



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

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Reserved on: 18th May, 2023

Pronounced on: 2nd June, 2023

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BAIL APPLN. 3094/2022

PRAMOD PEHALWAN

..... Petitioner

Through: Mr. Inderpreet Singh, Advocate.
versus

THE STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Ms. Richa Dhawan, APP for the State
with Insp. Sunny Kumar, PS:
Mukherjee Nagar.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

1. This petition has been filed seeking regular bail in FIR No.566/2018 registered at PS Mukherjee Nagar under Sections 307/302/120B/114/115 IPC read with Sections 25 & 27 Arms Act. As per the case of the prosecution, on 10th October, 2018, a PCR call was received at PS Mukherjee Nagar vide DD No.64A regarding gunshot to a person near Dheerpur Sisodia Tent House, Delhi. On reaching the spot, SI Prem Pal learnt that injured person had been shifted to the hospital. He collected MLC No. 162172/18 of one Shyam Sunder wherein the doctor had opined that there was firearm injury and declared him dead. No eyewitnesses were found and on the basis of the DD, FIR was registered. During further investigation, one eyewitness Parvesh @ Bholu was examined who stated that about a year ago, he borrowed an amount of Rs.2.5 lacs from Rahul @ Ganni and was unable to return the same. About a month back, Rahul @

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RAIL APPL. 3094/2022

Page 1/10



Ganni had come to his house along with friends Rahul @ Kheda, Sonu @ Sam and Kamlesh pressurizing him to return his money else they would kill him. He had been shown a pistol as well, at that time.

2. On 10th October, 2018 at about 9:00 a.m., Rahul @ Kheda, Sonu @ Sam and Kamlesh came outside House No. 77, Village Dheerpur which was his grandmother's house and threatened him saying that since he was not listening to them, they would finish him off today. A quarrel started and a *Naan* vendor residing in the *gali* intervened to stop the quarrel, in meanwhile Sonu @ Sam and Kamlesh told Rahul @ Kheda to take out the pistol and fire on both of them, upon which Rahul @ Kheda pulled out the pistol and fired upon by pointing at the *Naanwala* which hit him in the stomach and he fell down. Upon this, Parvesh fled towards the *gali* as Rahul @ Kheda was firing upon him as well, but he managed to escape unhurt.

3. On 12th October, 2018 Sonu @ Sam and Rahul @ Ganni were arrested and they disclosed that they were known to one Pramod @ Pehalwan (petitioner herein). Since Rahul @ Ganni had to take Rs.2.5 lacs from Parvesh @ Bholu and he was not returning the money, in September, 2018, Rahul @ Ganni had gone with the friends of the petitioner to his house and threatened him. On 15th October, 2018 a PCR call was received *vide* DD No.51A regarding apprehension of accused Kamlesh by the PCR Van Staff at AIIMS Gate No.1 and his disclosure regarding the involvement of the petitioner in the present case. Kamlesh was handed over to IO Ram Kishore and brought to the police station and then arrested. On 24th October, 2018, pursuant to information from Crime Branch, Darya Ganj regarding arrest of Rahul @ Kheda and recovery of pistol from his possession, and he was subsequently arrested.



4. During investigation, NBWs and process under Section 82 Cr.P.C. were taken against the accused petitioner since he was evading arrest. He was finally arrested on 13th November, 2018. During investigation, CDR calls were analyzed and it transpired that the petitioner was in touch with other accused persons. All 05 accused were in judicial custody. On completion of investigation, charge-sheet was filed and charges were framed on 28th August, 2019. Presently, the case was pending trial and witnesses were being examined. The FSL report of firearms and the bullet extracted by the doctor from the body of the deceased was received and as per the said report, the deformed bullet was discharged from the seized pistol.

5. As per an updated status report, CDR calls of petitioner and other accused were analyzed, and it was noted that mobile number 9582782502, being used by the petitioner was issued in the name of one Sonu S/o Rajpal, who was the neighbor of the petitioner. This had been verified by the subscriber as well. The mobile was not recovered as it was allegedly destroyed by the accused-petitioner. At the time of the incident, his location was at Bhagwan Park, Jharoda Village where the other accused persons had gathered and met after the incident. The early morning location of the CDR was of Hardev Nagar, Burari which was near the residential address of the accused-petitioner. Two days before the incident, on the intervening night of 7th and 8th October, 2018, location of the mobile phone of the petitioner was found at the place of incident. Besides, the CDR records suggest his connectivity with other accused persons namely Sonu @ Sam, Kamlesh and Rahul @ Moni at the relevant time.

6. More specifically it was submitted that while the incident occurred at Village Dheerpur, the residence of the petitioner was near Village Jharoda, Burari. The CDR would show that location of the petitioner's mobile, while



communicating with Sonu @ Shyam, Rahul @ Kheda @ Moni and Kamlesh, before and after the incident, was at Bhagwan Park, Jharoda Village, Burari.

7. This was co-related to the call records of Kamlesh CDR that he was also present at the same location. Similar is the case with the call records of Rahul @ Moni. Further, the call records of Kamlesh would show that just before, at the time of incident i.e., 20:59:25 hours, and after the incident his location was at Bhagwan Park, Jharoda Village, Burari. Call records of Rahul @ Ganni would show that just before the incident he was also located at Bhagwan Park, Village Jharoda, Burari. Further, the call records of the petitioner on the intervening night of 7th October, 2018 and 8th October, 2018 would show that at 23:45:10 hours, 00:22:05 and 01:09:08 hours, he was at Village Dheerpur, the place of the incident.

8. Thus, as per the Ld. APP while the petitioner's CDR would suggest that at the time of the incident he was at Bhagwan Park, Jharoda Village, Burari, the other accused persons had gathered before and after the incident at that location. Further, it was evident that there was connectivity of the petitioner with the other accused around the time of the incident as their location charts would show.

9. Further the status report was filed regarding previous involvement of the petitioner in FIR No. 581/2013 at PS Prashant Vihar under Section 195/34 IPC. The allegations in the said FIR were that the complainant in another FIR No.12/2012 at PS Mukherjee Nagar under Section 308/323/34 IPC registered against the petitioner and his two brothers had gone to Rohini Court for prosecution evidence. When the complainant was present in the Rohini Court, the petitioner and his associate Raja physically assaulted him



and threatened not to give evidence in FIR No.12/2012. A PCR call was made and at the behest of the complainant, FIR No. 581/2013 was registered which is pending trial and the case is fixed for prosecution evidence. Further, the petitioner was found involved in another case ST No. 309/2014 (Crime No.1427/2014) under Sections 302/307/120B/34 IPC at PS Murad Nagar, Ghaziabad, U.P. and ST No. 33/2015 under Sections 2 &3 Gangster Act at PS Muradnagar, U.P. Further, as per the nominal roll, his jail conduct was unsatisfactory having been awarded punishments in 2021 on 04 occasions for possessing prohibited article in jail and disorderly behavior. The petitioner had undergone 4 years 5 months 29 days in custody.

10. Ld. APP therefore submits that the information given by Kamlesh as also the incident which was at Rohini and led to registration of FIR No. 581/2013 would show that the petitioner was habitual of threatening witnesses, and therefore, in a situation where the trial was still to conclude and only 18 witnesses had been examined while 22 witnesses were left to be examined (though they were police/official witnesses), there was a very strong apprehension that the peaceful and safe conduct of the trial would be vitiated or compromised, if the petitioner is released on bail.

11. Ld. APP relied upon the decision of the Hon'ble Supreme Court in **Rajesh Ranjan Yadav v. CBI**, (2007) 1 SCC 70 where it has been held *inter alia* that “...that this is certainly not a case for grant of bail to the appellant, particularly, since the prosecution witnesses have been examined and now the defence witnesses alone have to be examined. It would, in our opinion, be wholly inappropriate to grant bail when not only the investigation is over but even the trial is partly over, and the allegations against the appellant are serious.”



12. Ld. APP submitted that one critical circumstance which would clearly show that the petitioner was involved in the conspiracy as the main mastermind, gang leader as per the PCR call made by Kamlesh and registered as DD No.51A on 15th October, 2018. The said PCR call recorded at 20:33:07 hours, was received by the police at South Delhi where the information from Kamlesh was noted, stating that on 10th October, 2018, the day of the incident of murder, he was on a motorcycle with one Shyam (who was correlated as Sonu @ Sam) and another boy, whom he did not know (who was correlated as Rahul @ Kheda). Further it was reported by Kamlesh that on 15th October, 2018, he was called on his motorcycle by the “gang leader Pramod @ Pehalwan” and he kept his motorcycle and blindfolded him and left him in South Delhi. Also, he took all his money and threatened him that in case he would tell anybody, he would kill him and his family.

13. Ld. APP submitted that this information given by Kamlesh was through a PCR call when he was not in custody of the police and therefore, the legal restrictions under Sections 25 & 27 Indian Evidence Act would not apply. Further, the said information relating to both the incident on 10th October, 2018 when the presence of Kamlesh as well as Shyam (Sonu @ Sam) and the third person is reported, and occurrence on 15th October, 2018 post the incident when the specific mention of the petitioner is made by Kamlesh who was not only intimidated but also blindfolded and threatened by the petitioner. According to the Ld. APP this was enough to implicate the petitioner for having been the mastermind of this conspiracy.



14. Learned counsel for the petitioner however submitted that the petitioner was on bail in FIR No.581/2013 and ST No.309//2014 and ST No. 33/2015, although trials were pending in all these matters.

15. The learned counsel for the petitioner in support of the bail, contended that since all the material witnesses have been examined, there is no possibility of tampering with them and the trial would take time as there are 40 prosecution witnesses. The petitioner was arrested only on the basis of disclosure statements of co-accused persons and no incriminating evidence was collected against him which could substantiate his complicity. The only evidence against the petitioner was in the form of CDR with co-accused persons and mobile location of the petitioner being close to the place of incident. The mobile number used by the petitioner was not even registered in his name and was registered in the name of his neighbor Sonu, who had expired prior to deposing before the Ld. Trial Court and his statement recorded under section 161 Cr.P.C. cannot be read against the petitioner. Otherwise, there was no transcript and the said calls cannot be incriminating against the petitioner. As regards the location, the petitioner's residence was near the place of incident and therefore, it cannot be attributed to the petitioner.

16. Reliance was placed on *Saloni Arora v. State*, CrI. Rev. P. 497/2008, where this Court held that mere telephonic conversation with co-accused is not an incriminating evidence against the accused. The eyewitness to the incident, PW-7 Parvesh @ Bholu had not supported the case of the prosecution. Moreover, the petitioner was not named by him in his statement under section 161 Cr.P.C., and the only role assigned to the petitioner was that of a conspirator. The eyewitness has also failed to identify the accused



persons. There was no recovery made from the petitioner. The reliance of the prosecution on PCR call made by PCR Van Staff on the day of the apprehension of Kamlesh and his disclosure relating to the petitioner cannot be read against the petitioner since it would amount to confession. The contents of the said PCR call also do not relate to the commission of the present offence.

17. Reliance was placed by the learned counsel for the petitioner on the decision of this Court in ***Sumer Singh v. State***, Bail Appln. 750/2007 wherein it has been held that at the time of bail application the Court can have a bird's eye view of the testimony of the witnesses. Considering that the so-called eyewitness of the incident PW-7 had not identified any of the accused including the petitioner being there at the time of the incident, the Court was bound to at least take that into account.

18. It was further contended that the call locations of Dheerpur and Jharoda cannot possibly implicate and give a clear picture of the involvement of the accused and the petitioner or their *inter se* connectivity considering that the petitioner was resident in that area and Dheerpur and Jharoda are located near each other. PCR call by Kamlesh even if taken on its face value, did not name the petitioner being present at the day of incident and therefore, cannot be sought to be implicate him.

19. The learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in ***Prabhakar Tewari v. State of U.P.***, CrI. A. No. 152/2020 in SLP (CrI.) 9207/2019; ***Seema Singh v. CBI & Anr.***, CrI. A. 569/2018 in SLP (CrI.) No. 5611/2017 and ***Puneet v. State of NCT of Delhi***, SLP (CrI.) 1882/2022.



20. Ld. APP however has relied upon the decision of this Court in ***Ishika v. State***, (2021) SCC OnLine Del 3131 where this Court has held that while drawing an inference from the materials brought on record to arrive at a finding as to whether charges of criminal conspiracy have been proved or not, it must always bear in mind that a conspiracy is hatched in secrecy and it is difficult, if not impossible, to obtain direct evidence to establish the same.

21. Further reliance has been placed on decision in ***Neeru Yadav v. State of U.P.***, (2016) 15 SCC 422 where the Hon'ble Supreme Court has observed that "*the law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner*". These observations were made in the context of a history-sheeter involved in the nature of crimes which were not minor offences.

22. The Hon'ble Apex Court cited in the approval of the above decision in ***Prasanta Kumar Sarkar v. Ashis Chatterjee***, (2010) 14 SCC 496 where various factors were enumerated for grant of bail to the accused and amongst them was included the issue of character, behaviour, means, position and standing of the accused, reasonable apprehension of the witnesses being influenced and likelihood of the offence being repeated.

23. In addition, this Court also notes the observations of the Hon'ble Supreme Court in ***State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru***, (2005) 11 SCC 600 noting that "*mostly conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair.*" and further "*most of the conspiracies, there is and could be no direct evidence of the agreement amounting to criminal conspiracy.*".



24. In *Ash Mohamad v. Shivraj Singh @ Lalla Babu*, (2012) 9 SCC 446 the Hon'ble Supreme Court observed that "*there should have been proper analysis of the criminal antecedents*" and that "*We do not deny for a moment that period of custody is a relevant factor but simultaneously the totality of circumstances and the criminal antecedents are also to be weighed.*"

25. Taking into consideration the contentions of the petitioner as well as the State, this Court is of the considered opinion that the petitioner cannot be enlarged on bail at this stage, considering evidence collected by the police regarding his role as the main conspirator and "gang leader"; the CDR which show his connectivity at the relevant times before and after the incident with all the assailants; his location which correlates to that of the co-accused the relevant times; his previous involvements and the nature of such involvements (including under Sections 2 & 3 Gangster Act, as well as under Sections 302/307 IPC, as also under Section 195/34 IPC); particularly the incidents relating to assaulting the complainant in the Rohini Court as also the incident of intimidation and threat reported by Kamlesh (as per the PCR call); and that the trial is still underway.

26. The bail application is, therefore, dismissed. Pending applications, if any, are rendered infructuous.

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

(ANISH DAYAL)
JUDGE

JUNE 02, 2023/'sm'