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

+ **BAIL APPLN. 1363/2024**

GOBINDER SINGH@ DEEPAK@ KALIPetitioner

Through: Mr. Siddharth Pandit, Mr. Vishwa
Prakash Rai and Mr. Vipin Kumar,
Advocates.

versus

STATE THROUGH SHO KAMLA NAGARRespondent

Through: Ms. Meenakshi Dahiya, APP for state
with SI Gaurav, PS: Kamla Market.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

26.07.2024

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1. This petition has been filed seeking regular bail in FIR no. 30/2018 registered at PS Kamla Market under Sections 302/365/34 IPC. The petitioner was arrested on 31st January, 2018.
2. The case of the prosecution is that on the intervening night of 30th & 31st January, 2018, an accident had occurred in front of Kotha No.64, G.B. Road where four boys were found beating Shahzeb *alias* Pui claiming that he was a mobile thief, and they took him into a white colour car parked and drove off.
3. Later at about 4 a.m., a phone call was received from Dr. Babasaheb Ambedkar Hospital, that Shahzeb had been admitted into a hospital in an injured state. Subsequently, Shahzeb expired during the course of treatment. PW-4 Mohammad Zamal had initially stated that he was present at that site when he saw four boys beating Shahzeb.



4. As per the status report, CCTV footage installed near the place shows that four persons can be seen holding and taking the Shahzeb with them. The mobile phone of the deceased Shahzeb was recovered from the glove box of the car (Swift Dezire). A sword with sheath was also discovered from the boot of the car. Four accused were arrested.
5. Counsel for petitioner highlights that the petitioner has been in custody for about 6 ½ years and the trial is proceeding at a slow pace; 34 witnesses are arrayed and only 11 have been examined so far. The material witnesses have been examined, which fact is confirmed by the APP for State on the instructions of the IO. Two co-accused have been given bail by order of this Court in Bail Application No. 650 /2024 dated 13th March 2024 and of the Trial Court on 4th April 2024.
6. Besides, as per the Nominal Roll, there are no previous involvements of the petitioner and he has been released on interim bail twice in 2020 and 2021 and has not misused his liberty
7. The two purported eyewitnesses PW-1 and PW-4 have given hostile testimony. The mobile phone which is recovered from the deceased did not belong to the deceased.
8. The *talwar* which was recovered from the petitioner's car, it is stated by counsel for petitioner, that it could not have been involved since the forensic report stated that death was due to effect of multiple injuries, sufficient to cause death in the ordinary course of nature due to blunt force/surface impact as evident from the MLC.
9. PW-1 does not identify the accused who was presented during the course of the trial, and PW-4 identifies two of the accused being Sachin and Devrat @ Punny. He stated that he was not able to conclusively identify other



offenders. As regards Sachin, he has been granted bail by this Court by order dated 13th March, 2024, as already stated above.

10. In these circumstances, where the main eyewitnesses have become hostile and the recovery of the *talwar prima facie* has no connection with the crime alleged to have been committed, as well as the recovery of the mobile phone is not linked to the deceased, and considering that there is no previous involvement, further that the petitioner was released on interim bail twice and the liberty was not misused, and that the trial is still along way from conclusion, and the petitioner is undertrial in custody for the last 6 ½ years, this Court deems it fit to grant bail to the petitioner.

11. It is also noted that two other co-accused have already been granted bail, one by this Court itself.

12. The Hon'ble Supreme Court in **Satender Kumar Antil v. CBI**, (2022) 10 SCC 51, observed as follows:

“12. The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India...”

(emphasis added)

13. The Hon'ble Supreme Court also noted the observations made by Krishna Iyer, J., in **Gudikanti Narasimhulu v. Public Prosecutor**, (1978) 1 SCC 240, as under:

“1. ... the issue [of bail] is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. ... After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of “procedure established by law. The last four words of Article 21 are the life of that human right.”



(emphasis added)

14. The Hon'ble Supreme Court further made note of their observations in ***Sanjay Chandra v. CBI***, (2012) 1 SCC 40, as under:

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.”

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.”

(emphasis added)

15. More recently, the Supreme Court in ***Javed Gulam Nabi Shaikh v. State of Maharashtra***, 2024 SCC OnLine SC 1693, observed as follows:

“18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or



parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”

16. In light of the above, and that the trial in the matter is likely to take some time, and it would not be prudent to keep the petitioner behind bars for an indefinite period, this Court finds it to be a fit case for grant of bail to the petitioner. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
- ii. Petitioner shall provide permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- iv. Petitioner shall join investigation as and when called by the IO concerned.
- v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all



times and shall not switch off or change the mobile number without prior intimation to the IO concerned.

- vi. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.

17. Needless to state, but 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.

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

19. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

ANISH DAYAL, J

JULY 26, 2024/RK

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