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

Judgment delivered on: 11.03.2024

+ **BAIL APPLN. 1868/2023 & CRL.M.A. 18656/2023**

ROHIT KRISHNAN MAHANTA

..... Petitioner

Through: Mr. Sidharth Luthra, Sr. Adv. with
Mr. Manu Sharma, Mr. Abhir Datt,
Mr. Vijay Singh, Mr. Kartik Khanna
and Mr. Akshat Kumar, Advs.

versus

STATE

..... Respondent

Through: Mr. Aashneet Singh, APP for State
with Insp. Premjeet Sing, P.S.
Safdarjang Enclave.
Mr. Maninder Singh, Sr. Adv. with
Jasdeep Sandhu, Ms. Simran
Chawdhary and Mr. Anirudh Jamwal,
Advs. for Complainant.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed under section 439 CRPC seeking grant of regular bail in connection with FIR NO. 387/2017 under sections 302/307 of the Indian Penal Code, 1860 registered at PS Safdarjang Enclave.
2. The case of the prosecution as borne out from the status report is that on 17.09.2017, information was received regarding an accident & when the



police reached the spot, they found three vehicles in accidental condition at the spot. One eye witness namely, Raju was found present on the spot and the injured persons were shifted to AIIMS Trauma Centre by PCR van and by public persons. The police reached the hospital with the eye witness-Raju & found injured Satish (Auto Driver), Maninder (Pillion rider of the motorcycle) and Gurpreet Singh (driver of the motorcycle) present there, who were unfit to give their statement.

3. Furthermore, one injured i.e. Rohit Krishnan Mahanta (the petitioner herein) was also found present in the emergency ward undergoing treatment. The eye witness identified the accused in the Hospital and informed the IO that the petitioner herein had committed the offence of accident while driving in a rash and negligent way.

4. On the statement of the eye witness, initially the present FIR came to be registered under sections 279/337 Indian Penal Code, 1860 and the accused was arrested and released on bail. Later on, during the investigation one injured i.e. the driver of the motorcycle namely, Gurpreet Singh died and the pillion rider Maninder Singh gave a statement on the basis of which sections 295A/307/302 of Indian Penal Code, 1860 and section 185 of the Motor Vehicles Act, 1988 were added and the accused was re-arrested on 20.09.2017 and was sent to judicial custody.

5. Sequel to the above, chargesheet was filed against the accused before the Court on 15.12.2017 and further charges for the offences punishable under sections 307/302 IPC were framed against the accused person.

6. Mr. Sidharth Luthra, learned senior counsel appearing on behalf of the petitioner at the outset submits that the petitioner has been falsely implicated



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in the present case, just on the basis of a statement given by the complainant/Raju, examined as PW-6, who eventually turned hostile in the court and specifically denied the suggestion that he voluntarily made statement to the police on the basis of which FIR was registered.

7. According to Mr. Luthra, a perusal of the testimony of PW-6 shows that when the incident took place he was not present at the spot and he does not even know how the accident took place.

8. Mr. Luthra further submits that the pillion rider of the motorcycle namely, Maninder Singh, who was examined as PW1, has specifically stated in his cross examination that the statement dated 18.09.2017 was handwritten; however, the alleged statement on record is a typed statement. Further, PW-4 SI Balraj, in his testimony has specifically admitted that except DD No. 17A there is no other DD entry dated 18.09.2017 pertaining to the present FIR; therefore, it is evident that the alleged statement is ante-dated.

9. He submits that as per MLC PW1 was admitted in the hospital at 04:22AM on 17.09.2017 and was conscious and fit to give statement but he intentionally did not give any statement to the police on the said day. However, his first statement was recorded on 18.09.2017 i.e. after a delay of one day and there is no explanation in the chargesheet regarding the delay in recording of his statement. He submits that PW1 took legal advice during the period between 17.09.2017 and 18.09.2017 and on the basis of the same gave an exaggerated and false account of the incident in order to convert a simple road traffic accident into a deliberate hit and run case.

10. Mr. Luthra contends that the report dated 15.12.2017 by the Regional



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Forensic Science Laboratory shows that the deceased was under the influence of alcohol on the date of incident, which casts a doubt on the narrative of the prosecution and the truthfulness of the deposition of PW1. The PW1 had deliberately suppressed the fact that he along with the deceased, was under the influence of alcohol which could have impaired the motor skills that resulted in the accident.

11. He submits that the petitioner has been got medically examined by the police twice. In the first MLC just after his arrest there is nothing mentioned with regard to the Blood Alcohol Level of the petitioner but the second MLC (subsequent MLC) mentions the fact related to Blood Alcohol level, which itself shows that the same has been fabricated in order to falsely implicate the petitioner in the present case. He contends that it is not a normal practice to get the injured examined medically multiple times during a short period of time.

12. He further submits that PW-2 Mohammad Irshad (cigarette seller) in his testimony has admitted his statement u/s 161 CrPC was recorded on 22.09.2017. The incident is of 17.09.2017, therefore, there is inordinate unexplained delay in recording the statement of PW-2 u/s 161 CrPC despite he being available to the police for giving his statement. The said delay, therefore, is a relevant factor which must enure to the benefit of the petitioner.

13. Mr. Luthra submits that police has indulged in fabrication. Elaborating on this submission, he submits that the deposition of IO PW25 ASI Digvijay Nath shows that he had taken PW6 Raju outside AIIMS and prepared *rukka* on the basis of statement of Raju, whereas PW6/Raju has stated in his



examination that neither he went to the hospital after the incident nor did he give any statement to the police.

14. Further, PW-25 during his cross examination has stated that on 17.09.2017 the MLC of PW1 was not ready and he did not record his statement as PW1 was unfit for the statement whereas in the MLC injury suffered by PW1 is mentioned as 'simple' and it nowhere mentions that he is unfit for statement. This shows that either PW25 deliberately did not record the statement of PW1 or it was PW1 who did not get his statement recorded on 17.09.2017 in order to leave the scope for manipulation later on.

15. Lastly, he submits that the petitioner was on interim bail and he never tried to flee from the administration justice. The petitioner does not have any criminal record. He thus, urges the court to enlarge the petitioner on bail.

16. *Per Contra*, the Ld. APP for the state has argued on the lines of the status report. Placing reliance on the testimonies of PW-2 and PW-1, the Ld. APP submits that the independent eye witnesses namely, Irshad (PW-2) & Maninder Singh (PW-1), have identified the accused and also testified against him.

17. Mr. Maninder Singh, the learned Senior Counsel appearing on behalf of the complainant submits that the accused/Petitioner had a quarrel with the deceased and pillion rider of the motorcycle, at the service road, near the emergency centre of Safdarjung Hospital and a verbal altercation took place between them, thereafter the present incident happened. Therefore, the accused/petitioner had the motive as well as an intention to kill the deceased and in furtherance of the same he had hit the motorcycle from behind with his car which was at high speed.



18. He further submits that the independent eye witnesses PW2 and PW1 have supported the case of the prosecution. He contends that the petitioner accused has made attempts to mislead the court by cherry-picking the statements of the eye witnesses.

19. He submits that as far as the testimonies of the independent witnesses and injured witnesses is concerned, the injured witness Maninder Singh (PW-1) who survived has already testified against the accused and the defence has not been able to point out any material inconsistencies in his testimony.

20. He submits that the complainant has lost his young son due to cold blooded murder committed by the accused. He submits that the accused had insulted the religion of the deceased and the sentiments of the entire Sikh Community were hurt as a result of the incident which took place during the quarrel. Further, the release of accused on bail would shock the conscience of the society at large.

21. He submits that though two crucial eye witnesses PW-5 and PW-6 have turned hostile due to the influence and pressure of the accused, however, the remaining eye witnesses and injured witnesses have given unequivocal testimonies and have also withstood the cross examination, making it clear that the accused/petitioner has committed the offence of murder beyond reasonable doubt.

22. With regard to the alcohol content of 14mg/100ml present in the blood of the deceased, which is borne out from the RFSL report, Mr. Maninder Singh submits that the same was possibly due to medicines used in the treatment of the deceased since he was in coma from 17.09.2017 till he



passed away on 20.09.2017. According to Mr. Singh, 14mg/100ml is otherwise a very minute quantity of alcohol which could not have impaired the deceased's driving.

23. In respect of non-mentioning of alcohol content in the initial MLC, Mr. Singh submits that the blood alcohol level of the accused was not checked at AIIMS trauma center. However, the subsequent MLC done at Safdarjung Hospital clearly shows presence of alcohol content to the extent of 35.6mg/100ml in the blood of the accused.

24. He submits that though PW-5 (the *parantha* vendor) turned hostile to the extent of identifying the accused, but he has stood by his version that a person had a quarrel with the cigarette vendor that night and the deceased person was also there. Mr. Singh submits that it is a settled law that part of the testimony of a hostile witness which favor the prosecution's case can be relied upon.

25. The Ld. APP for the state also added that the trial is at the fag-end, the petitioner has already used his influence to intimidate and win-over the witnesses which is evident from the testimonies of the main independent witnesses who have turned hostile, therefore, he may not be enlarged on bail.

26. I have heard the Ld. Senior Counsel for the petitioner, the Ld. APP for the State, as well as, the Ld. Senior Counsel for the complainant and have perused the record.

27. At the stage of deciding application seeking bail a meticulous appreciation of evidence is not to be undertaken, however, the Court while passing an order is expected to give reasons while granting or rejecting the bail, otherwise, such order would suffer from non-application of mind.



Reference in this regard may be had to the decision in ***Kalyan Chandra Sarkar v. Rajesh Ranjan***, (2004) 7 SCC 528 (pp. 535-36, para 11), wherein it was laid down as under:

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. (See Ram Govind Upadhyay v. Sudarshan Singh... ”

(Emphasis Supplied)

28. Accordingly, the evidence which has come on record is being examined only for the limited purpose of indicating the reason for arrival at the conclusion as to whether the petitioner deserves to be enlarged on bail or not.

29. It is not in dispute that an eye witness Raju, Ola cab driver, who was examined as PW6 did not support the case of the prosecution, in as much as he stated that he did not see the person who was driving the car which damaged his car. After he became hostile, he was cross-examined by the learned Special Public Prosecutor but still PW6 failed to identify the petitioner as the same person who had caused damage to his car, the



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motorcycle and the TSR. He further stated that he had not seen the petitioner at the time of the incident. Incidentally, the FIR was registered on the statement of PW6.

30. Similarly, Kishan Chaudhary, a *parantha* vendor, who was examined as PW5 did not support the case of prosecution. He though stated that one person was having arguments with the handicapped cigarette vendor near his shop but he failed to identify the person who was quarrelling with the handicapped cigarette vendor. He also denied the suggestion that the alleged person was also quarrelling with two Sikh boys. When the learned SPP had pointed out the petitioner to the said witness, he refused to identify him.

31. A perusal of the testimony of Satish, driver of the auto whose auto was also allegedly hit by the car of the petitioner and who was examined as PW11, shows that in his cross-examination he admitted that his statement was recorded by the police on 18.09.2017 but there is a Court observation that no statement dated 18.09.2017 of the said witness is on the record. There is also an improvement made in his testimony as regard the behaviour of the petitioner after the accident.

32. Dr. Amit Kumar, PW29, who had examined the injured witness Maninder Singh and prepared his MLC has stated that as per MLC the nature of injury suffered by Maninder Singh (PW-1) was simple in nature. He further stated that Maninder Singh was conscious and oriented at the time of the examination. However, it is on record that the first statement of Maninder Singh (PW-1) under section 161 CrPC was recorded only on 18.09.2017 after considerable delay as the accident had taken place on 17.09.2017 at about 04 am especially when, as per the doctor/PW-29, the



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said witness was conscious and oriented at the time of his examination. Further, the IO has also not given any cogent justification for not examining Maninder Singh on the same day. In this factual backdrop the contention of the learned Senior Counsel for the petitioner that an exaggeration has been made by Maninder Singh (PW-1) in his statement after obtaining legal advice, cannot be ruled out at this stage.

33. It is also not in dispute that the petitioner's MLC was done twice. In the first MLC done at AIIMS on 17.09.2017 at 04:45 A.M., there is no mention of blood alcohol level in the blood of the petitioner, but in the subsequent MLC done at Safdarjung Hospital blood at 9.00 A.M. alcohol level is mentioned as 35.6 mg/100 ml. Evidently, there is contradiction in the two MLCs.

34. The MLC of the deceased also shows that the alcohol contents were found in the blood of the deceased to the extent of 14mg/100 ml but whether that much alcohol contents could have impaired the driving skills of the petitioner, is a question which will be decided at the trial.

35. A road accident resulting into death, may attract Section 304-A IPC or Section 304 Part I IPC or Section 304 Part II IPC or Section 302 IPC depending upon whether it is case of simpliciter rash or negligent driving or an act was done with an intention to cause death or such bodily injury as is likely to cause death or an act was done with the knowledge of the likelihood of dangerous consequences.

36. Undoubtedly, the evidentiary value of the testimonies and other evidence, as well as the creditability of the witnesses, will be seen by the learned Trial Court at the stage of trial. However, at the stage of deciding the



application seeking bail, this court cannot be unmindful of some of the conspicuous features in the evidence as noted above. Such factors taken together have the potential of making dent into the case of the prosecution, and probalizing the defence of the petitioners to an extent, which coupled with long incarceration of 03 years and 09 months approx, tilts balance in favour of the petitioner for grant of regular bail.

37. Based on the probative value of the evidence on record it will be decided by the learned Trial Court as to whether the petitioner is guilty for an offence under Section 302 IPC for which the petitioner has been charged or for any other offence. The punishment for an offence under Section 302 IPC is life imprisonment whereas for the offence under section 304 Part I IPC, the minimum punishment is 10 years which may extend to life imprisonment. For an offence under Section 304 Part II the maximum punishment is 10 years and for the offence under section 304A IPC the maximum punishment is 02 years, but no minimum punishment has been prescribed. As noted above, the petitioner has already been incarcerated for 03 years 09 months approx. and at this stage there is also a presumption of innocence in his favour.

38. It would indeed be a travesty of justice to keep the petitioner in jail for an indefinite period for an offence in which he is ultimately acquitted, or the Trial Court convict him for an offence which is a minor offence in relation to the charged offence and the Court proposes to award punishment with imprisonment which is lesser than the period for which he has already been incarcerated.

39. It is also not disputed by the prosecution that the antecedents of the



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petitioner are clean. Further, it is matter of record that the petitioner was enlarged on interim bail for 02 years and 09 months pursuant to the recommendations of the HPC and he did not jump the bail. Thus, the petitioner is not a flight risk. That apart, the material witnesses have already been examined and there is no possibility of the petitioner influencing the witnesses, in the event he is enlarged on bail.

40. Considering the aforesaid facts and circumstances, the petition is allowed and the petitioner is enlarged on bail on his furnishing a personal bond of Rs. 50,000/- with one surety of like amount to the satisfaction of the Trial Court, further, subject to the following conditions:

- a. Petitioner/accused shall not leave the country without express permission of the Court.
- b. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- c. Petitioner shall provide all of his mobile numbers to the IO concerned which shall be kept in working condition at all the times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
- d. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses or any family members of the witnesses.

41. The petition along with all pending applications is disposed of.

42. Nothing stated herein shall be deemed to be an expression on the merits of the case of the respective parties.

43. Copy of the order be forwarded to the concerned Jail Superintendent



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for necessary compliance.

44. Order *dasti* under the signatures of the Court Master.
45. Order be uploaded on the website of the Court forthwith.

VIKAS MAHAJAN, J.

MARCH 11, 2024
N.S. ASWAL