



2024:DHC:2132

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

%

Judgment delivered on: 18.03.2024

+ **BAIL APPLN. 1114/2023**

MOHIT @ PADDU

.... Applicant

versus

THE STATE (GOVT. OF NCT OF DELHI) ... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Pardeep Khatri, Mr. Pankaj Balyan, Mr. Jatin Dhull, Mr. Pranjal Bhaskar and Mr. Amit Rana, Advs.

For the Respondent : Mr. Utkarsh, APP for the State with Insp. Manoj Verma, SHO Mangol Puri and SI Monu, PS Mangol Puri.
Mr. Paramjeet Singh and Mr. Himanshu, Advs. for Father of the victim.

CORAM:**HON'BLE MR JUSTICE AMIT MAHAJAN****JUDGMENT**

1. The present application has been filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeking regular bail in FIR No.605/2021, dated 21.05.2021, for offences under Sections 302/34 of the Indian Penal Code, 1860 ('IPC') and Sections 25/27 of the Arms

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Act, 1959, registered at PS Mangolpuri. Chargesheet has been filed against the petitioner for offences under Sections 302/34 of the IPC and Sections 25/27 of the Arms Act, 1959.

2. The brief facts of the present case are as follows:

2.1 On 21.05.2021, a PCR call was received by Sub Inspector Pritam (the complainant) regarding a person having been shot in front of Khushi Store, near Indra Park, Mangolpuri. The complainant reached the spot and found a pool of blood there.

2.2 Other police officials, including Constable Sanjeev and beat Head Constable Rakesh, also reached the spot. They informed the complainant that they had come to the spot earlier as well on the basis of information from an unknown person regarding a quarrel in the street.

2.3 It is alleged that the constable Sanjeev, on reaching the spot at the first instance, went towards the said road and took the injured victim on an E-rikshaw to SGM Hospital along with beat Head Constable Rakesh. It is also alleged that constable Sanjeev had spotted three persons running, one armed with a katta and the other two with knives. It is further alleged that the injured victim, on way to the hospital, informed that the accused Ashu and his friends had shot and stabbed him. The injured victim further informed that he had a conflict with accused Ashu as his brother was in jail in the murder case of a relative of accused Ashu.

2.4 On the same day, FIR No.605/2021 was lodged at the

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instance of the Sub Inspector Pritam under Section 307 of the IPC and Section 27 of the Arms Act, 1959 initially. After the victim succumbed to his injuries, Sections 302 and 34 of the IPC and Section 25 of the Arms Act, 1959 were added in the FIR.

2.5 The applicant was arrested on 22.05.2021, and has remained in custody since then.

2.6 The statement of the victim under Section 161 of the CrPC was recorded on 23.05.2021. The victim stated that his brother is in custody for the murder of accused Ashu's brother. He stated that accused Ashu had shot him. He stated that the applicant was standing near the India Park Gate with a knife and screamed to the other co-accused persons to kill the victim and pursuant to the incitement, the other two co-accused persons stabbed him. He stated that the accused persons fled from the scene on seeing the policemen.

2.7 The victim expired on 29.05.2021 due to his injuries.

2.8 The statement of the victim's father under Section 161 of the CrPC was recorded on 19.06.2021, wherein he stated that the applicant was standing near the gate with a knife in his hands, and had instigated the co-accused persons to kill the victim. He further stated that pursuant to the same, two of the co-accused persons had stabbed the victim.

3. The learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case. He submitted that the

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FIR only states that “Ashu and his friends” had shot and stabbed the victim, and the applicant is not named in the FIR. Moreover, he submitted that only three assailants have been mentioned in the FIR, one with a pistol and two with knives. He submits that the implication of the applicant, who is alleged to be the fourth person involved in the crime, is clearly an afterthought.

4. He submitted that the statement of the victim cannot be treated as dying declaration and pointed out that the same is not supported by any doctor as a witness. He further pointed out that the victim had not named the applicant as an assailant to the police officials initially as per the FIR.

5. He submitted that despite not being named, the applicant was arrested for no reason on 22.05.2021, even before the statement of the deceased victim was recorded on 23.05.2021, where the applicant is mentioned for the first time.

6. He further submitted that the statement of the victim’s father was recorded more than a month after the incident. The victim’s father is not an eye witness to the incident and stated in his statement that he was informed about the details of the incident by the victim before his death. It is thus contended that his statement cannot be relied upon.

7. He submitted that while the status report mentions that the applicant is visible in the alleged CCTV footage, the chargesheet doesn’t mention the same.

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8. He submitted that while a knife was allegedly recovered from the applicant, no DNA was found on the same to connect it with the present crime.

9. He submitted that the chargesheet has been filed and the trial is likely to take considerable period of time to conclude.

10. The learned Additional Public Prosecutor ('APP') strongly opposed the grant of bail to the applicant. He pointed out that the conduct of the applicant is reported as unsatisfactory in the nominal roll in view of recovery of prohibited articles from him on three occasions, due to which his *mulakat* was also stopped for certain days.

11. He submitted that the applicant was responsible for alerting the accused persons about police and a specific role has been attributed to him in the commission of the crime.

12. He submitted that the applicant had been arrested as the victim had given an informal statement to constable Sanjeev regarding the applicant's involvement while he was being taken to the hospital.

13. He further placed reliance on the statement of accused Ashu in which he had disclosed the involvement of the applicant, who is his uncle, in the commission of the crime.

14. He submitted that the present case was one of rivalry between two gangs, in relation to which four other cases have also been registered. He submitted that in such circumstances, the safety of the



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applicant would be jeopardised if he is released on bail.

15. He further submitted that there was a high possibility that if granted bail, the applicant would indulge in further crimes as well.

Analysis

16. It is pertinent to note that the Status Report mentions that the applicant has been captured stabbing the victim in the CCTV footage.

17. The learned APP had submitted before this Court that while the CCTV footage had been seen by the Investigating Officer, the same had been misplaced.

18. Subsequently, the same was found and placed on record. I have perused the CCTV footage. It seems, *prima facie*, that there are only three assailants who were involved in shooting and stabbing the victim and the applicant is not seen in the footage.

19. It is also suggested in the Status Report that the father of the victim had identified the applicant and seen him at the place of commission of the crime. However, a bare perusal of the statement of the victim's father makes it clear that he has, at best, only disclosed what was told to him by the victim at the hospital.

20. The learned counsel for the applicant has questioned as to why the applicant was arrested on 22.05.2021 despite not being mentioned in the FIR. While the learned APP for the State submitted that the



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applicant was arrested on the basis of an informal statement made by the deceased to the Constable Sanjeev, while he was being taken to the hospital, the said averment has not been substantiated.

21. The Hon'ble Supreme Court in the case of ***Ram Govind Upadhyay v. Sudarshan Singh And Others: (2002) 3 SCC 598***, has enunciated the following guiding principles while considering the application for grant of bail:

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of



the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

22. At this stage, it is relevant to note that the main piece of evidence relied upon to oppose the bail of the applicant, that is, the CCTV footage, does not *prima facie* support the case of the prosecution. In such circumstances, the very presence of the applicant at the crime spot is disputable. The allegations and defences in this regard are a matter of trial.

23. It is admitted that the applicant was not named initially when the FIR was registered. It only mentioned three assailants. All the three assailants that were seen in the CCTV Footage have been identified and are in custody.

24. The statement of the victim under Section 161 of the CrPC, where he named the applicant, was recorded on 23.05.2021, pursuant to the



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applicant's arrest. The statement of the victim, in the present case, was admittedly recorded two days after the alleged incident. It is also pointed out that the victim's statement was recorded in the hospital, five days prior to his death.

25. It is trite law that the dying declaration of a victim, cannot be rejected merely because the victim did not die immediately after the statement was recorded (**Ref. *Maniben v. State of Gujarat* : (2007) 10 SCC 362**).

26. It is also settled law that while a dying declaration recorded by a police personnel is admissible, the same ought not to be considered till the prosecution explains the non-availability of a doctor or a magistrate to record the statement (**Ref. *Dalip Singh v. State of Punjab* : (1979) 4 SCC 332**). Whether the police had sufficient time or facility to arrange a Magistrate or a doctor for recording the statement of the deceased, in the present case, is a question of fact, and will be discerned during the course of the trial.

27. Moreover, it is not alleged that the applicant gave any blow to the victim that led to his death.

28. It is not disputed that the father of the deceased has already been examined and the trial is likely to take long to conclude.

29. The object of Jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the



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deprivation of liberty has been considered as a punishment. The applicant cannot be made to spend the entire period of trial in custody specially when the trial is likely to take considerable time.

30. It is also relevant to note that the chargesheet has been filed and no purpose would be served by keeping the applicant in further custody.

31. Any apprehension regarding the applicant influencing the trial or committing further crime can be taken care of by imposing appropriate conditions.

32. In view of the above, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹25,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court / Duty MM / Link MM, on the following conditions:

- a. He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. He shall under no circumstance contact the victim's family members;
- c. He shall under no circumstance leave the boundaries of the National Capital Region without informing the concerned IO/SHO;
- d. He shall appear before the learned Trial Court as and when directed;

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- e. He shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- f. He shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

33. In the event of there being any FIR/ DD entry/ complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

34. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

35. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

MARCH 18, 2024
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