

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

% Reserved on : 1st March, 2023

Pronounced on: 28th March, 2023

+ **BAIL APPLN. 278/2023**

PRAVEEN GUSAIN@TINKU@MOTA Petitioner

Through: Mr. Nikhil Arora and Mr. Anshu Malhotra, Advs.

versus

STATE Respondent

Through: Ms. Richa Dhawan, APP for the State
Mr. Vishal Tiwari, Mr. Shailendra Mani
Tripathi and Mr. Deepak Kumar, Advs. for
Complainant.

+ **BAIL APPLN. 412/2023**

PRADEEP SINGH @GULGULA @MOTA Petitioner

Through: Mr. Kanhaiya Singhal, Mr. Prasanna and
Mr. Ujwal Ghai, Advs.

versus

STATE NCT OF DELHI Respondent

Through: Mr. Ritesh Kumar Bahri, APP for the State.
Mr. Vishal Tiwari, Mr. Shailendra Mani
Tripathi and Mr. Deepak Kumar, Advs. for
Complainant.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

1. By these petitions the petitioners, who are co-accused, seek regular bail in FIR No.665/2020 under sections 302/323/34 IPC registered at P.S. Ranhola. The petitioner was arrested on 30th June, 2020 and has been in custody since. Charge-sheet has been filed and the trial is progressing.

2. As per the case of the prosecution, on 27th June, 2020 information was received at PS Ranhola mentioning that “*the finger of caller was bitten and bone of finger has been broken*” and the same was marked to IO SI Amit Kumar. On inquiry, it was found that pursuant to an altercation, the parties had gone to the police station and the injured had gone to hospital for treatment. At the hospital, injured Jatinder Singh was found under treatment *vide* MLC 751/20, who later passed away. The case was registered initially under section 307 IPC since the doctor had opined the natures of injury as grievous. On 29th June, 2020, co-accused Amit Rawat was arrested by the IO. On the same day, information was received that Jatinder Singh had passed away. The *post mortem* of the deceased was conducted and blood from the clothes of the deceased was seized, cause of death was opined as ‘*cranio cerebral damage consequent upon blunt force impact to the head*’. On 1st July, 2020, 3 other accused including the present petitioner was arrested. The weapon of offence i.e. wooden *danda* was recovered at the instance of accused Amit Rawat.

3. As per the statement of the mother of the deceased and witnesses, it was stated that accused Amit Rawat was beating the deceased with wooden *danda* while the other including the petitioner, were giving him fists and blows.

4. As per the status report, the petitioner is not involved in any other case except the present FIR and charge-sheet was filed and charges were framed on 7th April, 2022 by the Sessions Court. As per the prosecution, three prosecution witnesses have been examined including PW-1, the complaint (brother of the deceased), PW-2 (the mother of the deceased) and PW-3 and testimony of 16 other witnesses is yet to be recorded.

5. In support of the bail application, learned counsel for the petitioner has contended that *firstly*, the name of the petitioner does not find a

mention in the FIR and it was merely stated by the complainant that when he had asked his brother, who was assaulted (the deceased victim) he had mentioned that his neighbor Amit Rawat and some accomplices had beaten him up. *Secondly*, as per the statement of complainant recorded under section 161 Cr.P.C. on 28th June, 2020, he had stated that Amit Rawat and Jitender often used to get into arguments relating to getting water from the bore well which was installed in the field and had stated that he had “*full faith*” that on 27th June, 2020 when his brother Jitender was getting water from the bore well then Amit Rawat along with Praveen and Pradeep and some other accomplices had beaten him and ran away. Learned counsel for the petitioner stated that this was statement of just belief and not of an eyewitness. *Thirdly*, as per the statement of Amit Rawat recorded under section 161 Cr.P.C., his disclosure, it was recorded that he used to have conflict with Jatinder since he used to stare at his sister and had made their life hell and was looking for excuses to fight all the time. On that day upon seeing Jatinder, Jatinder exhorted him and joked him about marrying his sister and on being provoked, he started beating Jatinder with a stick and some other ‘stray boys’ from the colony came there and also joined him in beating Jatinder. As per the learned counsel for the petitioners, even Amit Rawat had not named the petitioners in his statement. *Fourthly*, after the deceased had passed away on 28th/29th June, 2020, the case was marked to IO Sahi Ram and for the first time the name of the petitioners cropped up in the supplementary disclosure statement of the accused Amit Rawat dated 30th June, 2020 wherein he had stated that he had not told the whole truth regarding beating of Jatinder and named his friends, the petitioners who had also joined him who had given punches and fists. *Fifthly*, learned counsel for the petitioner Praveen submitted that the petitioner was on duty on 29th June, 2020 and was called to the PS and was detained and was not

allowed to go back and on 30th June, 2020 after second disclosure of Amit Rawat, recorded by Insp. Sahi Ram, the petitioner was arrested. *Sixthly*, names of two eye-witnesses namely of Dalbir Singh Rana and Jagdish surfaced after 4 days of the incident on 1st July, 2020 as also the mother of the deceased also became aware of the name of the petitioners. Their statements were recorded on 1st July, 2020 and charge-sheet was filed thereafter. *Seventhly*, a protest petition was filed by the complainant on 24th November, 2020 stating that neither his nor his mother's statement was recorded as per due procedure and influential persons involved in the incident, particularly Rakesh Bhandari, son of the President of RWA was deliberately favored by the police for extraneous reasons. *Eighthly*, in the examination-in-chief of the complainant, he had stated that he saw some boys along with Amit Rawat beating his brother but did not name anybody besides Amit Rawat. *Ninthly*, in the statement of PW-2, the mother of the deceased, she had also stated that her son had told her that Amit Rawat along with 8-10 associates had beaten him but did not name the petitioners and she identified Amit Rawat in Court. In her cross examination by the Ld. APP, she improved upon her statement and stated that Amit Rawat along with his friends, whom then she named as Digambar, Praveen, Pradeep and 8-10 persons had beaten her son. She categorically stated in her cross examination by the Ld. APP that the IO of the case had not met her on 1st July, 2020 and recorded her statement. In her further cross examination by the defence counsels, she again stated that she did not know the names of other accused persons except Amit Rawat.

6. On these facts and circumstances, learned counsel for the petitioner has contended that no role was attributed to the petitioners since PW-1 was not able to identify the petitioners nor did PW-2, who in any case denied giving any statement to the police on 1st July, 2020 and the name of Rakesh

Bhandari, a son of an influential person cropped up in both the statements because of which proper investigation was not conducted. The only other alleged eye-witness PW-3 Jagdish Rawat turned hostile and stated that he had not witnessed the quarrel and his statement was not recorded by the police. Therefore, in this view, it was contended that the petitioners have been falsely implicated, the trial will take time and petitioners are in custody for the last about 32 months, and may be released on bail.

7. On the basis of same facts and circumstances, and in addition to the arguments above, learned counsel for petitioner Pradeep has further contended that the statement made by the mother of the deceased before the Ld. MM was made on oath as witness and she did not name petitioner Pradeep. Further, during her cross examination, she was confronted with her previous statement and confirmed that name of accused Pradeep was not mentioned as an assailant in that statement. He therefore stressed that the name and identity of accused Pradeep remained undisclosed in the FIR, the testimonies of PW-1 and PW-2 who had all clearly identified accused Amit Rawat. Also in the statement of PW-2 recorded under section 161 Cr.P.C., she had stated that *“mujhe pura vishwas hai ke jab mera beta Jatinder bore se paani le kar aa rha tha tabhi Amit @ Dogra ne mere bête Jatinder ko jaan se marne ke liye apne dost Digambar, Praveen va Pradeep aur kuch anya sathiyon ke saath mil kar Rajasthan General Store, Jai Vihar ke pass mara peeta tha...”*.

8. It was reiterated that there was no other independent witness and there was no recovery of weapon of offence from the accused, the FSL report stated that there was no blood stains on the wooden stick and no chance finger prints were also developed from said wooden *danda*. Further, names of accused-petitioners were only added subsequently

without any proof or evidence and accused Pradeep has also been in custody since 30th June, 2020.

9. Learned counsel for the complainant refuted these allegations and stated that reliance on statement recorded under section 161 Cr.P.C. could not be done at this stage when trial is going on and the prosecution witnesses have been successful to establish that injuries were caused on the head of the victim by inflicting several blows by all accused persons with common intention.

10. Ld. APP, also refuted the contentions of learned counsel for the petitioners by stating that the victim had died due to beatings given by the accused persons and the petitioner was also implicated under section 34 IPC and death had been caused due to grievous injuries inflicted upon him by Amit Rawat and all the co-accused.

11. Ld. APP further stated that they were moving an application under section 311 Cr.P.C. to identify the petitioners and that the offence was grave and that PW-2 in her cross examination by the counsel for accused Pradeep before the Ld. Trial Court, denied the suggestion that he was not involved in the said incident.

12. Further, reliance has been placed on the decision of the Hon'ble Supreme Court in *Kalyan Chandra Sarkar v. Rajesh Ranjan & Anr.* (2004) 7 SCC 528 wherein it was held in para 19 that the admissibility of the confessional statements and the effect of the evidence adduced by the prosecution and the merit of the evidence that may be adduced hereinafter including that of the witnesses sought to be recalled, are all matters to be considered at the stage of the trial and bail had therefore, been refused.

13. Upon a perusal of records before this Court as also the appreciation of contentions of learned counsel for the petitioner, in these circumstances, the guilt of the petitioners would have to be proven on circumstantial

evidence which would have to be proved in trial. Material witnesses PW-1 and PW-2 have already been examined as per the status report as also the alleged eye witness, PW-3. Petitioners have been in custody since 30th June, 2020 and trial is expected to take time. 16 prosecution witnesses are yet to be examined. Further, as regards petitioner Praveen, perusal of nominal roll of petitioner also show that he has no previous involvement and his jail conduct has been completely satisfactory. In view of these facts and circumstances, there would be no purpose served by continuing custody of the petitioners pending conclusion of trial as they have already served close to 33 months in custody.

14. The Hon'ble Supreme Court in **Satender Kumar Antil v. CBI**, (2022) 10 SCC 51 observed as follows:

“12. The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India...” (emphasis added)

The Hon'ble Supreme Court also noted the observations made by Krishna Iyer, J., in **Gudikanti Narasimhulu v. Public Prosecutor**, (1978) 1 SCC 240 as under:

“1. ... the issue [of bail] is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. ... After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of “procedure established by law.” The last four words of Article 21 are the life of that human right.” (emphasis added)

The Hon'ble Supreme Court further made note of their observations in **Sanjay Chandra v. CBI**, (2012) 1 SCC 40 as under:

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of

the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.” (emphasis added)

15. In light of the above, and that the trial in the matter is likely to take some time, and it would not be prudent to keep the petitioners behind bars for an indefinite period, this Court finds it to be a fit case for grant of bail to the petitioners. Consequently, the petitioners are directed to be released on bail on furnishing a personal bond in the sum of Rs. 25,000/- each with one surety each of the like amount subject to the satisfaction of the Ld. Trial Court, further subject to the following conditions:

- i. Petitioners will not leave the country without prior permission of the Court.
- ii. Petitioners shall provide permanent address to the Ld. Trial Court. Petitioners shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.

- iii. Petitioners shall appear before the Court as and when the matter is taken up for hearing.
 - iv. Petitioners shall join investigation as and when called by the IO concerned.
 - v. Petitioners shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned. The mobile location be kept on at all times.
 - vi. Petitioners shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.
16. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.
17. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.
18. Accordingly, the petitions are disposed of. Pending applications (if any) are disposed of as infructuous.
19. Order be uploaded on the website of this Court

(ANISH DAYAL)
JUDGE

MARCH 28, 2023/sm