



2024:DHC:3484



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 04.04.2024
Pronounced on: 02.05.2024

+ **BAIL APPLN. 1587/2021**
NAZIM

..... Applicant

Through: Mr. Abdul Gaffar, Advocate.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Rajat Nair, SPP for State
with Mr. Dhruv Pandey, Adv.
along with Insp. Amit Prakash,
AEKC/Crime Branch.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This application has been filed under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') praying for the applicant to be released on bail in FIR No.65/2020 registered at Police Station: Dayalpur, North East under Sections 365/302/201/34 of the Indian Penal Code, 1860 (in short, 'IPC') (Sections 147/148/149/436/153-A/505/120-B of the IPC were later added in the charge-sheet).

Case of the Prosecution

2. It is the case of the prosecution that on 26.02.2020, complainant- Sh. Ravinder Kumar, resident of Khajuri Khas, Delhi, came to the Police Station: Dayalpur and informed that on 25.02.2020,



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his son, the deceased - Ankit Sharma, who is posted in the Intelligence Bureau, had come from his office, and at about 5:00 PM had gone out of the house to buy some household goods. As he did not return for a long time, the complainant started searching for him. In spite of searching at nearby places and hospitals, etc., he could not be found. The complainant, therefore, lodged a missing person report (GD No. 009-A dated 26.02.2020 at 11:41 Hrs). He stated that he later came to know from local boys that a person has been thrown into the Khajuri Khas Nala from the Masjid of Chand Bagh Pulia after being murdered. The complainant further stated that he had a strong suspicion that his son had been killed by Tahir Hussain and his goons, who had gathered in his office and who had, after killing his son, thrown the body in the Nala, from the masjid.

3. The prosecution alleges that the dead body of the deceased was later recovered from Khajuri Khas nala near Chand Bagh Pulia. The deceased had sustained injuries with a sharp object on his head, face, chest, back, and his waist. There were a total of 51 injuries caused by sharp-edged weapons and blunt objects on the body of the deceased.

4. The investigation was later transferred to Special Investigation Team (in short, 'SIT') of the Crime Branch.

5. As far as the applicant is concerned, it is the case of the prosecution that Pradeep Verma in his statement, under Section 161 of the Cr.P.C., recorded on 30.03.2020, affirmed that the applicant along with his brother was a part of the mob which was responsible for dragging the deceased near the pulia. He further stated that the



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applicant was wielding a knife and was responsible for the murder of the deceased.

6. The statement of the witness Pradeep Verma was also recorded under Section 164 of the Cr.P.C. on 08.05.2020, wherein he identified the applicant along with his brother Kasim as being responsible for the murder of the deceased. Even before the learned Trial Court, Pradeep Verma has also identified the applicant as being part of the mob that dragged the deceased towards the pulia and as one wielding a knife.

7. The prosecution further relies upon the statement of Bharat @ Kalu who affirmed that the applicant along with his brother was a part of the mob which was responsible for dragging the deceased near the pulia. He also stated that the applicant was wielding a knife and was responsible for the murder of the deceased.

8. The prosecution also relies upon the statement of Girish Yaduvanshi who stated that the applicant along with his brother was a part of the mob which was responsible for dragging the deceased near the pulia and was responsible for the murder of the deceased.

9. It is the case of the prosecution that after committing the offence, the applicant and his brother, namely, Kasim fled to Sambhal, UP and were in hiding. It was only after the disclosure of Haseen @ Mulla Ji @ Salman, that their whereabouts were obtained and they were arrested.

10. The applicant was arrested on 30.03.2020 in the present FIR. The charge-sheet was filed on 02.06.2020.

11. As far as the applicant is concerned, the charge-sheet describes his role as follows:



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“3. Role of Nazim- On disclosing the names of other assaulters by the accused Haseen @ Salman in the murder of Sh. Ankit Sharma in his disclosure statement, a dedicated team of AHTU was constituted to extract vital clues about the remaining criminals namely Sameer Khan r/o Sunder Nagri, Delhi, Nazim r/o Mustafabad, Delhi, Kasim r/o Mustafabad, Delhi and Sabir r/o Old Mustafabad, Delhi and to apprehend them. The team worked day and night continuously with dedication in the present adverse medical situation in the country and started working on the mobile number analysis of the accused persons. The team collected information about their present locations and also extracted other vital information about them. After getting the clues about the criminals namely Nazim r/o Mustafabad, Delhi and Kasim r/o Mustafabad, Delhi through technical surveillance and informers, finally the team succeeded in apprehending Nazim s/o Md. Azeem r/o H.No. 1378, Gali No. 15, Nala Road, Mustafabad, Delhi. Age- 38 years (BC of PS Dayalpur) and Kasim s/o Md. Azeem r/o H.No. 1378, Gali No. 15, Nala Road, Mustafabad, Delhi. Age- 26 years (BC of PS Dayalpur and externed from Delhi) from Sambhal, U.P. on 30.03.2020. Both of them were involved in the murder of Sh. Ankit Sharma. On analysis of the call details record (7055907361) of Nazim, it was found that the accused Nazim along with his brother Kasim had left for Sambhal U.P. on 11.03.2020, when both Nazim and Kasim came to know that Haseen @ Salman had been picked up by the police on 11.03.2020 for the murder of Sh. Ankit Sharma and since then both Nazim and Kasim had been hiding in Sambhal, U.P.

During interrogation, Nazim admitted to his involvement in the murder of Sh. Ankit Sharma. He was correctly identified by the witnesses namely Pardeep Verma and Bharat @ Kalu and Girish Yaduvanshi. After satisfaction, he was arrested in this case.



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Location of mobile number of Nazim, 7055907361, which is in the name of his wife Sumaiya could not be obtained for 25.02.2020 as the same was found switched off between 22.02.2020 and 29.02.2020 for the reason best known to him. Mobile phone of accused was recovered from him through his personal search memo. Moreover, weapon of offence i.e. knife which was used by accused Nazim in the murder of Sh. Ankit Sharma has also been recovered at his instance from the cardboard kept on the slab of the room at the 1st floor of his house. Site plan of the place of recovery was prepared. Recovered knife from accused Nazim has also been sent to FSL to find out any blood on the knife and also for comparison with the blood of the deceased. The report is still awaited. Opinion of the concerned doctor regarding the injuries sustained by the deceased by the recovered weapon will be taken after receipt of the weapon from FSL and report will be submitted accordingly. The witnesses, namely Pardeep Verma, Bharat @ Kalu and Girish Yaduvanshi have identified accused Nazim, who was involved in the act of killing of Ankit Sharma at the instigation of Tahir Hussain. During the course of investigation, the mobile phone of accused Nazim was also examined and seized and sent to FSL to retrieve all the data including the deleted data from his mobile phone. Report is still awaited.”

Submissions of the learned Counsel for the Applicant

12. The learned counsel for the applicant submits that prior to the arrest, there is no video or photographic evidence that places the applicant on the place of the incidence. Though the prosecution alleges that there was a mob of almost 300 to 1000 persons at the spot, no Test Identification Parade (in short, ‘TIP’) was conducted despite



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the availability of eyewitnesses. He submits that it is only after the arrest of the applicant, that, Pradeep Verma (PW-6), Bharat @ Kalu and Girish Yaduvanshi, in their statements recorded under Section 161 of the Cr.P.C on 30.03.2020, conveniently identified the applicant as the person who had dragged the deceased towards Chand Bagh Pulia, into the mob. He submits that, none of these witnesses had made any complaint to the police regarding the alleged incident and, in fact, Pradeep Verma and Bharat @ Kalu in their earlier statements did not name the applicant as a person who had dragged the deceased into the mob. He submits that therefore, they are witnesses planted by the prosecution in order to implicate the applicant in the crime.

13. He submits that Pradeep Verma is in fact a stock witness and his identical statements under Section 161 of the Cr.P.C. have been recorded in as many as 7 FIRs.

14. Placing reliance on the order dated 03.02.2021 passed by a Coordinate Bench of this Court in *Liyakat Ali v. State Govt. of NCT of Delhi*, 2021 SCC OnLine 310, he submits that the bail was granted to the accused therein observing that Pradeep Verma, while claiming to have witnessed commission of certain offences, had failed to make a PCR call or complaint to any authority regarding the involvement of the accused prior to the date on which his statement was recorded almost two months later.

15. He submits that the identification by a witness of a few persons in a huge mob, particularly in the absence of a TIP, cannot inspire confidence.



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16. He submits that in any case, mere presence of the accused is insufficient to attract any criminality in the absence of direct or circumstantial evidence which corroborates the fact that the accused shared common object of the assembly. In support, he places reliance on *Usmangani @ Bhura Abdul Gafar & Anr. v. State of Gujarat*, (2018) SCC OnLine SC 3270; *Muthu Naicker v. State of Tamil Nadu* (1978) 4 SCC 385; *State of Maharashtra v. Ramlal Devappa Rathod & Ors.* (2015) 15 SCC 77 and *Musa Khan & Ors. v. State of Maharashtra* (1977) 1 SCC 733.

17. He submits that as far as the alleged recovery of knife is concerned, the DNA profile generated from the knife has not matched with the DNA profile of the deceased.

18. He submits that in the chargesheet, it has been alleged that the applicant was using the mobile number which was found to be switched off between 22.02.2020 to 29.02.2020 and the reason for the same was not explained. However, in FIR nos. 91/2020 and 92/2020, both registered at Police Station: Dayalpur, it is claimed that the applicant was using another mobile number, as per the CDRs of which, the location of the applicant was at his home about 2 km from the place of the incident.

19. He submits that the applicant has been in custody since 09.03.2020. The prosecution has cited almost 114 witnesses, out of which only 11 have been examined so far. He submits that the applicant cannot be made to suffer a long period of incarceration when the trial is not likely to conclude anytime soon.



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20. He submits that the applicant is around forty-two years old and used to run a meat shop for the last twenty-five years. His family consists of his aged parents, wife and three minor daughters, who are all dependant on him. He submits that the applicant holds no power in the community to intimidate or influence witnesses. He has deep roots in the society and is a permanent resident of Delhi. He submits that therefore, there is no risk of him fleeing from the process of law in case is he released on bail.

Submissions on behalf of the learned Special Public Prosecutor

21. On the other hand, the learned SPP submits that Pradeep Verma (PW-6) has affirmed that he had seen the applicant in the mob on 25.02.2020 and had identified him to the police on 30.03.2020. He further stated that the deceased was taken by the mob and the applicant was also present in that mob with a knife in his hand. He submits that there are other witnesses also who identified the applicant as being part of the mob and responsible for dragging the deceased towards Chand Bagh Pulia into the mob. He places reliance on the statements of Bharat @ Kalu and Girish Yaduvanshi in this regard.

22. He submits that the applicant had absconded after committing the crime and was later apprehended only on 30.03.2020.

23. He submits that an application filed by the applicant's brother, Kasim, being BAIL APPLN. 1166/2021, has been rejected by a Coordinate Bench of this Court vide its order dated 03.05.2021. He submits that keeping in mind that the evidence against the applicant is identical to that against his brother- Kasim, the observations of this



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Court in the said order would equally apply to the applicant. He submits that this Court had observed that the eyewitnesses have identified the applicant as being actively involved in the riots, which eventually led to the death of the deceased. He had also fled to Sambal, U.P after the incident and was in hiding, thereby playing hide and seek with the prosecution.

24. He submits that the conviction of the applicant can be based also on the basis of the last seen theory.

25. He submits that at the stage of consideration of an application for seeking release on bail, the Court should not go into the credibility of the witnesses relied upon by the prosecution.

26. He submits that the trial is at a pivotal stage and the learned Trial Court is, in fact, prioritizing the trial by fixing day-to-day hearings. It has also directed that the public witnesses be summoned on a priority basis. He submits that a long period of custody is not a ground for releasing the applicant on bail in cases involving such heinous crimes. Placing reliance on Section 437(2) of the Cr.P.C., he submits that as the applicant is charged with an offence punishable with death or life imprisonment, he can be granted bail only if a positive finding is returned that the material available on record does not constitute reasonable ground for believing that the applicant has committed such an offence. He places reliance on the judgment of the Supreme Court in *Manish Sisodia v. Central Bureau of Investigation*, 2023 SCC OnLine SC 1393 to submit that in case of mass violence, delay in completion of the trial cannot be a ground to release the accused on bail. He submits that in similar circumstances,



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bail of a co-accused has been rejected by this Court in its judgment in *Mohd. Mustaqeem v. State (Govt of NCT) of Delhi* 2023 SCC OnLine Del 8031, which held that the accused cannot be granted bail only on account of long period of incarceration, as the accused has been charged with an offence punishable with death or life imprisonment.

Finding and Analysis

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

28. At the outset, it is noted that the offence charged against the applicant is heinous and grave, and if proved, is punishable with death or life imprisonment. It is also settled by the Supreme Court in its judgment of *Satish Jaggi v. State of Chattisgarh & Ors.*, (2007) 11 SCC 195, that the question of credibility and reliability of witnesses put up by the prosecution, should not be gone into by the Court at the stage while considering an application filed by the accused seeking bail; it is a matter to be determined by the learned Trial Court. The Supreme Court in *State of Orissa v. Mahimananda Mishra*, (2018) 10 SCC 516 and in *Anil Kumar Yadav v. State (NCT of Delhi) & Anr.*, (2018) 12 SCC 129, has also cautioned that while considering an application of the accused seeking bail, the Court would not be justified in going into evidence on record at such depth so as to ascertain probability of conviction of the accused.



29. In **Anil Kumar Yadav** (supra), the Supreme Court reiterated the relevant considerations which should weigh with the court while granting bail to an accused, as under:-

“17. While granting bail, the relevant considerations are : (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering. No doubt, this list is not exhaustive. There are no hard-and-fast rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the Court.

18. While considering the basic requirements for grant of bail, in State of U.P. v. Amarmani Tripathi, this Court has held as under:

“18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to



the following principles relating to grant or refusal of bail stated in Kalyan Chandra Sarkar v. Rajesh Ranjan:

'11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge.'"

19. The test to be applied for grant of bail was also considered in Jayendra Saraswathi Swamigal v. State of T.N., wherein it was held as under:

"16. ... The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in State v. Jagjit Singh and Gurcharan Singh v. State (NCT of Delhi) and basically they are — the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other



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similar factors which may be relevant in the facts and circumstances of the case.”

30. As regards the submission of the learned SPP that if there appears to be a reasonable ground to hold that the accused has committed an offence which is punishable with death or life imprisonment, bail should be refused, in ***Gurcharan Singh v. State (Delhi Administration)***, (1978) 1 SCC 118, the Supreme Court has observed as under:

“24. Section 439(1), Cr.P.C. of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike under Section 437(1) there is no ban imposed under Section 439(1), Cr.P.C. against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment of life. It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1), Cr.P.C. of the new Code. The overriding considerations in granting of bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1), Cr.P.C. of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a



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grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out.”

31. Applying the above tests to the facts of the present case, it is seen that the applicant has been identified by Pradeep Verma (PW-6) as not only being part of the mob that dragged the deceased into the mob but also as carrying a knife. The prosecution alleges that there are other eyewitnesses in form of Bharat @ Kalu and Girish Yaduvanshi who have also named the applicant, ascribing specific role to him in relation to the above. As has been held in **Satish Jaggi** (supra), at the stage of bail, this Court cannot go into the question of credibility and reliability of witnesses put up by the prosecution. It is also not to conduct a mini trial. Though, it may be true that in the present case, the trial may take a long period to conclude, however, that alone cannot be a ground to release the applicant on bail where he is charged with a heinous and grave crime. There are important public witnesses yet to be examined by the prosecution and there is a likelihood that if the applicant is released on bail, he may influence/threaten them.

32. In reaching the above conclusion, I am also guided by order dated 03.05.2021 passed by this Court in Bail Appl. 1166/2021, **Kasim v. State**, dismissing the bail application of the brother of the applicant, against whom similar allegations have been made by the prosecution, observing as under:

“19. This Court is conscious that while dealing with bail applications of Liyakat Ali, Arshad Qyauum @ Monu, Gulfam @ VIP and



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Irshad Ahmad pertaining to FIR No. 116/2020, registered at police station Dayalpur, Delhi, with regard to eye witness Pradeep Verma, this Court had made an observation as to why he had not made any PCR call regarding the incident, but in the facts and circumstances of the present case, his failure to having made a call to the PCR cannot be made fatal to the case of the prosecution wherein life of a young Intelligence Officer has been lost. Moreover, every case has to be seen in the peculiar facts and circumstances of each case and observation in one case may not be binding in another case.

20. With regard to petitioner Sameer Khan, trial court in the impugned order has noted that he is a resident of Nand Nagri and his presence at the place of occurrence was not natural and therefore, it cannot be said that he did not have a common object of unlawful assembly. Regarding petitioner Kasim, learned trial court has observed that he was absconding and could be apprehended from Sambal, UP and eye witnesses have rightly identified him. Trial court has further observed that these petitioners were a part of riotous mob and were involved in looting and vandalizing public and private property and in the said riots, several persons were injured and Ankit Sharma had lost his life. This Court finds force in the observations made by the court below.

21. It is a matter of fact, in such like cases where large mob is involved in riots and illegal activities causing harm to public property, peace and life, statement of eye witnesses and corroborative evidence plays a vital role and at the time of considering the bail application of accused, it would be too soon to analyse the testimony of eye witnesses and public witnesses to arrive at a conclusion as to whether any case is made out against the accused or not. Non availability of technical



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evidence such like CCTV footage etc. cannot be accepted as a ground for non-availability of direct evidence, as it is a matter of record that CCTV cameras installed in the areas in question were either broken or hidden by the mob. At the time of grant of bail only a prima facie opinion has to be formed and the facts and circumstances of this case do not persuade this Court to keep a lenient view towards the petitioners. Petitioners have been playing hide and seek with the prosecution. Charge sheet in the FIR in question has already been framed and trial is in progress. Petitioners will have an opportunity to make their case at the appropriate stage during the course of trial.”

33. The learned SPP has also pointed out that the applicant is a declared ‘Bad Character’ of PS Dayalpur and has 12 FIRs against him.

34. Keeping in view the totality of circumstances, in my view, therefore, the applicant has not been able to make out a case for being released on bail at the present stage. I am conscious that some other co-accused are being granted bail by this Court vide separate orders passed today. However, it is so that each case has to be determined on its own facts and the evidence alleged against each of the co-accused.

35. The bail application is accordingly dismissed.

36. 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 the merits of the matter.

NAVIN CHAWLA, J

May 2, 2024/am

[Click here to check corrigendum, if any](#)

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