



2024:DHC:5495



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

Date of decision: 23rd JULY, 2024

IN THE MATTER OF:

+ **CRL.M.C. 4625/2022**

MOHIT MASAND

.....Petitioner

Through: Mr. Prashant Mehta and Mr. Aaryav Mehra, Advocates.

versus

STATE OF NCT OF DELHI & ANR. & ANR.Respondents

Through: Ms. Priyanka Dalal, APP for the State
SI Deepak Kumar, PS Lajpat Nagar,
Insp. Manvendra Singh, South East
District.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. This is a petition filed under Section 482 CrPC challenging an Order dated 17.05.2022 passed by the learned Additional Sessions Judge-04, Saket Court, Delhi granting bail to Respondent No.2 herein in FIR No. 351/2016 dated 24.05.2016 registered at Police Station Lajpat Nagar which was initially registered for offences under Section 307 & 34 IPC but was later on converted into Section 302, 482, 420, 468, 471 & 120B IPC.
2. The brief facts which emanates from the record are that on 23.05.2016, at about 8:30 PM, Respondent No.2 along with co-accused Manish and Robin went to Gopal Sindhi Restaurant, Lajpat Nagar, New



2024:DHC:5495



Delhi for dinner. It is stated that they were served dinner and their bill was Rs.1085/- . They demanded for discount and when their request was rejected by the owner, they abused the owner and left.

3. It is stated that again at about 10:00 PM, some persons came in a Swift car and started fighting and abusing the restaurant staff which attracted the attention of the people and one of them fired a gun and shot at the owner of the restaurant. On the said complaint, an FIR under Section 307 IPC was registered.

4. The owner was taken to the hospital but he passed away and therefore Section 302 IPC was added. Arrests were made. Co-accused Manish and Robin were arrested. In the disclosure statement, it was revealed that it was Respondent No.2 herein who had instigated the co-accused to kill the owner of the restaurant and fire the shots.

5. Chargesheet has been filed on 12.08.2016. Supplementary chargesheet has also been filed on 20.12.2016.

6. Respondent No.2 was arrested when he was in custody in another case. On 17.05.2022, the impugned order was passed by the Trial Court enlarging Respondent No.2 herein on regular bail on the ground that 13 witnesses *qua* Respondent No.2 herein and 35 witnesses *qua* the other accused have been examined by that date.

7. Material on record indicates that main eyewitnesses have been examined in full and they have been discharged. The Trial Court was of the opinion that the testimony of PW-5 who had identified Respondent No.2 herein cannot be relied upon. The learned Trial Court accepted the contention of learned Counsel for Respondent No.2 herein that PW-5 who



2024:DHC:5495



had identified Respondent No.2 was a planted witness.

8. The said order has been challenged by the son of the deceased before this Court.

9. Learned Counsel for the Petitioner primarily relies on the judgment of the Apex Court in Jagjeet Singh & Ors. v. Ashish Mishra & Anr., (2022) 9 SCC 321, to contend that the Complainant had been appearing in the proceedings at every stage, the Complainant had been opposing the bail applications filed by Respondent No.2 herein and that the learned Trial Court erred in granting bail to Respondent No.2 herein without issuing notice to the Complainant/Petitioner herein.

10. Learned Counsel for the Petitioner contends that the learned Trial Court ought to have seen the record and found that since the Complainant had been participating regularly in the proceedings, notice ought to have been issued to the Complainant and the Complainant ought to have been heard. He states that the Apex Court in Jagjeet Singh (supra) has held that where the victim themselves have come forward to participate in the proceedings, they must be accorded an opportunity of fair and effective hearing. The Apex Court in the said Judgment has held that the victim has an unbridled participatory right at every stage of investigation till the culmination of proceedings in appeal or revision. He contends that the Trial Court had failed to see that Respondent No.2/accused was absconding for almost five months. A Proclaimed Offenders (P.O.) notice was also issued against him and he was arrested in the present case only when he was in custody in another case.

11. The learned APP for the State has supported the case of the Petitioner



herein.

12. *Per contra*, learned Counsel for Respondent No.2 contends that right of the Complainant to be heard is only if the Complainant is present in bail application and notice is not necessary to be given to the Complainant. He points out that in Jagjeet Singh (supra), the Complainant was present in the hearing before the High Court. He further states that it is not as if that the Complainant/Petitioner herein was appearing in every hearing. He draws the attention of this Court to the Order dated 23.04.2019 passed by this Court in BAIL APPLN.498/2019 wherein no notice was issued to the Respondent and ultimately the bail application was withdrawn but the Complainant/Petitioner herein did not participate in the proceedings. He, therefore, states that it cannot be said as a matter of right Complainant was to be heard.

13. Heard learned Counsel for the parties and perused the material on record.

14. The Apex Court in Jagjeet Singh & Ors. v. Ashish Mishra & Anr., (2022) 9 SCC 321, has observed as under:-

"14. Having heard the learned Senior Counsel for the parties at considerable length, we find that the following questions fall for our consideration:

14.1. (A) Whether a "victim" as defined under Section 2(wa) of the Criminal Procedure Code, 1973 (hereinafter "CrPC") is entitled to be heard at the stage of adjudication of bail application of an accused?

14.2. (B) Whether the High Court overlooked the



relevant considerations while passing the impugned order granting bail to the respondent-accused?;

14.3. *(C) If so, whether the High Court's order dated 10-2-2022 [Ashish Mishra v. State of U.P., 2022 SCC OnLine All 232] is palpably illegal and warrants interference by this Court?*

A. Victim's right to be heard

15. *Until recently, criminal law had been viewed on a dimensional plane wherein the courts were required to adjudicate between the accused and the State. The “victim”—the de facto sufferer of a crime had no participation in the adjudicatory process and was made to sit outside the Court as a mute spectator. However, with the recognition that the ethos of criminal justice dispensation to prevent and punish “crime” had surreptitiously turned its back on the “victim”, the jurisprudence with respect to the rights of victims to be heard and to participate in criminal proceedings began to positively evolve.*

16. *Internationally, the UN Declaration of Basic Principles of Justice for the Victims of Crime and Abuse of Power, 1985, which was adopted vide the United Nations General Assembly Resolution 40/34, was a landmark in boosting the pro-victim movement. The Declaration defined a “victim” as someone who has suffered harm, physical or mental injury, emotional suffering, economic loss, impairment of fundamental rights through acts or omissions that are in violation of criminal laws operative within a State, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted, and regardless of the familial relationship between the perpetrator*



and the “victim”. Other international bodies, such as the European Union, also took great strides in granting and protecting the rights of “victims” through various covenants [The position of a victim in the framework of Criminal Law and Procedure, Council of Europe Committee of Ministers to Member States, 1985; Strengthening victim's right in the EU communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Reasons, European Union, 2011; Proposal for a Directive of the European Parliament and of the Council establishing “Minimum Standards on the Rights, Support and Protection of Victims of Crime, European Union, 2011.] .

17. Amongst other nations, the United States of America had also made two enactments on the subject i.e. (i) The Victims of Crime Act, 1984 under which legal assistance is granted to the crime-victims; and (ii) The “victims” Rights and Restitution Act of 1990. This was followed by meaningful amendments, repeal and insertion of new provisions in both the statutes through an Act passed by the House of Representatives as well as the Senate. In Australia, the legislature has enacted South Australia Victims of Crime Act, 2001. While in Canada there is the Canadian Victims Bill of Rights. Most of these legislations have defined the “victim” of a crime liberally and have conferred varied rights on such victims.

18. On the domestic front, recent amendments to the CrPC have recognised a victim's rights in the Indian criminal justice system. The genesis of such rights lies in the 154th Report of the Law Commission of India, wherein, radical recommendations on the aspect of



compensatory justice to a victim under a compensation scheme were made. Thereafter, a Committee on the Reforms of Criminal Justice System in its Report in 2003, suggested ways and means to develop a cohesive system in which all parts are to work in coordination to achieve the common goal of restoring the lost confidence of the people in the criminal justice system. The Committee recommended the rights of the victim or his/her legal representative “to be impleaded as a party in every criminal proceeding where the charges are punishable with seven years’ imprisonment or more”.

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22. It cannot be gainsaid that the rights of a victim under the amended CrPC are substantive, enforceable, and are another facet of human rights. The victim's right, therefore, cannot be termed or construed restrictively like a brutum fulmen [Ed. : The literal translation from the Latin approximates to “meaningless thunderbolt or lightning”, and is used to convey the idea of an “empty threat” or something which is ineffective.] . We reiterate that these rights are totally independent, incomparable, and are not accessory or auxiliary to those of the State under the CrPC. The presence of “State” in the proceedings, therefore, does not tantamount to according a hearing to a “victim” of the crime.

23. A “victim” within the meaning of CrPC cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a “victim” has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in



an appeal or revision. We may hasten to clarify that “victim” and “complainant/informant” are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a “victim”, for even a stranger to the act of crime can be an “informant”, and similarly, a “victim” need not be the complainant or informant of a felony.

24. The abovestated enunciations are not to be conflated with certain statutory provisions, such as those present in the Special Acts like the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, where there is a legal obligation to hear the victim at the time of granting bail. Instead, what must be taken note of is that:

24.1. First, the Indian jurisprudence is constantly evolving, whereby, the right of victims to be heard, especially in cases involving heinous crimes, is increasingly being acknowledged.

*24.2. Second, where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing. **If the right to file an appeal against acquittal, is not accompanied with the right to be heard at the time of deciding a bail application, the same may result in grave miscarriage of justice. Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses.***

(emphasis supplied)

15. This Court is of the opinion that the Complainant/Petitioner herein had been appearing at every stage of hearing and had opposed the bail



2024:DHC:5495



applications filed by Respondent No.2/accused.

16. In view of the fact that since the Complainant/Petitioner herein was virtually appearing at every stage of the proceedings, ideally, the learned Trial Court ought to have given a notice to the Complainant/Petitioner herein and ought to have passed the order granting bail after hearing the Complainant/Petitioner herein.

17. This Court is not going into the merits of the case as to whether Order dated 17.05.2022 passed by the learned Trial Court granting bail to Respondent No.2 which is under challenge in this petition deserves to be set aside or not.

18. In view of the law laid down by the Apex Court in Jagjeet Singh (supra) and more particularly in view of the fact that the Petitioner was virtually appearing at every stage of the proceedings, which is reflected in the order sheets, this Court is inclined to set aside the order impugned herein and remand the matter back to the learned Trial Court to hear the matter once again.

19. In view of the fact that trial has progressed substantially, two years have passed after the order granting bail to Respondent No.2 herein was passed, there is no allegation that Respondent No.2 has violated any of the bail conditions, this Court is not directing for surrender of Respondent No.2 herein.

20. It is made clear that this Court has not made any observation on the merits of the case and the Trial Court is requested to consider the bail application afresh and pass orders after hearing the Complainant/Petitioner herein as the Complainant /Petitioner herein had come forward to participate



2024:DHC:5495



in the criminal proceedings and was appearing at every stage.

21. Needless to state that the Trial Court would take into account the subsequent events which have happened after the Order dated 17.05.2022 has been passed and take a holistic view of the matter and adjudicate the issue.

22. Let a copy of this order be transmitted to the learned Trial Court forthwith for consideration of the bail application.

23. With these observations, the petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JULY 23, 2024

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