



2023:DHC:9200



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Pronounced on: 20.12.2023*+ **BAIL APPLN. 1512/2023****PRAMOD**

..... Petitioner

Through: Mr. Kanhaiya Singhal with Mr. Prasanna, Mr. Teeksh Singhal, Mr. Udit Bakshi, Mr. Ujwal Ghai, Mr. Anmol chabra, Ms. Deepali Pawar, Mr. G.S. Puri, Ms. Richa Khera & Mr. Ajay Kumar, Advs.

versus

STATE NCT OF DELHI

..... Respondent

Through: Ms. Richa Dhawan, APP for the State

CORAM:**HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J.**

1. The present application has been filed under Section 439 CRPC seeking grant of regular bail in connection with FIR No. 811/2016 under Sections 302/120B/201/34 IPC registered at Police Station New Usman Pur.
2. The case of the prosecution as borne out from the status report is that on 09.10.2016 on receipt of a PCR Call, ASI Naresh Kumar along with staff reached at 2nd Pusta Ambedkar Bhawan near Rakesh's Shop. He found blood was lying on the road near H. No. 79 and it transpired that the incident had

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taken place at H.No. 89 Gali No. 5 New Usmanpur, Delhi. Thereafter, the police reached the hospital and collected the MLC of the injured Anil, which stated – *“alleged history of physical assault at Gali No. 5, New Usmanpur, Delhi and the Pt. was declared dead.”* The complainant Sanjay Kumar, who is the brother of the deceased was also present and his statement was recorded, wherein he stated that *“his brother Anil and Chaman were having partnership in BSES contracting work, Chaman was pressurizing Anil to end the business partnership, but without clearing the outstanding dues of Rs 4 lakh owed to Anil by Chaman. Chaman and his family members had also threatened him to end the partnership otherwise he will face dire consequences.”*

3. He further stated that on 09.10.2016 at about 2:30-3:00 PM Chaman went to the house of deceased Anil and asked Anil to accompany him to his house where Chaman's father Durga Prasad, brothers Pramod and Manoj were waiting to clear all the dues owed to Anil. At around 6:00 pm when the complainant was sitting near Rakesh's shop, he saw his brother Anil came running to the shop and he was fully covered in blood. He fell down near Rakesh's shop. On enquiry, Anil told his brother Sanjay Kumar (the complainant) that Chaman, his brothers Manoj, Pramod (petitioner herein) and their father Durga Prasad assaulted him with the knife, and as soon as he said this, he fell down and became unconscious.

4. On the basis of statement of Sh. Sanjay Kumar, the aforesaid FIR came to be registered.

5. Mr. Kanhaiya Singhal, learned counsel appearing on behalf the petitioner submits that the petitioner has been falsely implicated in the present case. He submits that the prosecution's case is based on theory of so-



called oral dying declaration of the deceased made to his family members, which is not supported by any independent witnesses, corroborative or even circumstantial evidences. Therefore, the alleged oral dying declaration is unreliable.

6. He further submits that surprisingly all the witnesses claiming to have heard the deceased pronounce the oral dying declaration are none else but the family members of the deceased and no person other than the family members of the deceased is claimed to have heard the said dying declaration despite the fact that the place where the deceased took his last breath was an open road in the colony surrounded by houses and shops and the time of alleged incident was around 6 PM in the month of early October, which raises very strong suspicion about the trustworthiness of the witnesses claiming to have heard the alleged dying declaration.

7. Mr. Singhal contends that nothing has been recovered from the possession of the petitioner/accused and neither he was present at the crime scene nor he was absconding. Further, he was arrested from his house on 10.10.2016.

8. He submits that the petitioner/accused had no business and/or enmity or any kind of dealing, whatsoever, with the deceased or his family and has been falsely implicated in the present matter.

9. He submits that the conduct of the public witnesses, who are family members, is also highly doubtful and suspicious as their statements have been recorded after five days. He submits that it is proved from the PCR report that when the PCR officials enquired the matter from the mother of the deceased, firstly, she did not disclose the name of the assailants to the police officials. Later on, after 5 days all the family members together got



their statement recorded with the same contents which creates a reasonable doubt in the mind and a prudent person can easily reach the conclusion that the false statements have been recorded regarding the so-called oral dying declaration.

10. He contends that Rakesh Kumar, who has been examined as PW-7, is an independent witness who was the first person whom the deceased met in an injured condition, but PW-7 did not make any statement *qua* the alleged dying declaration. He was also cross-examined by the Learned Public Prosecutor, but he did not support the story of the relatives of the deceased *qua* the alleged dying declaration.

11. He refers to the statements/cross-examination of some of the family members who were examined as PW-4, PW-9 and PW-13 to contend that there are major inconsistencies and contradictions in their statements.

12. He submits that there were total of 42 witnesses in the present case and 33 witnesses including public witnesses have been examined. Further the trial is continuing for the last 7 years and it is not going to be concluded anytime soon, therefore, no purpose will be served in keeping the petitioner in custody till the conclusion of the trial.

13. He submits that the petitioner was a student of law and was pursuing his LL.B from Delhi University at the time of his arrest, however, due to the present case, he could not complete his law in time and completed the final year exams only in the year 2023 while in jail. The endeavor of the petitioner to continue his studies shows that he believes in education and administration of justice. He submits that the petitioner has also been awarded a certificate of enrollment as a Para Legal Volunteer by the Delhi State Legal Services Authority.



14. Mr. Singhal invites the attention of the Court to the orders passed by the learned Trial Court to contend that the petitioner was granted interim bail but he did not misuse the liberty granted to him and duly surrendered himself in terms of the bail order. He submits that the petitioner has also been granted interim bails for the purpose of appearing in LLB exams number of times and he did not misuse the liberty granted to him and has always surrendered on time.

15. Lastly, he submits that all the male members of the family i.e., the father of the petitioner namely Late Durga Prasad; brothers namely, Chaman and Manoj; and uncles of the petitioner namely, Trilok & Satvir were framed in the present case by the family members of the deceased to take revenge, whereas the petitioner has nothing to do with allegations and the same is apparent from the fact that after the incident in question on 09.10.2016, the petitioner was arrested on 10.10.2016 from his house and he did not even try to flee. Had the petitioner been guilty/involved, he would have easily escaped at that time or would have taken precaution and tried for anticipatory bail.

16. He has placed reliance on the decisions of the Hon'ble Supreme Court in *Arun Bhanudas Pawar vs State of Maharashtra, (2008) 11 Supreme Court Cases 232; Arvind Singh vs State of Bihar, 2001 SC OnLine SC 697; Nikhil Chandra Mondal vs State of West Bengal, 2023 SCC OnLine SC 225.*

17. *Per contra*, Ld. APP appearing on behalf of the state argued on the lines of the Status Report. She submits that the offence is of serious nature.

18. She submits that during the course of investigation, scene of crime i.e., H.No. F-89 1st Floor Gali No. 5, 2nd Pusta New Usampur Delhi, was



inspected and blood stains were found on the kitchen window, toilet, stairs of gate, walls of stairs, floor and on the way. Further, the I.O. lifted the exhibits from the spot and the same were taken into police possession vide seizure memo. Thereafter the Post Mortem of the deceased was conducted & the Post Mortem report was obtained whereby the doctor opined the cause of death as *“hemorrhagic shock as a result of ante-mortem injury to neck vessels produced by single edged sharp weapon.”*

19. Sequel to the above, on 10.11.2016 the petitioner/accused was apprehended while he was standing at his house gate. He was interrogated and in his disclosure statement he disclosed that Anil and Chaman were having a partnership in BSES contracting work and Chaman was pressurizing Anil to end the business partnership, but without getting cleared the outstanding dues of Rs 4 Lakh payable by Chaman, but Anil was not ready to end the partnership. So, Durga Prasad, Chaman, Pramod and Manoj made a plan to kill Anil and as per planning Chaman called Anil and brought him to our home and they tried to convince him but he did not agree to end the Partnership without clearing all the dues. On this Manoj and Pramod caught hold of Anil and Chaman stabbed him on the directions of Durga Prasad.

20. Thereafter other accused persons were arrested and sent to JC. After the completion of investigation, charge-sheet was filed and charges were framed against the accused persons. During investigation statements u/s 161 CrPC of Kusumlata (mother of the deceased), Ms. Nita (wife of the deceased), Rakesh Kumar (shopkeeper in front of whose shop deceased Anil fell down) were recorded in which they stated that before becoming unconscious, Anil had told that Durga Prasad and his three sons namely



Chaman, Pramod and Manoj stabbed him with knife.

21. She further submits that other accused namely Durga Prasad, Pramod and Chaman, Trilok and Akash were arrested. Trilok and Akash were washing the blood which was lying in front of their house; hence they were also arrested.

22. She submits that the act done by the accused person is very heinous and he does not deserve any leniency or sympathy.

23. She places reliance on *State of Rajasthan vs Smt. Kalki and Anr. (1981) 2 SCC 752*, to contend that in the deposition of the witnesses there are always normal discrepancies however honest and truthful they may be. The same are due to normal errors of observation, normal errors of memory and due to lapse of time.

24. Ms. Dhawan submits that as far as the dying declaration is concerned it is a settled law that no matter how the dying declaration is made, whether oral or written, it has its own value. She submits that in the present case though the dying declaration was made in the presence of the relatives, but the same is admissible.

25. She further submits that cherry-picking of the testimonies of the relatives cannot be permitted at this stage. She submits that the very fact that the accused did not run or abscond after being identified cannot be a ground to grant bail to the accused.

26. She submits that the delay in recording of the statements of the relatives of the deceased is not relevant as the same is to be appreciated at the stage of trial.

27. I have heard the Learned Counsel for the petitioner, the Ld. APP for the State & have perused the record.



28. Before considering the rival contentions of the parties, apt it would be to refer to the factors which are to be considered at the time of considering a bail application. The Supreme Court in its decision in *State of UP v. AmarmaniTripathi* (2005) 8 SCC 21, restated the following principles relating to grant or refusal of bail:

18. It is well settled that the matters to be considered in 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 charge; (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 tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see Prahlad Singh Bhati v. NCT, Delhi [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] and Gurcharan Singh v. State (Delhi Admn.) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179]]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in Kalyan Chandra Sarkar v. Rajesh Ranjan [(2004) 7 SCC 528 : 2004 SCC (Cri) 1977] : (SCC pp. 535-36, para 11)

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such



reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] and Puran v. Rambilas [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] .)”

(emphasis supplied)

29. At the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merit of the case need not be taken, however, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence.

30. Accordingly, the evidence which has come on record is being examined only for the limited purpose of indicating the reasons for arriving at the conclusion as to whether the petitioner deserves to be enlarged on bail or not.

31. The present is not a case based on eye-witness account. The only incriminating material against the accused is the oral dying declaration allegedly made by the deceased to Rakesh/PW-7 and his other family members.

32. As per prosecution version Rakesh Kumar, who has been examined as



PW-7, was one of the first persons who saw the deceased. In his examination-in-chief, he categorically deposed that when he went near deceased Anil, he uttered – “*Rakesh, Mujhe Maar Diya*”. Intriguingly, PW-7 did not state about the so-called dying declaration, rather when cross-examined by the learned APP for the State, he denied any oral dying declaration having been made by the deceased, in the following terms :

“I had not told the police that when I and Sanjay asked Anil as to what had happened, Anil told me and Sanjay that Durga Prasad, Chaman, Pramod, and Manoj had attacked upon him with a knife in their house.”....

(emphasis supplied)

33. The other witnesses through whom the oral dying declaration is sought to be proved are the family members of the deceased. It is noticed that the statements of such family members have been recorded after a gap of 4-5 days from the date of the alleged incident when the deceased is alleged to have made an oral dying declaration. This fact has come on record through the testimony of PW-13 (wife of the deceased) who stated in her cross-examination that the statements of all the PWs/family members were recorded in one go on 14.10.2016 i.e. after five days of the incident that took place on 09.10.2016. Delay in such a situation, unless properly explained, may give rise to suspicion as to the false implication as it affords an opportunity to the witnesses to think and concoct a version, but ultimately, it is for the Trial Court to take a call on this aspect.

34. Further, the cross-examination of the PWs, who are family members of the deceased, shows that they do not remember the relevant details including the fact whether Rakesh (PW-7) was present or not, his shop was open or closed and the police came or not. Reference to some part of the



cross-examination of PWs/family members of the deceased is apposite at this stage for the sake of completeness:

a) **PW-4**, inter-alia, deposed as under:

“Rakesh is running kirana shop. I do not know if Rakesh hadkept any articles on the steps of the shop or outside the shop or not. I do not know if blood of Anil fell on any article of the shop of Rakesh.(Vol. However it had fallen on the first step of the shop). I do not remember if Rakesh was also available at his shop at that time or not. Till the time I reached at shop of Rakesh from shop of paan wala after arrival of Anil, nobody had picked up Anil...”

b) **PW-9** Kusum Lata (mother of the deceased), inter-alia, deposed that :

“I do not know who else was present at the shop of Rakesh when I reached there. The deceased was lying on the stairs of the shop of Rakesh. I do not know where was Rakesh at that time. I do not know if the shop of Rakesh was opened at that time or not....”

c) **PW-13** Sushma (wife of the deceased), inter-alia, deposed as under:

“I do not remember whether Rakesh was there or not. I do not remember if the shop of Rakesh was open or it was closed. I do not remember if the pan shop opposite shop of Rakesh was open or closed...”

(emphasis supplied)

Intriguingly, as per prosecution version Rakesh (PW-7) is the witness in whose presence the deceased is stated to have made dying declaration.

35. In so far as oral dying declaration is concerned, it is trite law that the such dying declaration has to be treated with care and caution since the maker of the statement cannot be subjected to any cross-examination.



Reliance in this regard is placed on *Arun Bhanudas Pawar vs State of Maharashtra (2008) 11 Supreme Court Cases 232*, wherein it was held as under:

“25. It is well-settled law that the oral dying declaration made by the deceased ought to be treated with care and caution since the maker of the statement cannot be subjected to any cross-examination. In the present case, admittedly, the alleged dying declaration had not been made to any doctor or to any independent witness, but only to the mother who, as stated above, arrived at the hospital only on the following day at about 3.30 p.m. when Dr. Nitin had already operated Raju for his injuries and thereafter he was lying on the bed in unconscious condition with oxygen tubes having been inserted in his nostrils. The prosecution has not brought on record any medical certification to prove that after operation the deceased was in a fit condition to make the declaration before his mother. The evidence of alleged oral dying declaration by the deceased Raju to his mother PW Sundarbai relied upon by the prosecution and accepted by the trial court and the High Court, in our view, was not cogent, satisfactory and convincing to hold that deceased Raju before his death was in a fit condition to make oral declaration to his mother.”

36. It is to be noted that as per the case of the prosecution, the dying declaration herein has not been made before the Doctor, Executive Magistrate or Police Official, but to the family members of the deceased who are stated to have arrived at that place only few moments before the death of the deceased. The case of the prosecution is that the deceased had become unconscious in front of the shop of Rakesh/PW-7 immediately after stating that Chaman and his family members have stabbed him with knife. Undisputedly, thereafter the deceased never regained consciousness and passed away. This fact itself pose a considerable doubt as to whether the



deceased immediately before becoming unconscious was in a fit state to make a statement, though this aspect will also be dealt with by the Trial Court in detail with reference to the medical evidence / post mortem report and other evidence at an appropriate stage.

37. It is also to be borne in mind that it the case of the prosecution that there was business partnership between the deceased Anil and petitioner's brother Chaman and there was some dispute between them as regard Chaman owing some amount to deceased Anil, therefore, in this backdrop the family members of the deceased may be treated as interested witnesses to an extent. In cases where the witnesses are inimically disposed towards the accused, at times a tendency is noticed to implicate the innocent persons also along with the actual accused. In the present case also, all the male members of the petitioner's family have been implicated. However, these also are the factors which will be dealt with at the stage of trial by the concerned court.

38. But at the same time there is no allegation of dispute between the deceased and the petitioner. Further, given the fact that the petitioner did not flee or made an attempt to flee and was available at his home when police arrested him, *prima facie*, does not appear to be the normal conduct of a person who is involved in the commission of an offence.

39. Though, the probative value of the evidence, the credibility and reliability of the witnesses will be seen by the Trial Court at the stage of trial but the above discussed factors, the inconsistencies in the testimonies of the prosecution witnesses noted above, the fact that the independent witness Rakesh/PW-7 has not supported the prosecution version regarding deceased making oral dying declaration, as well as, long period of petitioner's incarceration tilts the balance in favour of the petitioner for grant of bail and



the circumstances of the case do not warrant the continuation of petitioner's custody to await the conclusion of trial, which is not likely to be concluded anytime soon given the fact that there are still eleven prosecution witnesses to be examined.

40. Further, at this stage apart from the complicity of the petitioner, the other parameters for granting of bail are also required to be considered.

41. The petitioner has completed 03 years 8 months and 14 days of incarceration on 18.08.2023. Thus, the petitioner has completed almost four years of custody till date. It is also not the case of the prosecution in the status report that the petitioner has criminal record. The material witnesses already having been examined, there is no possibility of the petitioner influencing them. Besides that, all the material witnesses are the family members of the deceased.

42. That apart the petitioner was also granted interim bail on number of occasions and it is not in dispute that he did not misuse the liberty granted to him and duly surrendered on time. It is also contended by the petitioner's counsel that the petitioner completed LL.B while in custody and he has been awarded a certificate of enrollment as a Para Legal Volunteer by the Delhi State Legal Services Authority, which fact is also not in dispute.

43. Considering the above factors in entirety, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is admitted to bail subject to his furnishing a Personal Bond in the sum of Rs.25,000/- and one Surety Bond of the like amount subject to the satisfaction of the Trial Court / Jail Superintendent, further subject to the following conditions:-

- (i) Petitioner shall appear before the Court as and when the



matter is taken up for hearing.

(ii) Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.

(iii) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses or any family members of the witnesses.

44. The petition is disposed of.

45. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.

46. Order *dasti* under signatures of the Court Master.

47. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J.

DECEMBER 20, 2023

N.S. ASWAL