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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Delivered on: 13.09.2023

+ BAIL APPLN. 1795/2023

MOHD RAJ

..... Petitioner

Through: Mr. Vishal Raj Sehijpal, Adv.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Ms. Richa Dhawan, APP with Insp.
Manoj Kumar, PS Adarsh Nagar.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed under Section 439 Cr.PC seeking regular bail in connection with FIR No.668/2020 under Sections 302/34 IPC registered at PS Adarsh Nagar.
2. The case of the prosecution is that the deceased Rahul was admitted in BJRM Hospital, Jahangirpuri, Delhi in an unconscious condition. The MLC of the deceased mentions history of physical assault (few people slapped him) as told by the patient's father. During treatment the injured patient succumbed to his injuries. No witness to the incident was found in the hospital. On examining the body, no apparent injury was found. The post mortem of the deceased was conducted on 08.10.2020. In the meantime, Sh. Dharampal son of Sh. Jai Bhagwan, an eye witness to the incident, reached and stated that the



deceased was his nephew. He further stated that about two month's back it came to the notice of the family that deceased Rahul was having a love affair with one girl namely Sagufa and her Family members were annoyed with Rahul and were restricting them from meeting.

3. On 07.10.2020 at about 7.00 PM, friend of the complainant/Dharampal, namely, Raju informed him telephonically that 4/5 boys were beating Rahul at Nanda Road. On reaching the spot, he found that 5/6 boys from Sagufa's family were beating Rahul with kicks and fists and Rahul was lying on the road. He separated them and got Rahul released from their clutches. When he asked from Sagufa's relatives namely Raj (petitioner), Afroz, Shahnawab, Kaif, Tajudeen Hussain and others as to why they are beating Rahul, they replied that Rahul was talking to their sister Sagufa and they have tried to make him understand but he is not mending himself, hence they would finish him. Dharampal saved Rahul by requesting them and the accused persons left the spot threatening Rahul, who was having pain in his ribs at that time. He shifted Rahul to his residence where his condition deteriorated after which he was taken to Dr. Ajay's clinic where the deceased was provided first aid. Later on, when his condition did not improve, he was shifted to BJRM Hospital, Jahangirpuri, Delhi where he succumbed to his injuries during treatment.

4. During the course of investigation on 08.10.2020, accused Mohd. Raj (petitioner), who is the younger brother of Sagufa, accused Manwar @ Hussain friend of Mohd. Raj and CCL Shahnawab, CCL Mohd. Intkaf Aalam, CCL Tajudeen Hussain were apprehended on their identification by eye-witness Dharampal.



5. During further course of investigation on 09.10.2020, statement of Ms. Sagufa was recorded under Section 164 Cr.PC wherein she admitted to beating of Rahul by her relatives.
6. On 11.10.2020, Post Mortem Report of deceased Rahul was received wherein cause of death was opined to be “hemorrhagic shock due to abdominal injury caused by blunt force impact”.
7. The learned counsel for the petitioner invites the attention of the Court to the testimony of Sagufa, who was examined as PW1, to contend that she has not supported the case of the prosecution. PW1 has also stated in her testimony that the statement earlier recorded under Section 164 Cr.PC was given by her under pressure. In her statement she has not stated that deceased Rahul was beaten by her relatives including the present petitioner, who is her younger brother. On the contrary, she stated that Rahul had fallen on the road while saving himself from a bike which was passing by when he was standing on the road side. She states that Rahul was taken to the clinic and thereafter Rahul went to his residence.
8. Learned counsel also invites the attention of the Court to the testimony of Dharampal who has been examined as PW2 by the prosecution. He submits that prosecution has tried to project PW2 as an eye-witness whereas he is not an eye-witness to the incident. He further submits that there are material contradictions in the statement of PW2. He submits that PW2 has stated that he received a phone call from his friend Raju who informed him that some boys were beating his nephew Rahul at Nanda Road, Adarsh Nagar, Delhi. Accordingly, he rushed to the spot and when he reached at the spot at Nanda Road, he saw 4/5 boys were beating his nephew Rahul by giving leg and fist blows to him. However, in his cross-examination he has admitted that when he



reached at the spot number of public persons about 100-150 in number were present. He also admits that Raju had not disclosed the name of assailants to him. He also admitted that he himself had not made a call to PCR to spot. PW2 has also admitted that when he had taken his nephew Rahul to the clinic of Dr. Ajay he had informed that Rahul has received injury by falling on the road.

9. He also draws the attention of the Court to the statement of PW3, namely, Yuvraj who has been cited as eye-witness, to contend that when the said witness reached the spot, the quarrel had already stopped. Similarly, PW4 who has also been cited as an eye-witness, has stated that he has not witnessed the quarrel between Rahul and the accused persons.

10. He submits that the petitioner is in custody since 09.10.2020; investigation in the matter is complete and the chargesheet has been filed. Therefore, the custody of petitioner is no more required. He further submits that since material witnesses have already been examined, there is no possibility of the petitioner influencing them or extending any threats. He therefore urges that the petitioner may be enlarged on regular bail.

11. *Per contra*, the learned APP has argued on the lines of the Status Report. She submits that offence is of the serious nature. She submits that even if the PW1, PW3 and PW4 have not supported the case of the prosecution, PW2 has identified the petitioner as a person who had given beatings to the deceased along with other co-accused. She submits that CCTV footage from the spot was obtained wherein the accused persons are seen overpowering the deceased Rahul and walking with him.

12. She, however, fairly concedes that co-accused Shubham Bhardwaj has already been released on bail by the Learned Trial Court as PW2 Dharampal



was unable to identify him. She further submits that the complainant and other witnesses are the residents of the same colony where accused persons reside and in case bail is granted to the petitioner he can influence and threaten the witnesses.

13. I have heard the learned counsel for the petitioner as well as learned APP for the State and have perused the record.

14. Undoubtedly, the allegations against the petitioner are serious, but the seriousness of an offence is not a sole consideration for deciding the bail.

15. This Court is conscious of the fact that at this stage, evidence cannot be appreciated in detail. However, for the limited purpose of deciding the bail application, the Court can consider the testimonies of various witnesses which have come on record.

16. From a perusal of the testimony of PW1 Sagufa, it is evident that she has not supported the case of the prosecution. She has not testified to the effect that the beating was given by the petitioner to deceased Rahul. Similarly, PW3 Yuvraj, who is the cousin of deceased Rahul and has been cited as an eye-witness to the incident by the prosecution, has stated that quarrel had already stopped when he reached the spot. Likewise PW4 Akash, who is also a cousin of deceased Rahul and has been projected as an eye witness, has stated that he was informed by his uncle Dharampal that some persons had beaten deceased Rahul. He also denied the suggestion that the accused persons gave beating to his cousin Rahul with legs and fists which resulted into the death of Rahul.

17. In so far as the testimony of PW2 Dharampal is concerned, evidently there are contradictions in his statement. He also admits that when he had taken deceased Rahul to the clinic of Dr. Ajay, he had informed the doctor that Rahul has received injury by falling on the road.



18. At this stage, suffice it to say that the above factors have the potential of corroding the credibility of the prosecution's case to an extent. However, it is for the learned Trial Court to sift the evidence in detail and form an opinion at an appropriate stage and it would not be appropriate for this Court to comment on the probative value of the evidence at this juncture as it may prejudice the case of the prosecution as well as that of the accused persons.

19. Apart from the complicity of the petitioner, the other parameters for granting of bail are also required to be considered. A co-ordinate bench of this Court in *State (NCT of Delhi) v. Sanjeev Kumar Chawla*, 2020 SCC OnLine Del 1970 after considering various judgments of the Hon'ble Supreme Court has summed up the principles governing grant of bail. The relevant paragraph of the judgment reads as under:-

"33. The principles governing grant of bail which the courts have to consider can be enumerated, though not exhaustively, as under:—

- a. The gravity and severity of the offence and the nature of accusation;*
- b. Severity of punishment;*
- c. The position and status of the accused vis-à-vis the victim and the opportunity to approach the victims/witnesses;*
- d. The likelihood of the accused fleeing from justice;*
- e. The possibility of tampering with the evidence and/or the witnesses;*
- f. Obstructing the course of justice or attempting to do so;*
- g. The possibility of repetition of the offence;*



- h. *The prima facie satisfaction of the court in support of the charge including frivolity of the charge;*
- i. *The peculiar facts of each case and nature of supporting evidence."*

20. Further, the object of judicial custody is not punitive but to secure the presence of the accused during the trial. The following observations of the Hon'ble Supreme Court in ***Vinod Bhandari v. State of Madhya Pradesh***, (2015) 11 SCC 502 could advantageously be referred to:

"12. It is well settled that at pre-conviction stage, there is presumption of innocence. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be passed. The detention is not supposed to be punitive or preventive. Seriousness of the allegation or the availability of material in support thereof are not the only considerations for declining bail. Delay in commencement and conclusion of trial is a factor to be taken into account and the accused cannot be kept in custody for indefinite period if trial is not likely to be concluded within reasonable time. Reference may be made to decisions of this Court in Kalyan Chandra Sarkar v. Rajesh Ranjan [Kalyan Chandra Sarkar v. Rajesh Ranjan, (2005) 2 SCC 42 : 2005 SCC (Cri) 489] , State of U.P. v. Amarmani Tripathi [State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] , State of Kerala v. Raneef [State of Kerala v. Raneef, (2011) 1 SCC 784 : (2011) 1 SCC (Cri) 409] and Sanjay Chandra v. CBI [Sanjay Chandra v. CBI, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397]."

21. The petitioner is in judicial custody since 09.10.2020. There are 36 witnesses, out of which only 4 have been examined. The conclusion of trial is likely to take long time. It is also not the case of the prosecution that the petitioner has a criminal record. So far as the apprehension expressed by learned APP that the petitioner in the event of being enlarged on bail may



influence and threaten the witnesses, is concerned, notably the eye-witnesses have already been examined, therefore, there is no question of the petitioner threatening them. In any case, the apprehension of learned APP can be dispelled by putting strict conditions on the petitioner.

22. Having regard to the circumstances in entirety, I am of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is admitted to regular bail subject to his furnishing personal bond in the sum of Rs. 20,000/- and a surety bond of the like amount from a family member, subject to the satisfaction of the learned Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- a. Petitioner/applicant will not leave the city without prior permission of the Court.
- b. Petitioner/applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- c. Petitioner/applicant 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 Investigating Officer concerned. The mobile location be kept on at all times.
- d. Petitioner/applicant 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.

23. It is made clear that the observations made herein above 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.

24. The petition stands disposed of.



25. Copy of the order be forwarded to the concerned Jail Superintendent for information and necessary compliance.
26. Order *dasti* under signatures of the Court Master.

VIKAS MAHAJAN, J

SEPTEMBER 13, 2023
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