



2024:DHC:2753



\$~40

* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Judgment delivered on: 02.04.2024**+ BAIL APPLN. 763/2023, CRL.M.A. 20468/2023,
CRL.M.A.20469/2023 & CRL.M.A. 21915/2023

VASU SHARMA @ BUNTY

..... Petitioner

Through: Mr. Kanhaiya Singhal, Mr. Ujwal
Ghai, Ms. Prasanna, Mr. Ajay Kumar,
Mr. T. Singhal, Mr. Anmol Sharma,
Mr. Anmol Chopra & Mr. Udit
Bakshi, Advs.

versus

STATE NCT OF DELHI

..... Respondent

Through: Ms. Richa Dhawan, APP for State
with ACP Satender Kumar, P.S. Hari
Nagar.**CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J.**

1. The present application has been filed under Section 439 CrPC by the applicant praying for regular bail in FIR No. 1383/2015, registered at Police Station Hari Nagar, Delhi, under Sections 302/147/148/149/86/353/332/34 IPC.
2. *Vide* order dated 07.03.2023, notice was issued in the bail application 763/2023 and the State was directed to file a Status Report. The State has filed a Status Report dated 17.05.2023, which is on record.



3. The case of the prosecution as borne from the status report is that on 07.10.2015, a complaint was made by Head Warden namely Sh. Libin Lakra, who was posted at Ward No. 2, Central Jail No.1, Tihar Jail, Delhi, that during his duty hours he heard some noise near jail ward no. 4 and found that some of the jail inmates were quarrelling with each other and one of the jail inmates namely Ishwar started hitting another inmate namely Anil on his head with a stone.

4. Thereafter, other inmates namely Vasu Sharma (petitioner herein) and Sandeep pushed Ishwar down and simultaneously Anil overpowered Ishwar by sitting over him. Further, when Ishwar again started hitting Anil with the stone, Vasu and Sandeep held the hands of Ishwar and simultaneously Anil started assaulting Ishwar with his hand-made knife on his face. However, with the intervention of jail staff, Ishwar was rescued and the alleged knife was taken by the jail staff. Further, the jail inmates namely Anil and Ishwar were shifted to the jail hospital where they were declared dead by the doctor, accordingly post-mortem was conducted and accused persons including present Petitioner was arrested.

5. After the completion of investigation, charge sheet was filed for the murder of Ishwar in which the petitioner has been arraigned as an accused whereas abated chargesheet was filed against co-accused Anil, who had died as noted above. The matter is now pending trial before the Ld. Trial Court.

6. Mr. Kanhaiya Singhal, the learned counsel appearing on behalf the petitioner at the outset submits that the petitioner has been falsely implicated in the present case. He submits that the whole case has been concocted by the Jail staff in connivance with the police and it suffers from various infirmities.



7. He submits that medical evidence is entirely contrary to the version of the prosecution. Elaborating on his submission, it is contended by Mr. Singhal that as per prosecution version the deceased Ishwar was assaulted by the accused persons including the petitioner herein by one “10 inch long hand-made iron knife”, which was allegedly recovered, however, medical evidence shows that there was no incised wound or stab wound on the body of the deceased which could have been caused by the alleged knife. He submits that the post mortem report dated 08.10.2015 rather mentions that the injury suffered by the deceased was cranio-cerebral damage due to hard and blunt force on the head which could have been caused by use of hard and blunt weapon. Various other injuries noted were also lacerated wounds and not incised wound which could have been caused by knife.

8. Inviting attention of the Court to the said post mortem report, as well as, to the subsequent opinion dated 21.11.2015 that was sought by the I.O regarding the use of weapon, Mr. Singhal submits that the story of use of alleged knife is entirely manipulated and concocted and the recovery of the knife has been planted to implicate the accused persons including the petitioner herein.

9. According to the learned counsel even the recovery of stones which were allegedly used by the assailants to kill deceased Ishwar seems to be planted as the said stones were never shown to the eye witness PW-1/Libin Lakra, therefore, it has not been established that the stones which were recovered are the same which were used by the accused persons for committing the offence. To buttress this contention, the following part of PW-1’s testimony was referred to:

“I had not shown the stones to the police with which Ishwar was



hitting Anil. It is correct that I had not shown any stone to the police involved in the incident”

10. He draws attention of the Court to the FIR wherein it is recorded that to control the prisoners, the jail staff had used “*jayaz halka bal*” (*justified mild force*) whereas PW-1/Libin Lakra in his testimony has admitted that the Tamil Nadu State Police (TSP) officials gave beatings to inmates with sticks and *dandas*.

11. Elaborating further he submits that it is the beatings given by the jail staff to the deceased which caused death of the deceased and this become apparent from the statement of PW-1/Libin Lakra, who stated that deceased Ishwar was taken to *chakkar* (a control room of jail) on his foot. PW-1 further stated that deceased Ishwar was “*injured but fine*”. He submits that in respect of deceased Anil also, the PW-1/Libin Lakra has stated that when Anil was shifted to hospital he was alive. According to the learned counsel both the deceased persons were fine after the alleged incident and they were taken to the hospital on their foot.

12. He submits that the post mortem of deceased Ishwar clearly indicates that he had sustained numerous injuries on his entire body which were grievous in nature. He has referred to the post mortem of deceased Ishwar to contend that there were as many as 40 injuries on the body of the deceased and the same were all over the body of the deceased Ishwar which could not be the result of any scuffle or fight between the inmates of jail as projected in the prosecution story.

13. According to Mr. Singhal, such injuries on the body of the deceased Ishwar were clearly a result of atrocities committed by the jail officials. He



submits that it is a case of custodial death on account of such atrocities and the petitioner is being made a scapegoat. He further submits that even as per the prosecution version, the role ascribed to the present petitioner is only that he along with co-accused Sandeep had held the hands of deceased Ishwar while injuries were inflicted by co-accused/deceased Anil.

14. He submits that the police miserably failed to examine and investigate an important aspect of the case i.e. how death of inmate Anil occurred and who allegedly gave fatal injuries to deceased Ishwar. No incriminating circumstance is on record to point that inmate Anil died because of the alleged fight between the inmates.

15. He submits that the statement of witness Libin Lakra recorded under Section 161 CrPC, Ex.PW-1/A, was also manipulated by the police officials as PW-1/Libin Lakra in his testimony specifically stated that his statement which was recorded by the police was only on one page and he also denied that Ex.PW-1/A is the same statement which was recorded by the police, when confronted with Ex.PW-1/A. The relevant part of the testimony of the PW-1 on which reliance was placed reads as under:

*“Only one statement of mine was recorded by the police in the present case. My said statement was recorded on one page. One page means only one side of the page
.....
.....At this stage, witness had been shown Ex. PW-1/A and has been asked that the statement Ex. PW-1/A is not the said statement which was referred by the witness during the cross examination. After seeing and perusing the document Ex. PW-1/A, witness states that it is correct that Ex. PW-1/A is not the said statement which was made by him to SI in the office of Superintendent at about 5:00 PM on 07.10.2015. My statement Ex. PW-1/A was not recorded on the same day at about 5:00 PM”*



16. Mr. Singhal submits that the investigation carried out is shady, inasmuch as PW-1/Libin Lakra was never asked to actively participate in the investigation nor he was taken to the crime spot for inspection, as admitted by PW-1 in his testimony. To buttress the contention, attention of the Court is also invited to the relevant parts of the testimony of PW-1 which read as under:

“I did not visit the spot when crime team inspected the same. It is correct that I had not shown the spot to the crime team”

“It is correct that apart from my statement, I was not asked to join investigation of the present case ever”

17. He submits that jail barracks and premises are under CCTV surveillance for the security reasons but despite such surveillance the prosecution deliberately did not produce a single CCTV footage to substantiate the case set up by it, which warrants drawing an adverse inference. Reliance has been placed on the decision in ***Tomaso Bruno vs State of Uttar Pradesh, (2015) 7 SCC 178***, wherein the Hon’ble Supreme court of India has taken a serious view regarding similar kind of omission to produce CCTV footage and enunciated that adverse inference should be drawn against prosecution.

18. He further submits that it is in the testimony of PW-1/Libin Lakra that deceased Ishwar was high risk inmate in the jail and whenever high risk prisoners are taken out from his cell, they are always guarded by the security/police staff deputed in the jail, as per the Delhi Prison Rules, 2018 which fact has also been testified by PW-1 in the following terms:

“It is correct that Ishwar was high-risk inmate in the jail. I cannot tell whether two other high risk inmates namely Mohd.



Shadab and Vijay are also lodged with Ishwar. High Risk prisoners were/are lodged in respective high risk cells. It is correct that whenever high risk inmate is taken out from his cell, he is always accompanied by jail official and TSP personnel. It is correct that the movement register is maintained in high risk ward regarding movement of high risk inmate, whenever he is taken out from his cell for any purpose including visit to legal cell, jail dispensary, canteen, control room, chakkar etc.”

19. He submits that it is not understandable when deceased Ishwar was a high risk security prisoner and guarded by jail officials and TSP personnel then how is it possible that deceased had quarrel with another inmate Anil and sustained severe injuries, which casts serious doubt on the story of the prosecution.

20. As regards the antecedents of the petitioner, the learned counsel submits that the petitioner herein though charged with numerous offences, however, in many cases, either he has been discharged/acquitted or is on regular bail. According to Mr. Singhal, the petitioner is facing trial only in two cases including the present one. He submits that the involvement in other cases cannot be the ground for denying bail to the petitioner as held by Hon'ble Supreme Court of India in ***Prabhakar Tiwari vs State of Uttar Pradesh, (2020) 11 SCC 648***.

21. As far as apprehension expressed by the prosecution that the petitioner is a flight risk, Mr. Singhal submits that strict conditions may be imposed on the petitioner in the event bail is granted to the petitioner.

22. He submits that the petitioner is in judicial custody in the present case since past 08 years and the prosecution has only examined one witness that too after the intervention of this Court. He submits that the prosecution has



cited as many as 52 witnesses, therefore, the trial is not likely to be concluded anytime in the near future, which itself furnishes a ground for granting bail to the petitioner. Reliance has been placed on the decisions of the Hon'ble Supreme Court in *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713 and *Ashim vs National Investigation Agency*, (2022) 1 SCC 695. He, therefore, urges the Court to enlarge the petitioner on bail.

23. *Per contra*, Ms. Richa Dhawan, the learned APP appearing for the State, has argued on the lines of the status report and she submits that the petitioner has been in custody as a high security prisoner and has been accused of a grave and serious offence, therefore, he may not be enlarged on bail.

24. She submits that the entire incident of 07.10.2015 can be segregated in three transactions – First, deceased Ishwar got engaged into a fight with deceased Anil, petitioner and one Sandeep; Second, the petitioner and co-accused Sandeep tripped the deceased Ishwar while Anil gave blows with cement bricks and the petitioner and Sandeep caught hold of the hands of deceased. Thereafter petitioner and the co-accused Sandeep also hit deceased Ishwar with cement bricks; Third, Anil, the petitioner and co-accused Sandeep were taken to the barracks and they incited a riot in prison no. 1 and to quell the same police personnel resorted to *lathi* charge on the inmates during which deceased Anil, the petitioner and co-accused Sandeep received injuries.

25. It is contented by Ms. Dhawan that case of the Petitioner is premised on the principle that '*falsus in uno falsus in omnibus*' inasmuch the Petitioner seeks bail on basis of the contention that use of mild minimum force by the police being implausible renders the assault by the Petitioner on



the victim as implausible and misconceived. She contends that the said maxim has no application to the question of appreciation of evidence in India as noted by the Hon'ble Supreme Court of India in ***Criminal Appeal No(s).I265/2012 T.G.Krishnamurthy & Ors v. State Of Karnataka & Ors.***

26. She submits that the petitioner Vasu Sharma has criminal antecedents and is involved in 16 criminal assault, Arms Act cases etc. He is a desperate criminal, who with the help of his associates had attacked the co-inmate Ishwar Singh with intention to kill him and also assaulted on-duty Tihar Jail staff with his associates.

27. She submits that deceased Anil was not the perpetrator. It is the petitioner who started the fight. Deceased Ishwar was tripped by petitioner and co-accused Sandeep. Thereafter the petitioner (Vasu), Anil and Sandeep repeatedly hit him on his head with cement blocks. That FSL Report dated 21.09.2016 has opined there is presence of blood of the victim/ deceased on the cement blocks.

28. Additionally, she submits that reliance of the Petitioner on the medical evidence /post-mortem report dated 08.10.2015 to conclude that the prosecution version is doubtful as regard use of hand-made knife, is wholly erroneous. She submits that the post-mortem report completely corroborates the fact that the victim was attacked with cement blocks and a knife, by the deceased Anil, the Petitioner and Sandeep. Expanding her argument, Ms. Dhawan adds that the reliance of the Petitioner on the word 'laceration' is misconceived inasmuch as 'laceration' is a wound which may be caused by sharp objects as well as by hard blunt objects and the distinction drawn by the Petitioner between 'incision' and 'laceration' is wholly erroneous.



Reference in this regard is made to *Modi's Medical Jurisprudence & Toxicology (22nd Edition, Student Edition)*.

29. She further submits that the exact meaning and import of the expressions used in the MLC and the post-mortem report could be clarified by the concerned medical professionals who made the same, at the time when they step into the witness box.

30. She submits that PW-1/Libin Lakra has supported the case of the prosecution inasmuch as PW-1 supports the occurrence of hitting the victim on his head with cement blocks and improvised knife, as well as, the story that the accused persons incited a riot in the Prison. She further submits that it is a matter of record that the incident had occurred in the year 2015 whereas the witness has been examined in the year 2023 thus, given the long lapse of time minor omissions and embellishments are but natural in the deposition of the PW-1/Libin Lakra.

31. She submits the absence of CCTV footage *per se* does not falsify the case of the prosecution especially when the eye-witnesses are yet to be examined and the impact of absence of CCTV footage on the case of the prosecution will only be ascertained during the trial.

32. She submits that the antecedents of the petitioner are not clean. Further, when he was enlarged on interim bail, he abused the liberty so granted to him and absconded. She, therefore, urges the Court to dismiss the bail application of the petitioner.

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

34. The case of the prosecution is that deceased Ishwar was assaulted by Anil with hand-made knife on his face but his post mortem report does not



indicate that deceased Ishwar suffered any incised wound which could have been caused by such hand-made knife, therefore, *prima facie* there is some substance in the submission of petitioner's counsel that medical evidence does not support the case of prosecution on certain aspects. The aspect whether lacerated wounds which were found on the body of deceased Ishwar could have been caused by knife will be decided by the learned Trial Court at an appropriate stage after the doctors who prepared the post mortem report have been examined.

35. *Prima facie* there also seems to some merit in the contention of petitioner's counsel that it has not been established that the stones which were recovered are the same which were used by the accused persons for causing injuries to the deceased Ishwar as the said stones were never shown to the eye witness PW-1/Libin Lakra.

36. It is also in the testimony of PW-1 that deceased was taken to *chakkar* (control room of jail) on his foot and that deceased Ishwar was "*injured but fine*". It is also the case of the prosecution that the jail staff had used "*jayaz halka bal*" (*justified mild force*) to control the prisoners and quell the riot like situation. Further, the post mortem report shows that the deceased had suffered injuries over his entire body and there were as many as 40 injuries on the dead body. It is the case of the prosecution that the petitioner with the help of his associates had attacked the co-inmate Ishwar and also assaulted on-duty Tihar Jail staff. In this factual backdrop the contention of petitioner's counsel that the injuries suffered by deceased Ishwar were not result of scuffle or fight between the inmates of jail, but was on account of atrocities committed by the jail officials as opposed to use of *justified mild force* while the petitioner has been made a scapegoat, cannot be negated all



together at this stage especially when not a single CCTV footage has been produced by the prosecution despite the jail barracks and other parts of jail premises being under perpetual CCTV surveillance.

37. Yet another intriguing aspect that has the potential of making dent into the prosecution version is that deceased Ishwar was admittedly high risk inmate who was supposed to be guarded by jail officials and TSP personnel, but it is not understandable as to how he quarrelled with another inmate Anil and others which lead to the death of both Ishwar and Anil. It has not been explained as to how Anil died because of the alleged fight between the inmates. Incidentally, it is the case of the prosecution that Anil received injuries during *lathi* charge, which *prima facie* supports the theory of commission of atrocities by the police personnel and jail staff on the inmates, as propounded by the learned counsel for the petitioner.

38. There also appears to be some merit in the contention of the learned counsel for the petitioner put forth with reference to the statement of PW-1/Libin Lakra that the investigation is shady and statement of Libin Lakra under section 161 CrPC is manipulated, but those aspects, as well as, the probative and evidentiary value of his testimony will be considered during the trial.

39. There are other peculiar features of the matter which cannot be overlooked. The petitioner is stated to be in custody for the past 08 years. The prosecution has listed 52 witnesses, of which only one has been examined, therefore, the trial would inevitably be a protracted one, however, the circumstances discussed above do not warrant continuation of petitioner's custody for an indefinite period to await the outcome of trial.



An ultimate acquittal with continued custody would rather be a case of grave injustice.

40. No doubt the petitioner has a criminal record but it is also not in dispute that the petitioner has already been either discharged/acquitted or is on bail in other cases. The petitioner is stated to be facing trial only in two cases including the present one. Having regard to the facts and circumstances of the present case, as well as, long incarceration, petitioner's involvement in other cases cannot be pressed into service to deny bail to him.

41. Insofar as apprehension expressed by the learned APP that the petitioner is a flight risk, the same could be dispelled by imposing strict conditions on the petitioner.

42. Considering the circumstances in entirety, this Court is 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. 25,000/- with one surety 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: Greater Kailash, a cell-phone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times.
- 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.
43. It is made clear that the observations made herein are only for the limited purpose of deciding the bail application and the same shall not be deemed to be an expression of opinion on the merits of the case.
44. The petition stands disposed of.
45. Copy of the order be forwarded to the concerned Jail Superintendent for necessary information and compliance.
46. Order *dasti* under the signatures of the Court Master.
47. Order be uploaded on the website of the Court.

VIKAS MAHAJAN, J

APRIL 02, 2024/dss