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

Reserved on: 04.10.2023

Pronounced on: 20.11.2023

+ **BAIL APPLN. 1591/2023 & CRL.M.A. 20991/2023**

SAURABH SHARMA

..... Petitioner

Through: Mr. Mohit Mathur, Sr. Adv. with Mr. Rajiv Mohan, Mr. Sumit Mishra and Mr. Nishant Madan, Advs.

versus

STATE

..... Respondent

Through: Mr. Amol Sinha, ASC for State with Mr. Kshitiz Garg, Mr. Ashvini Kumar and Ms. Chavi Lazarus, Advs. with Insp. Ravindra Tomar, PS. Pahar Ganj.

Mr. Ravi Bassi, Mr. Vikas Shokeen and Mr. Nitin Kumar, Advs. for complainant.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in connection with FIR No. 188/2022 under Sections 302/307/34 IPC registered at PS Paharganj.



2. *Vide* order dated 12.05.2023, notice was issued in the bail application of the petitioner and the State was directed to file a status report. The State has filed a status report dated 03.07.2023.
3. The case of the prosecution as borne out from the chargesheet is that on 01.03.2022, information *vide* DD No. 45A was received at the police station that a knife stabbing incident has taken place behind KG Hotel, Paharganj. On receipt of the above information, police staff reached at the spot i.e. Fitness Hub Gym, 1663-64, Main Bazar, Chuna Mandi, behind KG Palace Hotel, Pahar Ganj. After inspection, blood spots were found inside the said Gym and in the street outside the gym.
4. Thereafter, an enquiry was conducted at the spot, wherein it was revealed that the injured persons were taken to Lady Harding Medical College Hospital, New Delhi. Accordingly, police staff reached at LHMC Hospital, wherein 02 persons namely, Manoj Manchanda and Vicky Manchanda/complainant from one group and 04 persons namely Joginder Sharma, Manjeet Sharma @ Bable, Rahul Sharma & Saurabh Sharma from another group were found injured *vide* different MLCs. It was revealed that Manoj Manchanda S/o Ved Prakash R/o Motia Khan had expired during treatment on account of sharp weapon injuries.
5. It is in this backdrop that the FIR came to be registered on the basis of the statement of Vicky Manchanda, who is the brother of the deceased. The petitioner was arrested in the present case on 06.03.2022 and since then he is in judicial custody.
6. Vicky Manchanda revealed in his statement that Mayank Manchanda @ Jaanu S/o Manoj Manchanda (cousin of Vicky Manchanda) called his



father at about 10:15 AM on 01.03.2022 from Fitness Hub Gym and informed him that he was involved in a quarrel in the gym with the petitioner herein. Accordingly, Vicky Manchanda and Manoj Manchanda reached the gym at about 10:25 AM where Joginder Sharma, Manjeet Sharma @ Babla and sons of Joginder Sharma namely Rahul and Saurabh (petitioner herein) were present. It was further stated that Joginder and Manjeet Sharma @ Babla had a knife in their hands; whereas Rahul had *Chapat* (meat cutter) and the petitioner had a stone in his hand.

7. It was also stated by the complainant that Manjeet Sharma @ Bable hurled abuses at Manoj Manchanda while extending threats to eliminate him and that all four persons including the petitioner herein attacked the complainant and his brother. The complainant also disclosed that the petitioner gave a stone blow on the head of the deceased.

8. During investigation of the present case, statements of witnesses namely Ayan Ali and Waseem Raja were recorded under Section 161 of the Code of Criminal Procedure, 1973 wherein they disclosed that they were present in the gym, where at about 10 AM, a quarrel took place between the present petitioner namely, Saurabh Sharma and Mayank Manchanda @ Jaanu over playing music in the gym. Thereafter, the said quarrel was pacified by the gym trainer and the petitioner was sent outside the gym. Later on, the petitioner came inside the gym and again quarrel took place between them.

9. During further investigation, CCTV footage was recovered from the cameras which were installed near the place of the incident and it was found



that the petitioner was leaving the spot on a scooter with one of his known associates namely, Dal Chand @ Aashish.

10. A cross FIR No. 189/2021 under Sections 307/34 IPC also came to be registered on the basis of statement of injured Joginder Sharma S/o Kripa Ram Sharma against Vicky Manchanda and Mayank Manchanda @ Jaanu wherein he alleged that during the same incident they were also informed by his son Saurabh Sharma (petitioner herein), pursuant to which the complainant of aforesaid FIR No. 189/2021, namely, Joginder Sharma alongwith Rahul Sharma and Manjeet Sharma reached at the spot where they were also lethally assaulted by Manoj Manchanda, Vicky Manchanda and Mayank Manchanda @ Jaanu, with knife and Danda.

11. Mr. Mohit Mathur, learned Senior Counsel for the petitioner at the outset submits that the petitioner has been incarcerated since 06.03.2022 and has thus spent more than 1½ years in custody. He submits that the prosecution has sought to examine 28 witnesses and urges that the petitioner may not be kept in custody till the conclusion of trial, which is not likely to be concluded anytime soon.

12. On merits, Mr. Mathur submits that the case of the prosecution can be divided into two parts which are as follows:

- a) **Incident inside the gym** – The first incident occurred inside the gym somewhere between 10:17:46 A.M. to 10:19:06 AM as per the CCTV footage. The said incident was a fight between the petitioner and Mayank Manchanda. In brief, it is submitted that during this incident, the petitioner was inflicted with multiple injuries with a knife.



b) **Incident outside the gym** – The second incident relates to the fight between the family members of the petitioner and the family members of Mayank Manchanda, in which neither the petitioner nor Mayank Manchanda, was present.

13. Mr. Mathur submits that in respect of the incident which occurred inside the gym, the witnesses to the said fight between the petitioner and Mayank Manchanda, are Waseem Raja and Ayan Ali. According to Mr. Mathur, a perusal of their statements recorded under Section 161 Cr.P.C. would reveal that they are silent in respect of the fight which has taken place between the petitioner and Mayank Manchanda. He further contends that the said witnesses have not supported the case of the prosecution.

14. In respect of the incident which has occurred outside the gym, Mr. Mathur submits that it is the case of the prosecution that when Vicky Manchanda/complainant along with Manoj Manchanda/deceased reached the spot at 10.25 A.M., all the four accused persons namely, Joginder Sharma, Manjeet Sharma @ Bable, Rahul Sharma and Saurabh Sharma (petitioner), were present at the place of incident. He submits that this version of the prosecution is in contradiction with the CCTV footage which has been collected by the investigating agency, in as much as, the CCTV footage reveals that the petitioner after being injured had left the spot around 10:19:55 A.M for the hospital.

15. He submits that in the entire CCTV footage which has been collected by the prosecution neither the petitioner nor his friend Dal Chand @ Ashish are seen carrying any weapon in their hand. Further, the CCTV footage



shows that after the petitioner left for the hospital at 10:19:55 AM, he is not seen returning to the place of incident to join the fight.

16. In the aforesaid facts and circumstances, it has been urged by Mr. Mathur that as the petitioner was not present during the fight outside the gym where the deceased is alleged to have suffered fatal injuries, he be enlarged on bail.

17. *Per Contra*, Mr. Amol Sinha, learned ASC has argued on the lines of the status report and he submits that the petitioner has been accused of a grave and serious offence, therefore, he may not be enlarged on bail. He also relied upon the CCTV footage to contend that in the initial part of the CCTV footage, the petitioner is seen talking over mobile phone at the place of incident and it is pursuant to his call that other co-accused came at the spot and inflicted fatal injuries to the deceased, therefore, there was common intention to kill the deceased.

18. I have heard the learned senior counsel for the petitioner, as well as, the learned ASC for the State and have perused the record.

19. As Mr. Mathur, as well as, Mr. Sinha, have placed considerable reliance on the CCTV footage, it is imperative to advert to the same before proceeding further. The CCTV footage, which has been placed on record, pertains only to the incident which has occurred outside the gym and there is no footage available pertaining to the incident which has occurred inside the gym.

20. In regard to the incident which has occurred inside the gym, the only witnesses to the said incident are Waseem Raja and Ayan Ali. The statement of Waseem Raja recorded under Section 161 Cr.P.C reads as under:-



“Stated that I live at the aforesaid address with my family. For the past 5 years, I am working as a trainer at Fitness Hub Gym, Basement H No. 1663-1664, Main Bazar, Chuna Mandi, Pahar Ganj, Delhi. I have many members in my gym, and Saurav and Mayank @ Janu are also members of the gym. Both of them came to the gym today to exercise and around 10 AM, while exercising there was a fight between them on the issue of listening to music. Thereafter, they started hitting each other. I pacified the fight between them and sent Saurabh away. After sometime, Saurabh returned to the gym with another person and a fight ensued with Mayank @ Janu. Thereafter, Ayan and I ran to the roof of the hotel and I do not know what happened thereafter. The CCTV which was installed in the gym was disconnected at the time as a mobile was being charged at the electric point. For this reason, there is no CCTV footage. You have recorded my statement after making inquiry from me.”

21. The statement of Ayan Ali recorded under Section 161 Cr.P.C reads as under:

“Stated that I live at the aforesaid address with my family and am a student of BBA 2nd studying in Jamia Hamdard University. I have been coming to Fitness Hub Gym, Chuna Mandi, Paharganj since September, 2021. I came to the gym at 7:30 AM to exercise and around 10 AM, there was a fight between Saurabh and Mayank @ Janu on the issue of listening to songs. Both Mayank and Saurabh were beating one another and Saurabh was sent away. After sometime, Saurabh along with another person came the fight between them happened again so I hid in the changing room. Therefore, both Wasseem and I ran to the roof of the gym. I do not know what happened thereafter. You have recorded my statement after making inquiry from me. ”

22. A conjoint reading of the statements of Waseem Raja and Ayan Ali shows that there was a fight between the petitioner and Mayank Manchanda @ Janu, which was pacified by Waseem Raja and the petitioner was sent



away from the gym. Thereafter, the petitioner returned to the gym with another person, presumably Dal Chand @ Ashish (*as is seen from the CCTV footage*) and a fight between Mayank Manchanda and the petitioner ensued again. Due to the fight, both Waseem Raja and Ayan Ali ran away to the roof of the hotel and they are unaware as to what happened pursuant thereto.

23. Notably, in respect of the incident which has occurred inside the gym, it does not manifest from the statements of the witnesses that the petitioner has used a deadly weapon. Further, they stated that they are not aware of the circumstances and the manner in which the incident occurred outside the gym, in which the deceased/Manoj Manchanda had suffered injuries.

24. From the perspective of judging petitioner's presence at the place of incident and his involvement in the fight in which the deceased suffered fatal injuries, the following timeline as formulated by Mr. Sinha, the learned ASC, from the CCTV footage, which was played in the Court, is notable:

<i>RELEVANT VIDEO FOOTAGE WHERE THE PETITIONER IS VISIBLE</i>		
S. No.	Time	Particulars
01.	10:14:07 – 10:14:19	Walking from the inner lane towards road
02.	10:16:03 – 10:16:24	Pacing on main road on talking on the phone
03.	10:16:57 - 10:17:10	Walks from road to the inside of the inner lane



04.	10:17:46 – 10:17:10	Briefly comes out of lane and interacts with another man
05.	10:19:27 – 10:19:55	Comes out of lane while bleeding and gets on a scooter and drives away

25. In respect to the second incident which occurred outside the gym, from an examination of the above CCTV footage, it *prima facie* appears that the petitioner had already left at 10:19:55 AM, whereas the complainant in his statement has stated the petitioner inflicted injuries on the deceased with a stone after he had reached the spot at 10:25 AM. I thus, find merit in the submission of Mr. Mathur that there is a stark contradiction in the version of the complainant and the CCTV footage collected by the prosecution. Mr. Mathur's submission also finds support from the MLC of the petitioner which shows that he had been admitted in the hospital on 10:25 A.M.

26. It is trite that the Courts while examining a bail application are also duty-bound to consider the statements which are recorded under Section 161 Cr.P.C.¹ Accordingly, the statement of an independent public witness, namely, Amit Sharma S/o Mahender Pal Sharma, which was recorded under Section 161 Cr.P.C., needs to be adverted to, which also throws light on the role played by the accused persons during the fight which occurred at 10:25 A.M. onwards. The said public witness in his statement has mentioned that on 01.03.2022, in the morning when he was going to his office, then at about 10:25 AM when he reached Main Bazar Road, Near Mahavir Park, and Barahi Mata mandir, he saw that Joginder Sharma and Rahul Sharma both

¹ Salim Khan v. Sanjai Singh, (2002) 9 SCC 670



were giving beatings to Manoj Manchanda with wooden *balli*. He further states that he intervened in the matter of both the parties and sent Joginder Sharma, Rahul Sharma and Manjeet Sharma to the hospital in auto, since they had also sustained severe injuries.

27. The above statement of said public witness makes it luminously clear that at about 10:25 A.M. when the independent witness reached the spot of the incident i.e. outside the gym, the petitioner was not present at the spot. Thus, statement of the independent witness is in accord with the version of the petitioner that he had left the spot at 10:19:55 A.M., whereas, the fight between the parties started after 10:25 A.M., when the complainant along with the deceased reached the spot.

28. Another relevant aspect which needs to be noted herein is that it is not the case of the prosecution that any weapon has been recovered from the petitioner or at his instance. The CCTV footage so collected by the prosecution also does not show the petitioner carrying any weapon or knife.

29. No independent witness has been brought on record who could testify that the petitioner was present on the spot when the entire incident took place. Dal Chand @ Ashish could have testified as the CCTV footage shows the petitioner leaving with Dal Chand @ Ashish but intriguingly, the statement of the Dal Chand @ Ashish has not been recorded by the investigating agency for reasons best known to it. This lapse on part of the investigating agency should therefore, inure to the benefit of the petitioner.

30. *Prima facie*, the incriminating circumstance that it was the petitioner who called his family members by making a call over mobile phone by itself will not be sufficient to come to the conclusion that the petitioner had called



his family members to come and kill the deceased. There is a possibility that he may have called his family members to come and protect him, which possibility cannot be ruled out at this stage. There is also no transcript of such call available on record to conclusively attribute common intention to the petitioner. Further, there is no incriminating material on record to come to a conclusion that at the time of making a mobile call, the petitioner had in mind a pre-conceived result of the death of deceased that ensued in the fight in furtherance of his call, so as to attribute constructive intention to the petitioner. In any case, the probative and evidentiary value of such mobile call made by the petitioner has to be seen by the learned Trial Court during the trial. However, while considering the bail application of the petitioner, this Court cannot be unmindful of the gaps which exist in the version of the prosecution, which have the potential of making a dent into the case of the prosecution to an extent and furnishes a justified reason to enlarge petitioner on bail.

31. That apart, the petitioner is a permanent resident of Delhi and there is no reason to believe that the petitioner shall flee from administration of justice. It is also not the case of the prosecution in the status report that the petitioner is a flight risk. The presence of petitioner during trial can also be ensured by putting appropriate conditions.

32. The material witnesses are mainly from the complainant party, therefore, there is no possibility of the petitioner influencing them.

33. At this stage, it cannot also be overlooked that the prosecution has cited as many as 28 witnesses, which would inevitably lead to a protracted



trial. In the given circumstances, no useful purpose will be served in keeping the petitioner behind bars.

34. It is well settled that at the pre-conviction stage, there is a presumption of innocence. It would indeed be a travesty of justice to keep the petitioner in jail for an indefinite period for an offence which is ultimately found not to have been committed by him, especially when the material on record *prima facie* indicates the non-presence of the petitioner during the fight in which deceased suffered fatal injuries.

35. Considering the above circumstances in entirety, I am of the view that the petitioner is entitled to grant of regular bail pending trial. Accordingly, the petitioner is admitted to bail subject to his furnishing a personal bond in the sum of Rs. 50,000/- with two sureties of like amount, subject to the satisfaction of the Trial Court/Duty Magistrate/CMM, further subject to the following conditions.

- a) The petitioner shall not leave the NCR without permission of this Court and shall ordinarily reside at the address as per prison records/as mentioned in the petition;
- b) Petitioner shall surrender his Passport, if any, before the Trial Court at the time furnishing bail bond/surety bond.
- c) Petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- d) The petitioner shall furnish to the IO/S.H.O P.S: Paharganj, a cell-phone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and the same is not changed without prior intimation to the IP/SHO.



e) The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to the complainant or any of the prosecution witnesses or other persons acquainted with the facts of the case.

f) The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.

36. It is made clear that the observations made herein are only for the purpose of considering the bail application and the same shall not be deemed to be an expression of opinion on the merits of the case.

37. The petition along with pending application stands disposed of.

38. Copy of the order be forwarded to the concerned Jail Superintendent for necessary information and compliance.

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

40. Order be uploaded on the website of the Court.

VIKAS MAHAJAN, J.

NOVEMBER 20, 2023

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