



2024:DHC:4092



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 20th May, 2024

+ **BAIL APPLN. 2882/2023**

VINEET

.....Applicant

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Mohit Mathur, Sr. Advocate with Mr. Rajiv Mohan, Mr. Ankur Rai & Mr. Sumit Mishra, Advocates

For the Respondent : Mr. Utkarsh, APP for the State with Insp. Shrichand, PS Timarpur.

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 (**CrPC**), seeking regular bail in FIR No. 491/2017 dated 26.11.2017, registered at Police Station Timarpur, for offences under Sections 323/341/34 of the Indian Penal Code, 1860 (**IPC**).

2. The facts relevant for the adjudication of the present application are as follows:

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2.1 On 26.11.2017, an information was received by DD No.4B at around 1:10am from Aruna Asaf Ali Hospital that one-Mohan Lal (deceased) was admitted in injured condition *vide* MLC No. 3616/17. The said information was recorded and entrusted to SI Manish Rana for necessary action. The MLC mentioned the alleged history of assault by 4-5 known persons and the injuries were opined to be blunt and the deceased- Mohan Lal at the time, was declared fit for giving statement.

2.2 The deceased – Mohan Lal in respect of the incident dated 25.11.2017, alleged that after finishing his duty, when he reached home and was preparing to sleep, at around 10:30pm, he saw smoke in his bedroom and kitchen and when he peeked out of his window, he saw one person namely- Saurabh, who was his neighbour along with co-accused Shiv Kumar, his son- Gaurav and his cousin- the applicant sitting around a bonfire. He alleged that since the smoke was going upwards, his house got filled with smoke.

2.3 He alleged that on asking co-accused Saurabh's father to get the fire extinguished, co-accused – Gaurav and the present applicant started shouting and threatened him that if he came down, they will thrash him, and further told the deceased "*tuneeche aa, aagtoh hum ne lagayihai, tuhumsebhid hum terikabarkhoddenge*". On the refusal of the deceased to go downstairs, co-accused Gaurav Sharma and Shiv Kumar along



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with the applicant went to the gate of the house of the deceased and started beating him with punches and kicks.

2.4 He alleged that co-accused Shiv Kumar caught hold of his hands from behind, co-accused Gaurav and the applicant gave him beatings with fists and kicks on his chest and stomach and when he tried to enter his house, the accused persons hit him with something on his back.

2.5 On this, the wife of the deceased informed the police whereafter, he was taken to the hospital. On the basis of the statement of the deceased the present FIR No.491/2017 was registered for offences under Sections 323/341/34 of the IPC.

2.6 The deceased was shifted to Fortis Hospital from Aruna Asif Ali Hospital on 26.11.2017. The condition of the deceased deteriorated and he expired on 12.12.2017 i.e. 15 days after the alleged incident.

2.7 The post-mortem report dated 13.12.2017 was obtained wherein the cause of death was mentioned as "*blunt force impact diverted on the dead along with an element of septicemia and its sequel, which is sufficient to cause death in ordinary course of nature.*" All the injuries were opined to be *ante-mortem* in nature and were found to be two weeks old caused by blunt force impact except injury no.12 (which was opined to be iatrogenic).

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2.8 After the post-mortem, section 304 of the IPC was added and subsequently, Section 302 of the IPC was also added during further investigation.

2.9 The chargesheet in the present case was filed for offences under Sections 302/323/341/34 of the IPC against the applicant and co-accused persons. *Vide* order dated 08.06.2018, charges were framed under Section 302 of the IPC and in the alternative, the accused were charged under Section 304 Part I of the IPC.

2.10 The applicant along with co-accused – Gaurav Sharma and Shiv Kumar had preferred bail applications under Section 439 of the CrPC before the learned Trial Court which was dismissed *vide* common order dated 05.07.2023.

3. The learned Senior counsel for the applicant submitted that the applicant is a law-abiding citizen and has been falsely implicated in the present case. The applicant has been in incarceration since 14.12.2017. He submitted that the investigation in the present case is complete and no purpose would be served by keeping the applicant in further custody.

4. He submitted that co-accused – Saurabh has been enlarged on bail by the learned Trial Court by order dated 01.07.2019.

5. He submitted that the applicant has not caused the fatal injury on the victim, and the material witnesses including the public witnesses have been examined before the learned Trial Court and



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several exculpatory facts have come to light. He contended that the FIR in the present case was initially registered under sections 323/341/34 of the IPC on the statement given by the accused which was corroborated by his wife (PW-3) that the three accused persons including the applicant gave him beating by kicks and fist blows on his abdomen and chest and did not state about hitting his head against the wall.

6. He submitted that the MLC No.3616/2017 dated 25.11.2017 prepared at the Aruna Asaf Ali Hospital does not mention any injury to the head. He stated that PW-4 Dr. Kuldeep Valvi in his deposition before the learned Trial Court deposed that as per the MLC, neither at the time of the admission nor at the time of preparation of MLC, the deceased or his wife stated anything about the deceased sustaining any head injury.

7. He submitted that PW-7- Additional Director of Cardiology, Department of Cardiology, Fortis Hospital, in his deposition stated that neither the deceased nor his wife ever disclosed to him about sustaining any head injury and that the intracerebral bleed and the gastrointestinal bleed was caused due to hypoxemia and not due to any head injury.

8. He submitted that the PW-50, neighbour of the deceased who is an eye-witness also did not disclose about the banging of the head of the deceased against the wall by the accused persons including the applicant.



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9. He submitted that even as per the death summary prepared at the Fortis Hospital on 12.12.2017, the cause of death was not attributed to any head injury, and only cardiac disease, blockage, and severe dysfunction were observed. He further submitted that medical documents on record also depict that no treatment was ever administered to the deceased in respect of head injury.

10. He submitted that the allegations against the applicant can only be considered within the ambit of Section 323/341 of the IPC. All the material witnesses have been examined, and 19 witnesses are yet to be examined. The applicant has been in judicial custody since 14.12.2017. It is, therefore, prayed that the present bail application be allowed.

11. He relied upon the following judgments in support of his contentions:

- (i) ***Zakia Ahsan Jafri v. State of Gujarat and Another : 2022 (9) SCALE 385***
- (ii) ***Niranjan Singh and Another v. Prabhakar Rajaram Kharote and Others : (1980) 2 SCC 559***
- (iii) ***Vinod Balasaheb Shinde v. State of Maharashtra : 2019 SCC OnLine Bom 11210***
- (iv) ***Lakhwinder Singh and another v. State of Punjab : 2023:PHHC:049642***
- (v) ***Prithi v. State of Haryana : 1994 SUPP (1) SCC 774***



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- (vi) *Mayandi v. State represented by Inspector of Police* :
(2010) 11 SCC 774
- (vii) *AAS Mohammad ETC. v. State* : CRL. A. 34/2000, date of
decision : 07.05.2015
- (viii) *Gulfam and Another v. The State NCT of Delhi* : CRL.A.
890/2019, date of decision : 17.10.2022
- (ix) *Shaikh Matin v. State of Maharashtra and Another* :
(2020) 20 SCC 402
- (x) *Litta Singh and Another v. State of Rajasthan* : (2015) 15
SCC 327
- (xi) *State of Rajasthan v. Santosh Savita* : (2013) 12 SCC 663
- (xii) *State of U.P. v. Indrajeet Alias Sukhatha*: (2000) 7 SCC
249
- (xiii) *Anbazhagan v. State represented by the Inspector of Police*
: 2023 SCC OnLine SC 857

12. *Per contra*, the learned Additional Public Prosecutor opposed the grant of bail to the applicant on the ground that there are grave and serious allegations against the applicant, and the investigation clearly reveals that the applicant along with other accused persons inflicted grievous injuries upon the deceased, on various parts of his body with the intention to cause death.



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13. He submitted that there is no material change in circumstances after the dismissal of the applicant's previous bail applications, and all the grounds raised by the applicant have already been considered. He further submitted that there is enough incriminating evidence against the applicant, and his bail application ought to be dismissed.

14. Lastly, he submitted that when considering bail applications, especially in cases involving serious allegations, the court should not delve into a detailed evaluation of the evidence.

Analysis

15. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc.. However, at the same time, the period of incarceration is also a relevant factor that is to be considered.

16. The application filed by the applicant on an earlier occasion was dismissed as withdrawn by this Court by order dated 11.04.2023 passed by this Court whereby, this Court had granted liberty to the accused persons to approach the learned Trial Court. The learned Trial Court dismissed the application preferred by the



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applicant by orders dated 01.05.2023 and 05.07.2023. The dismissal was predicated on the grounds of an absence of any change in circumstances since the last judicial consideration and the severity of the allegations levied against the applicant.

17. It is trite law that there must be change in circumstances to warrant fresh consideration of the bail application and the successive bail applications filed without there being any material change in circumstances, is strongly discouraged [Ref: ***Kalyan Chandra Sarkar v. Rajesh Ranjan and Another: (2005) 2 SCC 42***].

18. Pursuant to the dismissal of bail application preferred by the applicant by order dated 11.04.2023 passed by this Court, more than one year has been spent in custody which, in the opinion of this Court, is a ground to move for bail afresh and constitutes a significant change in circumstances. This approach is consistent with the Hon'ble Apex Court's acknowledgment that prolonged detention can itself be a ground for reconsideration of bail, independent of the earlier dismissal, thereby not constituting a review but rather a fresh consideration under changed conditions. This aligns with the judicial imperative to ensure that detention prior to the trial does not become punitive and is in accordance with the principles of justice and liberty.

19. It is well settled that an accused cannot be kept in custody for an indefinite period of time, and the bail application can be considered on its own merits, even if filed repeatedly. The Hon'ble Apex Court in a catena of cases has observed that every day spent in custody can



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provide a new cause of action for filing a bail application under certain circumstances. This principle is part of a broader approach emphasizing that the law prefers bail over jail, aiming to balance the rights of the accused with the requirements of the criminal justice system. This leads to the principle that each additional day in custody could potentially alter the circumstances under which bail is considered, thereby necessitating a fresh evaluation of the bail application.

20. The contention of the learned counsel for the applicant that the death was not the result of any act attributable to the applicant is based on the following grounds:

20.1 The MLC of the deceased dated 25.11.2017 nowhere mentions any injury on the head.

20.2 PW-4, Dr. Kuldeep Valvi, CMO, Aruna Asif Ali Govt. Hospital, in his deposition before the learned Trial Court has stated that as per the MLC, neither at the time admission nor at the time of preparation of MLC, the deceased or his attendant (his wife, PW-5, Anita) stated anything about sustaining of head injury by the deceased.

20.3 PW-7, Dr. Manish Gunjan, Addl. Director of Cardiology, Fortis Hospital, who prepared the case summary, stated in his deposition that neither the deceased nor his wife ever disclosed to him about sustaining of any head injury by the deceased. He



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further stated the wife of the deceased only gave history of alleged physical assault with blunt trauma to the chest and abdomen of the deceased. He further stated that the intracerebral bleeding and gastrointestinal bleeding was not due to any injury but due to hypoxemia (lack of supply of oxygen), which was caused by massive heart attack.

20.4 PW-8, Dr. Ashitesh Bajwa, Specialist, Forensic Medicine, Aruna Asaf Ali Govt. Hospital, who conducted the post mortem as well as gave subsequent opinion on the cause of death, rules out the occurrence of death due to injuries allegedly caused by the accused persons including the applicant. During his cross-examination, he stated that there is no reference to any head injury in the MLC.

20.5 The death summary prepared pursuant to the death of the deceased on 12.12.2017, mentions that the cause of death of the deceased as cardiac disease, blockage and several dysfunction and the cause of death was not attributed to any head injury.

21. The court, while granting bail, is precluded from delving into the minutiae of evidence to assess its sufficiency in proving the accused's guilt beyond reasonable doubt. Such an inquiry into the likelihood of the prosecution culminating in a conviction or acquittal is irrelevant at this stage. While deciding a bail application, it is improper for the court to scrutinize or opine on the evidence; engaging in such a practice would transgress the confines of its jurisdiction. The



likelihood of guilt or innocence of the accused is not germane when adjudicating the bail application. Rather, the pertinent question pertains to whether a *prima facie* case is made out for grant of bail.

22. Evidently, neither the attendant nor the doctors were aware of any head injury being inflicted on the deceased and hence, the prosecution version of the head of the deceased being banged against the wall in the presence of the wife would be matter of final adjudication and cannot be presumed with certainty at this stage.

23. It is settled law that in the event of there being even some doubt as to the genuineness of the prosecution, in the normal course of events the accused is entitled to bail. [Ref: ***Ram Govind Upadhyay v. Sudarshan Singh: (2002) 3 SCC 598***].

24. The victim died while being admitted in Fortis Hospital, Shalimar Bagh. The prosecution witness Dr. Manish Gunjan, who prepared the case summary, deposed that the victim was advised coronary angiography for which the consent was not given by the victim and his attendants. The victim was later taken for coronary angiography which revealed significant single vessel disease (100% right coronary artery thrombotic occlusion with huge thrombus load). The temporary pace maker was inserted when the victim developed intermittent complete heart block and developed hypotension. He deposed that the victim and his attendant never disclosed that the victim had sustained any head injury and there was no diagnosis for the same. He opined that the death was most likely due to hypoxemia



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to the liver which was caused by a heart attack due to 100% blockage of right coronary artery.

25. Whether it was the beatings given by the accused persons which triggered something which led to heart attack or whether the death of the victim was due to beatings itself, cannot at this stage be ascertained with certainty as the same would be decided after the trial is complete and the matter is finally adjudicated by the learned Trial Court.

26. The investigation in the present case already stands concluded with the filing of chargesheet followed by framing of charges and the material witnesses have already been examined by the learned Trial Court. The object of Jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment.

27. The applicant has been in incarceration since 14.12.2017 and was released on interim bail on 01.07.2020 on HPC Guidelines during COVID-19 outbreak and had duly surrendered before the concerned jail authorities within the stipulated time period.

28. The applicant cannot be made to spend the entire period of trial in custody especially when the trial is likely to take considerable time as 17 witnesses are yet to be examined. In the opinion of this Court, no purpose would be served by keeping the applicant in further custody.



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29. The Hon'ble Apex Court in the case of *Union of India v. K.A. Najeeb*: AIR 2021 SC 712 held that once it is obvious that a timely trial would not be possible, and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

30. A long period of incarceration, thus, is also a factor which has to be kept in mind at the time of deciding the question of grant or refusal of bail. Appropriate conditions ought to be put to allay the apprehension of tampering with the evidence and hampering the witness.

31. Considering the aforesaid discussion, in the interest of upholding the principles enshrined under Article 21 of the Constitution of India, this Court is of the opinion that the applicant has established a *prima facie* case for the grant of bail.

32. In view of the above, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹50,000/- 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. The applicant 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. The applicant shall under no circumstance leave the boundaries



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of Delhi without the permission of the learned Trial Court;

- c. The applicant shall appear before the learned Trial Court as and when directed;
- d. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- e. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phones 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 the observations made in the present order are only for the purpose of deciding the present bail application and shall 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

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