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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 3473/2023, CRL.M.A. 13057/2023

MANNU SHARMA

.....Petitioner

Through: Mr. Nakul Chaudhary, Ms. Leela Wati and Mr. Gautam Chaudhary, Advocates.

versus

STATE NCT OF DELHI AND ANR.

.....Respondents

Through: Mr. Laksh Khanna, APP for State with Insp. Pankaj Thakran and SI Dharmendra, N.R. Crime Branch. Ms. Aditi Drall and Mr. Ravi Drall, Advocates for respondent No.2.

11. CRL.M.C. 3476/2023, CRL.M.A. 13062/2023

MANNU SHARMA

.....Petitioner

Through: Mr. Nakul Chaudhary, Ms. Leela Wati and Mr. Gautam Chaudhary, Advocates.

versus

STATE NCT OF DELHI AND ANR.

.....Respondents

Through: Mr. Laksh Khanna, APP for State with Insp. Pankaj Thakran and SI Dharmendra, N.R. Crime Branch. Ms. Aditi Drall and Mr. Ravi Drall, Advocates for respondent No.2.

12. CRL.M.C. 7732/2023, CRL.M.A. 33626/2023, CRL.M.A. 33689/2023

MANNU SHARMA

.....Petitioner

Through: Mr. Nakul Chaudhary, Ms. Leela Wati and Mr. Gautam Chaudhary,



Advocates.

versus

STATE OF NCT OF DELHI & ORS.

.....Respondents

Through: Mr. Laksh Khanna, APP for State
with Insp. Pankaj Thakran and SI
Dharmendra, N.R. Crime Branch.

Ms. Aditi Drall and Mr. Ravi Drall,
Advocates for respondent Nos. 2 to 7.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

07.08.2024

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1 By way of present petitions, the petitioner/complainant seeks cancellation of bail granted by the Additional Sessions Judge, Rohini Courts to 8 out of the 9 accused persons in the proceedings emanating from FIR No. 104/2021 registered under Sections 147/148/149/323/302/341/506/ 34 IPC and Sections 25/27 of the Arms Act at P.S. Crime Branch. For convenience, the details of the bail granted to the 8 accused persons/private respondents is given hereinbelow-

S.No.	CRL.M.C	Accused	Details of bail order
1.	3473/2023	R2/Tajuddin	Granted by ASJ-05/North-West District, Rohini Courts vide order dated 14.02.2023
2.	3476/2023	R2/Islam	Granted by ASJ-05/North-West District, Rohini Courts vide order dated 03.03.2023
3.	7732/2023	R2/Aftab	Granted by ASJ-05/North-West District, Rohini Courts vide



			order dated 27.03.2023
4.		R3/Jahid@Chingu	Granted by ASJ-05/North-West District, Rohini Courts vide order dated 01.06.2023
5.		R4/Sakruddin	Granted by ASJ-05/North-West District, Rohini Courts vide order dated 27.03.2023
6.		R5/Sadri	Granted by ASJ-05/North-West District, Rohini Courts vide order dated 27.03.2023
7.		R6/Nirale	Granted by ASJ-05/North-West District, Rohini Courts vide order dated 26.04.2023
8.		R7/Nasruddin	Granted by ASJ-05/North-West District, Rohini Courts vide order dated 26.04.2023

The petitioner/complainant thereafter moved an application for cancellation of bail granted to the 6 accused persons arrayed as Respondents Nos. 2 to 7 in CrI. M.C. 7732/2023 which was rejected by the trial court vide order dated 28.08.2023. Since all the three petitions are filed by the complainant concerning FIR No. 104/2021 and pertain to the same incident, they are being dealt with by way of a common order.

2. Learned counsel for the complainant/petitioner submits that the accused persons have been wrongly granted bail by the trial court. He submits that the accused persons are constantly threatening the complainant and his family members and other eyewitnesses who were present at the spot



at the time of the incident and they are constantly in a grave state of fear, as there is apprehension of threat to life and property and that they have also moved an application for police protection. He further submits that the mother of the deceased was attacked by the accused persons when she came to visit her son in the hospital which is reflected in her statement to the police.

3. Per contra, learned counsel for the accused respondents has opposed the present petitions and submits that the orders granting bail are well reasoned and require no interference. He further states that the trial is proceeding at a very slow pace and only 2 out of 46 witnesses have been examined so far and there is no probability of it being completed in the near future. He submits that post-grant of bail, accused are staying away from Mangolpuri and there has been no misuse of bail or threatening of witnesses.

4. Learned APP for state has supported the contentions of the learned counsel for the complainant and additionally submits that the present incident occurred in the night of 10.02.2021 and the presence of the accused persons can be ascertained by CCTV footage. He further submits that the accused persons gave beatings to deceased/*Rinku* resulting in his death. In addition, he submits that the material injured eyewitness have only been partly examined and out of 46 witnesses, there are 6 eyewitnesses who are yet to have their testimonies recorded and that there is a possibility of the accused persons influencing the material witnesses. Lastly, he states that statement of deceased was videorecorded by police officials.

5. I have heard learned counsels for the parties and have also gone through the entire material placed on record. The CCTV footage of the incident is also played and examined.



6. A reading of the FIR would show that the parties were known to each other and had prior enmity. The alleged incident took place on 10.02.2021 around 10-10.30 pm. As per the statement of injured eyewitness *Aakash* given to the police on 14.02.2021, the deceased/*Rinku* and his friends had gone to attend a birthday celebration at '*Masala Durbar restaurant*' in Mangolpuri where an altercation had taken place between *Jaahid@chingu*, one of the accused, and one *Sachin*, belonging to the group of the deceased. Afterwards, the deceased left for his home and shortly afterwards while the friends of the deceased were standing in an alley near the deceased's house, *Shama Parveen*, who is the wife of one of the accused persons, *Nasruddin @ Lali*, came there, called on her relatives and while pointing at the deceased, exhorted them to attack him.

7. While the other co-accused were holding sticks in their hand, accused *Mehtab @ Natu* was having a knife. Accused persons were heard saying that a lesson has to be taught to the complainant as well as his brother (the deceased). The co-accused persons armed with sticks abused the deceased and when objected to, gave beatings to the deceased and his family whereafter *Mehtab @ Natu* inflicted knife blow on the lower back of the deceased. *Rinku* (deceased) was taken to Sanjay Gandhi hospital for treatment. The deceased and his friends and family were again attacked in the hospital by the accused persons, and *Taju* further pushed the knife in the back of the deceased before it could be operated upon causing him to succumb to his injuries. The first information about the incident was received through a PCR call at 00.46.42 hrs on 11.02.2021 at which DD No. 08A was registered at P.S. Mangol Puri. As per the MLC, deceased had suffered a knife blow. The MLC of two other injured namely *Mannu*



Sharma (complainant) and *Aakash* was also taken on record. The investigations thereafter were transferred to Crime Branch on 13.02.2021.

8. As discernible from the record, the impugned orders granting bail to the accused persons are similarly worded. In the order granting bail to respondent No.3 in CrI. M.C. 7732/2023, the trial court observed as under-

“4. I have duly considered the above submissions and gone through the record. The allegations against the applicant/accused are serious in nature. However, this cannot be the only criterion for denying bail as has been observed in Sanjay Chandra Vs. CBI (2012) 1 SCC 40 and relied by the Hon’ble Delhi High Court in Awanish Kumar Mishra Vs. State Decision dt. 25.10.2021, Bail Application No. 1947/2021. Reliance can further be placed on the judgment passed by Hon’ble Supreme Court Prabhakar Tiwari Vs. State of UP 2020 SCC online SC 75 wherein it has been observed that although the offence alleged (in that case u/s 302 IPC) may be grave and serious and there may be several criminal cases pending against the accused, these facts by themselves cannot be made the basis for refusal of bail.

5. The applicant/accused has been in custody for a considerable time. The case was committed on 25.06.2021 during the thick of pandemic. The charges were framed on 07.09. 2022. The material witness Mannu Sharma has recently been examined in part and his examination has been deferred for want of case property on request of Ld. APP for want of FSL result and for want of the supplementary chargesheet against suspect Shama Praveen. The FSL result has not been received so far. There are practically remote prospects of examining the public witnesses in the near future. On the other hand, the applicant is in custody for over 2 years. As already discussed, the trial will take its own time. The public witnesses have not been examined but the reason therefor has been beyond the control of the court. The non-examination of public witnesses cannot be made an



absolute ground to deny bail. Moreover, stringent conditions can be imposed in this regard. Similarly, the seriousness of allegations and the gravity of offence is also not an absolute ground to deny bail. The victim has shown apprehension of threats. Ld. Counsel for the applicant/accused submits that the applicant/accused undertakes not to reside in Mangolpuri area and he will shift somewhere else away from the residence of the complainant after taking his articles from his house. Several co-accused persons facing somewhat similar allegations have already been granted bail. Considering the relevant facts and circumstances of the case, I am of the view that the scale is tilted towards the liberty of the accused. I am of the view that it is a fit case for grant of bail to the applicant/accused.”

9. A reading of the impugned order shows that the trial court directed to release the accused persons on regular bail relying solely on the ground that the examination of eye witnesses/public witnesses will take some time. The trial court failed to appreciate that besides the injured eyewitnesses who have been only partly examined, there are six other eyewitnesses who are yet to be examined.

10. The scope and powers of the Court while considering a challenge to the bail granted are well delineated in Puran v. Rambilas, reported as **(2001) 6 SCC 338**, the relevant para of which is extracted hereunder :-

10. It has been held that generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. It is, however, to be noted that this Court has clarified that these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail



is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected.

To similar extent are the observations in State of U.P. v. Amarmani Tripathi, reported as **(2005) 8 SCC 21**.

11. Recently, the Supreme Court in the case of Ansar Ahmad v. State of U.P., reported as **2023 SCC OnLine SC 974** while dealing with a case having multiple witnesses, and where the eyewitnesses had not been examined at the time of grant of bail, had made the following observations-

13. The other important factor is that Razi Ahmad @ Manu is one of the eye witnesses. He is yet to depose as a prosecution witness. Though not as a general rule but it is expedient and is always in the interest of criminal justice system that the prayer for bail is considered after ensuring that the statements of the vital witnesses stand recorded and there is no likelihood of influencing or tampering their evidence.

12. Recently, Supreme Court in case of Kumer Singh v. State of Rajasthan, reported as **2021 SCC OnLine SC 511**, while hearing an appeal against the grant of bail to the accused charged under S.302 read with S.149 IPC, the contention of the accused that they only had lathis while other accused had swords and other sharp weapons and that is why they were entitled to bail, it was observed as under:

28. The submission on behalf of the accused that the accused



were alleged to have been armed with lathis and therefore they were released on bail is concerned, at the outset, it is required to be noted that all the accused are charged for the offences punishable under Sections 302 and 307 read with Section 149 of the IPC. At this stage, the individual role of the accused is not required to be considered when they are alleged to have been the part of the unlawful assembly.

Applying the above stated principle to the facts at hand, it is to be inferred that the fact that certain co-accused persons were carrying sticks while one of the accused was carrying a knife is immaterial as the rigours of Section 149 are to be applied in the same manner to all the accused persons i.e. the individual role of each accused person is not to be considered when they are part of an unlawful assembly.

13. Considering the nature of accusation, weighing the gravity and severity of the offence, the severity of punishment, and considering the fact that 6 eyewitnesses, including 2 injured eyewitnesses are yet to be fully examined, the court is satisfied that the trial court did not take into consideration the relevant material while granting bail to the private respondents. It may be true that an accused cannot be permitted to be languished in jail without an end but the Courts while considering the bail application need to wait for the appropriate stage where such a relief can be granted without it having any adverse impact on the prosecution case. In the present trial, that stage has not arrived as some of the crucial eye witnesses are yet to be examined.

14. Therefore, reasons given for grant of bail cannot be sustained and hence, petitions are allowed and orders granting bails to the respondents as mentioned in para 1 are set aside. The accused persons are directed to



surrendered before the concerned Jail Superintendent/Trial Court forthwith.

15. With the above directions, the petitions are disposed of alongwith pending applications.

16. A copy of this order be communicated electronically forthwith to the concerned Jail Superintendent for information.

17. A copy of this order be also uploaded on the website.

18. Needless to state that nothing observed hereinabove shall amount to an expression on the merits of the case and will not have a bearing on the trial.

MANOJ KUMAR OHRI, J

AUGUST 7, 2024

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