overheard conversations between the deceased and Angel Gupta over the phone where the deceased had been threatened. From the CCTV footage, the presence of a Duster car was noted as also a Maruti Esteem car which was found to be owned by Rajiv Gupta, the father of Angel Gupta whose presence was also established through the mobile location details. From the data retrieved from the mobile phone from co-accused Deepak, driver of Rajiv Gupta, would show that Rajiv Gupta hatched a conspiracy and hired criminals. Deepak brought the hired scooter from Meerut on 28th October, 2018 and then later identified one of the shooters in the judicial TIP while other accused persons, namely, the petitioner refused to join TIP proceedings. Later, on disclosures of Rajiv Gupta, Manjit and Angel Gupta who were arrested on 01st November, 2018, it was allegedly revealed that they had decided to kill Sunita and Deepak. The driver of Rajiv Gupta had apparently introduced them to his maternal uncle Dharmendra who in turn hired Shehzad and present petitioner who had shot Sunita on 29th October 2018. Petitioner Deepak was arrested on 02nd November, 2018, Shehzad was arrested on 07th November, 2018, Dharmendra was arrested on 17th

November, 2018 and petitioner was arrested on 20th November, 2018. At the instance of the petitioner, motorcycle used in the crime was recovered as also the weapon of offence at the instance of accused Shehzad. Cash was recovered from Dharmendra, including a pistol that he was carrying on that day and the Maruti Esteem Car was recovered at the instance of accused Deepak.

3. The case is at the stage of prosecution's evidence. There about 30 material witnesses and 3 witnesses have been examined by the Ld. Trial Court. The petitioner filed an application in the Sessions Court to plead guilty. However, the Ld. Sessions Court held that *"in view of the said settled proposition of law made in Gaurav Aggarwal (supra) case, there is no recourse available to the accused to make a plea of guilt again under Section 304 IPC once the stage is over and the matter being on trial. Once the plea of not guilty is recorded upon the charge being framed, the only consequence is the conclusion of trial either the judgment of conviction or acquittal. In these circumstances, the application under Section 229 Cr.P.C. moved on behalf of the accused Vishal @ Johny for pleading guilty is dismissed"*. Pursuant to this order dated 10th March, 2022, a criminal revision petition was filed assailing the same but was withdrawn with liberty to approach the Ld. Trial Court. Another application under Section 229 Cr.P.C. was moved which was again dismissed by order dated 03rd August, 2022. The third plead guilty application was moved by the petitioner on 25th November, 2022 and later the regular bail application of the petitioner was dismissed by the Ld. Trial Court on 06th January, 2023.

4. The learned counsel for the petitioner contends that the petitioner has been in judicial custody for more than 4 years 3 months and has pleaded guilty on 29th July, 2022 which was dismissed by the Ld. Trial Court *vide*

order dated 03rd August, 2022. Reliance is placed on *State of Maharashtra & Ors. v. Sukhdeo Singh & Anr.* 1992 (3) SCC and *Mohammed Amir Mohammed Ajmal Kasab & Ors. v. State of Maharashtra & Ors.* 2012 (9) SCC 1 to contend that the accused can plead guilty at any stage of trial and after the plea of guilt is recorded the Ld. Trial Court can either convict the accused on such plea of guilt or keep it pending till after the conclusion of trial and then decide on the plea of guilt. Reliance was also placed on the decision of the Hon'ble Supreme Court in *Satender Kumar Antil v. CBI & Ors.*, AIR (2022) SC 3386 for canvassing the issue of bail. Bail on ground of parity was also pleaded since co-accused Shehzad who was on interim bail with two other co-accused Deepak and Dharmendra since May 2021. It was contended that the commission of murder of the deceased was due to road rage. Bail is also sought on the ground that the petitioner is a young unmarried man aged about 22 years old with old age parents and as also had been granted custody bail for a period of ten hours on the occasion of his sister's marriage on 28th November 2022. Shehzad, Deepak and Dharmendra were granted interim bail on account of HPC recommendations and continued to be on such interim bail till date.

5. The Ld. APP has refuted these contentions and stated that in view of the offence committed by the petitioner being grave and heinous and that he was contracted for killing would not entitle him for the grant of bail. However, it is stated that Manjit and Angel Gupta continued to be in judicial custody and Rajiv Gupta had violated the conditions of bail and proceedings under Section 82 Cr.P.C. had been initiated order dated 15th March, 2023 by the Ld. ASJ.

6. Ld. APP also drew attention to order dated 10th March 2022 passed by the Ld. ASJ when deciding applications moved by the accused under

Section 229 Cr.P.C. As regards the petitioner for his application to plead guilty, it was contended by the State that the stage of making plea of guilt had passed and charges had been framed by order dated 07th December, 2019 at which stage the petitioner had pleaded not guilty and claimed trial, therefore, the application was not maintainable. Reliance was placed by the Ld. ASJ on the decision by this Court in *Gaurav Aggarwal* (*supra*) as per which if the accused pleads not guilty and then the prosecution is called upon to furnish proof of guilt the procedure prescribed for trial resulting eventually in a judgment based on evidence is to follow. The decision in *Sukhdeo Singh* (*supra*) is also distinguished on the basis that the accused in that case had decided to own-up to their involvement in the murder of the deceased before their statements were recorded under Section 313 Cr.P.C. However, in this case the accused/petitioner had pleaded not guilty in their statements recorded under Section 313 Cr.P.C.

7. The basic thrust of the learned counsel for the petitioner is on the plead-guilty plea taken by the petitioner stating that he was responsible for the murder of the deceased, however, done as part of road rage. Accepting such plea at this stage would be untenable, when the petitioner has already pleaded not guilty and a full trial is already underway, as also when the investigation, as per the prosecution, has revealed a larger conspiracy involving other accused, namely, Manjit, Angel Gupta, Rajiv Gupta as also facilitators Deepak and Dharmendra, as well as accused Shehzad another collaborator for the killing. It would be incongruous, inappropriate and illogical at this stage, and would sabotage a proper adjudication of the matter, as also erode possibility of complete justice, if such a plea of guilt is accepted. The plea of guilt and the basis on which it is presented, that the killing was in road rage, is completely at odds with what the investigation

has revealed and would be an integral part of the prosecution's case. Accepting this, notwithstanding the legal hurdle as stated in the decision of ***Gaurav Aggarwal*** (*supra*), would also involve effectively exonerating the other co-accused who were involved in the conspiracy to kill the deceased. This could not be acceptable and will render the whole investigation facile, purposeless and of no consequence. Therefore, the bail application of the petitioner will have to be considered aside from and *de hors* the plea of plead guilty.

8. Considering the facts and circumstances and what has been revealed by the investigation, the petitioner is alleged to be a contract killer who was requisitioned for the killing of Sunita, the deceased at the behest of a conspiracy hatched between Manjit, Angel Gupta and her father Rajiv Gupta. In these circumstances to allow the release of the petitioner while the trial is still underway and only three witnesses have been examined whereas as per the status report 30 material witnesses are still to be examined, would be placing the witnesses and the trial in jeopardy. The petitioner therefore cannot be enlarged on bail at this stage. Releasing the petitioner on bail would clearly fall foul of a various decisions of the Hon'ble Supreme Court which have rejected bail on the possibility of accused's likelihood to repeat similar offences, or to feel from justice, or to influence the witnesses, or tamper with the evidence, or apprehension to the family of the victims or to the complainant. As per the Nominal Roll of the petitioner while there are no previous involvements, various punishments have been awarded for misconduct during jail during the period in 2019 as well as in May and July, 2022 including attacking co-inmates and abusing escort guards in court lock-up.

9. In view of these facts and circumstances, the application is dismissed. All pending applications, if any, are disposed of as infructuous.

10. Copy of this order be sent to the Superintendent, Tihar Jail for information and record.

11. Judgment/Order be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

APRIL 11, 2023/mk



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