



2023 : DHC : 8527



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

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+ **BAIL APPLN. 1568/2023**

PUNIT KOTIA

..... Petitioner

Through: Mr. Vineet Jain, Adv.

versus

STATE

....Respondent

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

**CORAM:**

**HON'BLE MR. JUSTICE RAJNISH BHATNAGAR**

**ORDER**

**RAJNISH BHATNAGAR, J.**

1. The present bail application has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case FIR No. 286/2020 under Sections 302/308/34 IPC registered at Police Station Anand Parbat, Delhi.

2. As per the allegations made by eyewitness Ms. Sarita who is the sister of deceased Ajay, on 01.10.2020 deceased Ajay had told her that accused Vikas @ Pilka quarreled with him and threatened him of dire consequences. She further alleged that on 02.10.2020, she was at her home and she came to know that some persons were beating her brother Ajay (since deceased). Thereafter, she rushed to Military Road

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near Mandir where she saw that accused persons namely Vikas @ Pilka, Aman @ Kavva, Deepankar @ Deepu and Punit Kotia (petitioner herein) were beating her brother mercilessly. She further alleged that accused Aman @ Kavva had hit a brick on the head of Ajay, then Vikas @ Pilka hit Ajay's head over the bonnet of a car. Accused Deepankar @ Deepu and Punit @ Kotia (petitioner herein) had also beaten Ajay with kicks on head and chest and when Sarita tried to save her brother, accused Deepankar pushed her away. Sarita further alleged that when Ajay became unconscious, all the accused fled away from the spot. She also alleged that one person namely Chetan was also present on the spot and she alongwith Chetan shifted her brother Ajay to LMHC Hospital.

3. As per the prosecution, on the basis of the information received vide DD No. 3 A on 03.10.2020 at police Station Anand Parbat a case vide FIR No 286/20 U/s 308/34 IPC was initially registered and investigation was handed over to ASI Rajesh. Deceased Ajay who was firstly admitted to LHMC Hospital vide MLC No. 3109/20 was later on referred to higher center and lastly, injured Ajay died in Mimhans Neurosciences Hospital on 23.12.2020. On 23.12.2020 postmortem of deceased Ajay was got conducted by the officials of PS Medical, Meerut UP at Lala Lajpat Rai Memorial Medical College, Meerut, UP vide PM No. 1451/2020 and the doctor opined that the "Cause of death is septicemia due to chronic illness of multiple



organs". As per the prosecution during investigation, statements of eye witnesses namely Sarita, Vivek and Mr. Chetan were recorded U/s 161 Cr.P.C. and the statement of eye witnesses were also got recorded U/s 164 Cr.P.C wherein they have corroborated the case of the prosecution.

4. During investigation, the petitioner was arrested who disclosed his involvement in the present case with his associates namely Aman Kardam @ Kavva, Deepankar @ Deepu and Vikas @ Pilka.

5. I have heard the Ld. counsel for the petitioner, Ld. APP for the State, perused the Status Report and also perused the Records of this Case.

6. It is submitted by the Ld. counsel for the petitioner that the petitioner is in J.C. since 19.05.2021 in a false and fabricated case. It is further submitted that PW Sarita who is stated to be the sister of the deceased has been introduced as a witness as according to SI Usman Ali he had made the efforts for searching the eye witness of the incident but was unable to find any eye witness. It is further submitted that the FIR has been registered on the statement of SI Usman Ali U/s 308/34 IPC and not on the statement of PW Sarita who according to the prosecution is the eye witness of the incident. It is further submitted that the injured had expired after 3 months of the incident and the cause of death is opined to be septicemia due to chronic illness. It is further submitted that the injured (since deceased) had been discharged from MAX Hospital as his condition was satisfactory and it is due to the



negligence of the family of the injured (since deceased) that he had expired and not because of the alleged beatings given by the petitioner and his co-accused.

7. It is further submitted that all the material public witnesses have been examined and now there are no chances of tampering with the prosecution evidence. It is further submitted that there are material contradictions in the testimony of PW Sarita and PW Vivek and PW Vivek has even failed to identify the accused persons of this case as the assailants.

8. The bail application has been vehemently opposed by the Ld. APP for the State by stating that the allegations against the petitioner are grave and serious in nature and he has also argued on the lines of the Status Report. It is further submitted by the Ld. APP that statement of the witnesses were got recorded U/s 164 Cr.P.C. wherein they have corroborated the prosecution's case. It is further submitted by the Ld. APP that the deceased had several multiple fractures on vital parts of the body which clearly shows the intention harbored by the petitioner and his co-accused.

9. It is further submitted by the Ld. APP that this is not the stage to deeply analyze the testimonies of the prosecution witnesses and to find inconsistencies in their examination as the same can only be done at the time of final decision of this case. It is further submitted that as per the subsequent opinion on the cause of death, the doctor opined that



cause of death is Septicemia due to chronic illness of multiple organs and the possibility of physical assault leading to the head and facial injury and its subsequent sequelae as mentioned in the treatment record cannot be ruled out.

10. It is further submitted that Ms. Sarita is the eye witness of this case and she has stood by her testimony in the trial Court. It is further submitted by the Ld. APP that PW Sarita has categorically stated that her brother Ajay (since deceased) had informed him on 01.10.2020 about the fight with accused Vikas @ Pilka.

11. In the instant case, PW-2 who is the sister of the deceased has categorically narrated about the happening with her brother on 01.10.2020 i.e. one day prior to the date of the incident. In her testimony recorded before the trial court she has narrated the manner in which the incident had taken place. She has identified the petitioner and his other co-accused persons during her testimony. She has been cross examined at length by the counsel for the petitioner but this is not the stage to form an opinion about the credibility or non credibility of the eye witness by deeply analyzing her testimony.

12. It has been argued that SI Usman Ali has got the FIR registered U/s 308/34 IPC which subsequently got converted into section 302/34 IPC but it is to be noted that SI Usman Ali is yet to be examined as he is the person according to the arguments addressed by the Ld. counsel for the petitioner who had reached the spot first.



13. No doubt, PW-3 has not supported the case of the prosecution in toto as he has failed to identify the accused persons, however, he has owned his statement U/s 164 Cr.P.C. recorded before the Ld. Metropolitan Magistrate on 26.12.2020 in his examination-in-chief and what evidentiary value is to be accorded to his testimony viz a viz PW Sarita and the testimony of the other witnesses who are yet to be examined will be seen later on but not at this stage of the bail petition as any opinion expressed at this stage upon the statements of PW Sarita and PW-3 would prejudice the case of either of the parties. The allegations against the petitioner are grave and serious in nature. No ground for bail is made out. The bail application is, therefore, dismissed and disposed of accordingly.

14. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

**RAJNISH BHATNAGAR, J**

**NOVEMBER 29, 2023**

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