



2024:DHC: 978



\$~100

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

Date of decision: 09.02.2024

+ **CRL.M.C. 856/2024**

SANJAY MORE

..... Petitioner

Through: Ms.Sonali Karwasra Joon,
Ms.Sushila Karwasra,
Mr.Madhookant Bhatia,
Mr.Mayank Singh, Advts.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Shoaib Haider, APP with
SI Manjit Singh.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

Background in Brief:

1. This petition has been filed under Section 482 read with Section 167(2) of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), challenging the Order dated 06.12.2023 passed by the learned Additional Sessions Judge-05, West, Tis Hazari Courts, Delhi in Criminal Revision Petition, being Crl. Rev. No. 642/2023, titled ***Sanjay More v. State***, and praying for release of the petitioner on Statutory Bail in FIR No. 380/2023 registered at Police Station: Kirti Nagar, New Delhi under Sections 304/34 of the Indian Penal Code, 1860 (in short, 'IPC').

2. The above FIR has been registered on a complaint received



2024:DHC:978



from the father of the deceased stating that the deceased, aged around 23 years, was unemployed and was also a drug addict. On the day of the incident at around 3.00 AM, he went out of the house. He came back at around 6.30 AM, completely wounded, with blood oozing from his head and nose. He had other injury marks on other parts of his body as well. There was also something like black paint on some parts of his body. Upon enquiry, the deceased told to the complainant that he was roaming around the plot No.52/53 Furniture block when some persons there mistook him to be a thief, and caught hold of him and started beating him with sticks (*dandas*), legs and fists. They also put something like black paint on him. The complainant took his son to a local clinic for medicines, however, as the medicines did not work and his condition deteriorated, he was taken to Ashray Clinic, Kirti Nagar, Kamla Nehru Camp, where the doctor advised him to immediately rush the deceased to the Safdarjung Hospital. On the way to the Safdarjung Hospital, unfortunately the deceased died.

3. Based on the above complaint, the petitioner was arrested on 27.08.2023.

4. As the charge-sheet was not filed in spite of expiry of a period of 60 days of the arrest, the petitioner filed the application under Proviso (a)(ii) to Section 167(2) of the Cr.P.C., seeking Statutory Bail. The said application was dismissed by the learned Link Metropolitan Magistrate, West, Tis Hazari Courts, Delhi, vide order dated 31.10.2023. The petitioner challenged the said order by way of the abovementioned Revision Petition. The same has been dismissed by way of the Impugned Order dated 06.12.2023.



2024:DHC:978



Submissions of the learned counsel for the petitioner:

5. The learned counsel for the petitioner, placing reliance on the judgment of this Court in *Varun Goyal v. State of NCT of Delhi*, Neutral Citation No.2023:DHC:1704, submits that where the FIR is lodged invoking Section 304 of the IPC, the accused/petitioner shall be entitled to a Statutory Bail on the expiry of 60 days of the arrest, until and unless the Investigating Agency apprises the learned Metropolitan Magistrate that the accused is being charged under Section 304-I of the IPC, that is, for an offence for which the accused can be sentenced upto imprisonment for life.

Submissions of the learned APP:

6. On the other hand, the learned APP for the State submits that in the present case, the FIR itself points to the offence being committed under Section 304-I of the IPC. The deceased was brutally injured by the accused as is evident from the MLC and the opinion of the doctor that the injury suffered by the deceased was sufficient to cause death in ordinary course of nature. It is also so evident from the CCTV footage of the incident. He further submits that the FIR is registered only under Section 304 of the IPC without specifying whether the investigation will lead to the offence found under Part-I and II of Section 304 of the IPC and therefore, merely because the FIR invoked Section 304 of the IPC does not mean that it is invoking Section 304-II of the IPC; the nature of the allegations in the FIR has to be considered by the Court for determining the same.

7. He submits that the judgment of this Court in *Varun Goyal*



2024:DHC:978



(supra) would not be applicable as it was rendered in the facts of its own case, wherein 27 persons had died as a result of a fire that broke out. In the said case, in fact, the father of the accused had also died as a result of the fire.

8. He submits that this Court had relied upon its earlier judgment of ***Devesh Kumar v. State***, 2018 SCC OnLine Del 13073, wherein again, on the facts of that case, the Court found that the allegations in the FIR and the statement of the witnesses only points to an offence under Section 304-II of the IPC having been made out.

9. He submits that therefore, the application filed by the petitioner for grant of Statutory Bail has rightly been rejected by the learned Link Metropolitan Magistrate and the learned Additional Sessions Judge.

Analysis and Findings:

10. I have considered the submissions made by the learned counsels for the parties.

11. The allegations made in the FIR have been discussed hereinabove. They point to the fact that the petitioner alongwith others thought that the deceased was a thief roaming around in the locality in the early hours of the morning. The deceased was confronted, tied up, and beaten. The exact manner in which he escaped is not mentioned in the FIR; that would be a matter of investigation. The prosecution claims to have the CCTV Footage which has been shown to me during the course of the hearing, it does reflect that the deceased had been tied up and was beaten by at least two persons with sticks (*dandas*).



2024:DHC:978



The nature of the injuries suffered by the deceased has been opined to be sufficient to cause death in the ordinary course of nature. However, at the same time, for invoking Section 304-I of the IPC, the prosecution, at this stage, at least has to allege that the injuries were caused with the intention of causing death.

12. Section 304 of the IPC prescribes the punishment for culpable homicide not amounting to murder. It is in two parts, and reads as under:-

“304. Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder, shall be punished with 1 [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

13. A reading of the above would show that where the death is caused by an act “done with the intention of causing death, or of causing such bodily injury as is likely to cause death”, the person committing the culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Where, however, the act is done “with the knowledge



2024:DHC: 978



that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death”, the person committing culpable homicide not amounting to murder shall be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

14. The difference between the two parts of Section 304 of the IPC becomes important to be considered for purpose of the statutory right of the accused to be released on bail under Proviso to Section 167(2) of the Cr.P.C.. Section 167(2) Cr.P.C. is reproduced hereinunder:

“167. Procedure when investigation cannot be completed in twenty-four hours.—

xxxxx

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that— 2 [(a) the Magistrate may authorise the detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding— (i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years; (ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the



2024:DHC: 978



said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.”

15. In terms of Proviso (a)(i) to Section 167(2) of the Cr.P.C., the maximum period for which the Magistrate may authorise the detention of the accused in custody, shall be ninety days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years, or under Proviso (a)(ii) to Section 167(2) Cr.P.C., for a period of sixty days, where the investigation relates to any other offence. It is further provided that on the expiry of the said period of ninety days or sixty days, the accused shall be released on statutory bail if he is prepared to and does furnish bail.

16. It must be remembered that the Statutory Bail is a protection to fundamental rights of personal liberty of the accused. It must therefore, be considered liberally in favour of the accused. Further, the



2024:DHC:978



general principle governing criminal jurisprudence is bail not jail.

17. In this regard, the observations of the Supreme Court in ***M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence***, (2021) 2 SCC 485 are apt and are reproduced hereinbelow:-

“17. Before we proceed to expand upon the parameters of the right to default bail under Section 167(2) as interpreted by various decisions of this Court, we find it pertinent to note the observations made by this Court in Uday Mohanlal Acharya on the fundamental right to personal liberty of the person and the effect of deprivation of the same as follows :

“13. ... Personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. When the law provides that the Magistrate could authorise the detention of the accused in custody up to a maximum period as indicated in the proviso to sub-section (2) of Section 167, any further detention beyond the period without filing of a challan by the investigating agency would be a subterfuge and would not be in accordance with law and in conformity with the provisions of the Criminal Procedure Code, and as such, could be violative of Article 21 of the Constitution.”

17.1 Article 21 of the Constitution of India provides that “no person shall be deprived of his life or personal liberty except according to procedure established by law”. It has been settled by a Constitution Bench of this Court in Maneka Gandhi v. Union of India, that such a procedure cannot be arbitrary, unfair or unreasonable. The history of the enactment of Section 167(2) CrPC and the safeguard of “default bail” contained in the proviso thereto



2024:DHC:978



is intrinsically linked to Article 21 and is nothing but a legislative exposition of the constitutional safeguard that no person shall be detained except in accordance with rule of law.

xxxxxx

17.7. Therefore, as mentioned supra, Section 167(2) is integrally linked to the constitutional commitment under Article 21 promising protection of life and personal liberty against unlawful and arbitrary detention, and must be interpreted in a manner which serves this purpose. In this regard we find it useful to refer to the decision of the three-Judge Bench of this Court in Rakesh Kumar Paul v. State of Assam, which laid down certain seminal principles as to the interpretation of Section 167(2) CrPC though the questions of law involved were somewhat different from the present case. The questions before the three-Judge Bench in Rakesh Kumar Paul were whether, firstly, the 90-day remand extension under Section 167(2)(a)(i) would be applicable in respect of offences where the maximum period of imprisonment was 10 years, though the minimum period was less than 10 years. Secondly, whether the application for bail filed by the accused could be construed as an application for default bail, even though the expiry of the statutory period under Section 167(2) had not been specifically pleaded as a ground for bail. The majority opinion held that the 90-day limit is only available in respect of offences where a minimum ten year' imprisonment period is stipulated, and that the oral arguments for default bail made by the counsel for the accused before the High Court would suffice in lieu of a written application. This was based on the reasoning that the court should not be too technical in matters of personal liberty. Madan B. Lokur, J. in his majority opinion, pertinently observed as follows:

“29. Notwithstanding this, the basic legislative intent of completing investigations



within twenty-four hours and also within an otherwise time-bound period remains unchanged, even though that period has been extended over the years. This is an indication that in addition to giving adequate time to complete investigations, the legislature has also and always put a premium on personal liberty and has always felt that it would be unfair to an accused to remain in custody for a prolonged or indefinite period. It is for this reason and also to hold the investigating agency accountable that time-limits have been laid down by the legislature. ...

32. ... Such views and opinions over a prolonged period have prompted the legislature for more than a century to ensure expeditious conclusion of investigations so that an accused person is not unnecessarily deprived of his or her personal liberty by remaining in prolonged custody for an offence that he or she might not even have committed. In our opinion, the entire debate before us must also be looked at from the point of view of expeditious conclusion of investigations and from the angle of personal liberty and not from a purely dictionary or textual perspective as canvassed by the learned counsel for the State.

41. We take this view keeping in mind that in matters of personal liberty and Article 21 of the Constitution, it is not always advisable to be formalistic or technical. The history of the personal liberty jurisprudence of this Court and other constitutional courts includes petitions for a writ of habeas corpus and for other writs being entertained even on the basis of a letter addressed to the Chief Justice or the Court.”

Therefore, the courts cannot adopt a rigid or formalistic approach whilst considering any issue that touches upon the rights contained in Article 21.



2024:DHC:978



17.8. We may also refer with benefit to the recent judgment of this Court in S. Kasi v. State, wherein it was observed that the infeasible right to default bail under Section 167(2) is an integral part of the right to personal liberty under Article 21, and the said right to bail cannot be suspended even during a pandemic situation as is prevailing currently. It was emphasised that the right of the accused to be set at liberty takes precedence over the right of the State to carry on the investigation and submit a charge-sheet.

17.9. Additionally, it is well-settled that in case of any ambiguity in the construction of a penal statute, the courts must favour the interpretation which leans towards protecting the rights of the accused, given the ubiquitous power disparity between the individual accused and the State machinery. This is applicable not only in the case of substantive penal statutes but also in the case of procedures providing for the curtailment of the liberty of the accused.

17.10. With respect to the CrPC particularly, the Statement of Objects and Reasons (supra) is an important aid of construction. Section 167(2) has to be interpreted keeping in mind the threefold objectives expressed by the legislature, namely, ensuring a fair trial, expeditious investigation and trial, and setting down a rationalised procedure that protects the interests of indigent sections of society. These objects are nothing but subsets of the overarching fundamental right guaranteed under Article 21.

17.11. Hence, it is from the perspective of upholding the fundamental right to life and personal liberty under Article 21 that we shall clarify and reconcile the various judicial interpretations of Section 167(2) for the purpose of resolving the dilemma that has arisen in the present case.”



2024:DHC:978



18. As noted hereinabove, if the applicant is charged for an offence under Part I of Section 304 of the IPC, he would be entitled to Statutory Bail under Proviso (a)(i) to Section 167(2) of the Cr.P.C. on expiry of 90 days, however, if he is charged under Part II of Section 304, in terms of Proviso (a)(ii) of Section 167(2) of the Cr.P.C., he shall be entitled to a Statutory Bail on expiry of period of 60 days of his arrest. Though the charge-sheet has been subsequently filed under Part I of Section 304 of the IPC against the petitioner, his entitlement to the Statutory Bail has to be considered as on the date of the expiry of period of 60 days of his arrest.

19. In *M. Ravindran* (Supra), the Supreme Court, however, has clarified that the right of the accused to Statutory Bail cannot be made dependent to the charge-sheet subsequently filed.

20. On the expiry of the period of 60 days from the date of the arrest of the petitioner, the charge-sheet had not been filed, therefore, till that date, the prosecution has not reached to a conclusion that the FIR/MLC/CCTV Footage and/or the statements recorded till then, made out a case under Section 304-I of the IPC; as investigation was still ongoing on that day.

21. In *Varun Goyal* (supra), considering the same issue, the Coordinate Bench of this Court has observed as under:

“55. In so far as Section 304, IPC, is concerned, it should be seen from the FIR and the statement recorded during the course of investigation up to the filing of the application under Section 167 as to whether the investigation is in relation to Part ‘I’ or Part



2024:DHC: 978



'II'. The same, in my opinion, cannot be decided on the basis of the reply filed by the Police to the application under Section 167, which is filed after 60 days, in the absence of the same being reflected in the case diary. In order to avoid any ambiguity, the same should be brought to the knowledge of the Magistrate before the expiry of the period of 60 days, whether the investigation relates to offence falling under Part I of Section 304, IPC or Part II of Section 304, IPC.

56. Merely showing or filing a reply that the investigation is in relation to Part I, in my opinion, is not sufficient because that would give whimsical powers to the Police authorities to mention any section in order to defeat the right of the accused. It is then the duty of the Magistrate to see at the stage when the application is filed, as to whether there is any substance for making such statement and should not wait for filing of the chargesheet.

57. In an event, an accused is initially arrested under section 304 IPC without specifying the nature of accusation as to Part (I) or Part (II), the accused is liable to be detained for a period of 60 days without any demurer since the investigation for the purpose of determination whether the offence falls in Part (I) or Part (II) is still possible as in both the scenario his detention for initial 60 days cannot be objected to for the purpose of investigation.

58. However, where even on the 60th day, the prosecution is still unable to determine whether the offence falls within Part (I) or Part (II), there is nothing to presume that the offence shall fall in Part (I) entitling further 30 days (total of 90 days) for completion of investigation and any remand thereafter, for the said purpose without specifying the offence being in Section 304 Part (I) of IPC shall vest a right in the favor of accused to be released



2024:DHC:978



on bail in terms of Section 167(2)(a)(ii) CrP.C. Since, it is a matter of liberty of a person and a person cannot be detained in custody even for a day more than what is permitted under law. Where the prosecution even after 60 days of investigation, is not in a position to definitively assert, that the offence falls under sub-clause(1) of Section 304 IPC, in such a situation, the denial of bail and remanding the accused further to custody to enable the prosecution to determine if Part (1) of Section 304 IPC applies, cannot be permitted.

59. Provision of Section 167(2), Cr.P.C. is in the nature of beneficial provision. It is settled law that in case of any ambiguity or doubt, the benefit has to go in favor of the accused.

60. Needless to say that in a matter of personal liberty, the statute has to be interpreted strictly and no leverage or benefit can be extended to the prosecution and an interpretation in favour of the accused is to be accepted. Failure of the prosecution cannot be at the detriment of the accused.

xxx

64. Whether the conviction would be under the provisions of Section 304 Part II IPC or Part I IPC can only be ascertained after the conclusion of the trial. It cannot be alleged at the initial stage when the FIR is registered, unless the specific allegations of such nature are made so as to fall under Section 304 Part I of the IPC.”

22. In **Devesh Kumar** (supra), this Court relied upon the judgment of the Supreme Court in **Rajeev Chaudhary v. State (NCT of Delhi)**, (2001) 5 SCC 34, and reiterated that once infeasible right of Statutory Bail accrues to the petitioner when the period of 60 days for



2024:DHC:978



completing the investigation and filing the charge-sheet comes to an end, by subsequent filing of the said charge-sheet, the said indefeasible right is not taken away and in case the petitioner/accused even orally prays for a Statutory Bail, he would be entitled to the same. It was further held as under:

“9. The issue which now arises for consideration is that whether at this stage from the FIR itself the Court can form an opinion and/or is required to form an opinion whether a case is made out for offence punishable under Section 304-I or 304-II. In a given case on the facts it may be difficult to ascertain whether the act which resulted in the death was caused with the intention or knowledge, in which case the Court would not be required to form an opinion whether the offence would fall under Section 304-I or 304-II. If the offence fall under Part-I, then the sentence being punishable up to life imprisonment the investigating agency would have time of 90 days for filing the charge-sheet whereas if the offence falls within Section 304-II, then the charge-sheet is required to be filed within 60 days.”

23. As on the date of filing of the application by the applicant, keeping the above principles in mind, it has to be presumed, unless contrary is evident from the reading of the FIR and the collected evidence by the prosecution, that the accused is being investigated for offence under Section 304 Part I of the IPC and not Section 304 Part II of the IPC and, therefore, the investigating agency is required to file the charge-sheet within 60 days of his arrest, and having not filed the same, the accused/applicant having exercised his right to Statutory Bail is entitled to grant of the same.



2024:DHC:978



24. In the present case, a perusal of the allegations made in the FIR, supplemented by the CCTV Footage and the MLC, does not *prima facie* show that the petitioner had an 'intention of causing death' of the deceased. The Court while making the above observation is not making any comments on the charge-sheet that has been filed by the prosecution.

25. In view of the above, the Impugned Order dated 06.12.2023 passed by the learned Additional Sessions Judge is set aside. It is held that the petitioner is entitled to be released on Statutory Bail in terms of Proviso (a)(ii) to Section 167(2) of the Cr.P.C..

26. Accordingly, it is directed that the petitioner be released on bail in FIR No. 380/2023 registered at Police Station: Kirti Nagar, New Delhi under Sections 304/34 of the IPC, on furnishing a personal bond in the sum of Rs.25,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, and further subject to the following conditions:

- i) The petitioner will not leave the country without the prior permission of the Ld. Trial Court.
- ii) The petitioner shall provide his permanent address to the Ld. Trial Court. The petitioner shall also intimate the Court, by way of an affidavit, and to the IO regarding any change in his residential address.
- iii) The petitioner shall appear before the Ld. Trial Court as and when the matter is taken up for hearing.
- iv) The petitioner shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the petitioner in a



2024:DHC:978



working condition at all times and shall not be switched off or changed by him without prior intimation to the Ld. Trial Court and the IO concerned. The mobile location is to be kept on at all times.

- v) The petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact, directly or indirectly, with any of the prosecution witnesses or tamper with the evidence of the case.

27. Needless to state, any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

28. The petition is disposed of in the above terms.

29. Copy of this order be sent to the Jail Superintendent for information and necessary compliance.

30. *Dasti.*

NAVIN CHAWLA, J

FEBRUARY 09, 2024/Arya/am

Click here to check corrigendum, if any