



2024:DHC:6714



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

%

Reserved on: 12th August, 2024

Pronounced on: 30th August, 2024

+ **BAIL APPLN. 2460/2024**

PRADEEP @GOLU

.....Petitioner

Through: Mr. Harshit Jain, Mr. Prakhar Sharma,
Mr. Aakash Goyal, Mr. Anurag, Mr.
Himanshu and Mr. Sudhir Kumar,
Advocates.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Amit Ahlawat, APP for the State
with SI Mahendra Patil, PS Narela.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This petition has been filed seeking regular bail in FIR No.86/2018, PS Narela, under Sections 302/34 of the Indian Penal Code, 1860 ('**IPC**') read with Section 25/27 of The Arms Act, 1959 ('**Arms Act**'). Petitioner has been in custody since 12th April, 2018. Trial is underway and 13 out of 31 witnesses have been examined.

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Background Facts

2. As per status report, the case of prosecution is on the statement of one Vijay Kalkal, who stated that, on 05th February, 2018, when he and his friends Sunil, Amit, Ramesh, and others came to attend the marriage ceremony of an acquaintance in Lampur Village, Narela, Delhi, at around 10:00 P.M., they had a minor verbal altercation with 3-4 boys in a Santro Car over giving way to the car. The boys in the Santro Car left threatening '*to teach them a lesson*'. At 10:50 P.M., they reached the gate of the farmhouse where the wedding was to take place. The boys arrived back in the Santro Car and stopped at some distance from the farmhouse. Two boys carrying pistol-like weapons exited the car, approached the farmhouse gate, and started to beat the complainant's friend Amit. The other two boys remained in the Santro Car, keeping it running. When the complainant and others intervened to save Amit, the said boys fired, and one of the boys shot the complainant's friend Sunil and then fled.

3. Five empty cartridge cases and two leads were seized from the spot. The victim succumbed to the injuries during treatment, and Section 302 IPC was added.

4. Later, after investigation and tracking efforts, accused Pradeep Kumar and Pankaj @ Vicky were arrested on 18th February, 2018 and refused to participate in Test Identification Parade ('**TIP**') proceedings. Petitioner was arrested on 12th April, 2018 and from his possession, one pistol and one *desi katta* were recovered by the Special Cell.

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5. During TIP proceedings, petitioner was not identified but during PC remand and before the Court during trial, the petitioner/accused was correctly identified by the complainant. As per the FSL report, empty cartridges were seized from the spot which were fired from the pistol recovered from the petitioner.

6. PW-6/ Vijay Kalkal correctly identified the petitioner/accused before the Trial Court, but also submitted that he had been receiving threatening telephone calls from unknown numbers not to depose in this case, failing which he would be killed.

7. State Crime Records Bureau ('**SCRB**') report was also appended to the status report, noting that petitioner/accused is a habitual criminal, involved in approximately 16 different cases and one of the co-accused Pradeep had been enlarged on interim bail and has been absconding since then.

Submissions of Parties

8. Counsel for petitioner essentially contended that even as per the prosecution case, as noted in the charge sheet, at the farmhouse gate there was a scuffle between the complainants and petitioner/accused, when petitioner fired pistol in the air. Upon the deceased attempting to stop the scuffle, one Pradeep (*not the petitioner*) had fired the pistol at him which struck his abdomen.



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9. On this basis, petitioner's counsel contended that the petitioner can at best be accused of firing in the air and that the fatal shot on Sunil was by co-accused Pradeep and not by him. Also, in TIP proceedings, the petitioner had not been identified and he had been incarcerated for the last six years, while the trial was still underway.

10. APP for State, however, refuted this issue of identification and stated that four eyewitnesses identified the petitioner in Trial Court, details of which are as under:

- (i) **PW-6/ Vijay Kalkal**, correctly identified Pradeep @ Golu concerning his specific role and, in his testimony, stated: *"On 23rd February, 2018, I alongwith Ramesh, Manoj, Amit, Pradeep and father of Sunil went to PS Narela, where 2-3 boys were apprehended by the police. However, I can identify them, as I had seen them at the time of the incident. At this stage, the witness has been taken a look around the court and pointed out towards three boys standing in the court and stated that they were the persons, who were involved in the incident of firing dated 05th February, 2018 (correctly identified by the witness). These persons were present there at the time of shooting. Out of which two were firing with pistols, however, I cannot specify the roles of each of the accused persons, as it was darkness at that time being night."*

"..... It is correct that on 23rd February, 2018, I and other persons, who accompanied me to the PS Narela had identified two boys only namely Pradeep Kumar S/o Jagbir and Pankaj @ Vicky, who were sitting in the car when the first quarrel took place over the right of way and Pradeep Kumar S/o



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Jagbir and his associate were carrying pistols in their hands. It is correct that Pankaj @ Vicky was sitting in the Santro car when the firing incident took place. Witness has correctly identified Pradeep Kumar S/o Jagbir and Pankaj @ Vicky with regard to their specific roles.”

“..... It is correct that on 18th April, 2018, I went to PS Narela and on that day, I saw a person to whom I identified as the person, who had given beatings to Amit and he fired upon Sunil and he also fired in air. It is correct that the police officials revealed his name to me Pradeep @ Golu, who was having an old injury on his left eye. Witness has correctly identified Pradeep @ Golu with regard to his specific role”.

During cross-examination by the Amicus for the accused, the witness stated, *“At this stage, witness submits that he had been receiving threatening phone calls from certain unknown numbers, not to depose in this case, failing which they will kill them”.*

(emphasis added)

- (ii) **PW-9/ Ramesh**, a friend of the deceased, in his testimony, stated: *“.... I identified the said person who was carrying a pistol and firing in order to terrorize the guest/baratis of marriage function. The said person also gave beatings to Amit. The said person alongwith accused Pradeep got down from the Santro car with pistol. On my identification Inspector Ram Manohar revealed the name of said person Pradeep @ Golu”.*

“Witness pointed to the accused Pradeep @ Golu as the person who was with the accused Pradeep and carrying a pistol in



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his hand. Witness has correctly identified the accused Pradeep @ Golu”.

(emphasis added)

- (iii) **PW-10/ Manoj**, a friend of the deceased, in his testimony, stated: *“On 23rd February, 2018, I alongwith Vijay Kalkal, Pradeep, Ramesh, Amit and father of Sunil namely Ishwar Singh went to PS Narela Delhi where two persons were found sitting in a room of PS Narela. I identified those two boys involved in the incidents on 05th February, 2018. Firstly, I identified one of the boys who fired on Sunil with the intent to kill him by aiming at him. On my identification, Inspector Ram Manohar revealed the name of the said person as Pradeep. I also identified the second boy as the person who was involved in the incidents dated 05th February, 2018. The said person was sitting on the driver seat of the Santro car and the said car speed away when their two other associates sit down in the said car after firing shots. This second boy was sitting on the driver seat of the said Santro car. On my identification, Inspector Ram Manohar revealed the name of the said person as Pankaj @ Vicky”.*

“Witness pointed to the accused Pradeep @Golu s/o Late Sh. Mahender as Pradeep (he is not aware of his nickname). It is categorically stated by the witness that accused Pradeep as pointed out by him just now had fired upon Sunil and also fired in the air”.

(emphasis added)

- (iv) **PW-11/ Pradeep**, a friend of the deceased, correctly identified the accused in Trial Court and, in his testimony,



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stated: “.....Pradeep @ Golu fired upon Sunil and hit on his body. Sunil fell down on the ground. Pradeep was also carry the pistol in his hand. We all raised noise and both Pradeep @ Golu and Pradeep fled away towards the said white color Santro car which was already switched on and one boy was sitting on its driver seat”.

“On 18th April, 2018, I alongwith other friends and relatives went to PS Narela where I identified Pradeep @ Golu who fired upon Sunil. He opened fire by aiming on Sunil with the intent to kill him. The name of the accused was revealed to me by the police”.

“The witness is asked to identify the accused. The witness pointed out by finger to accused Pradeep@Golu. Accused Pradeep @ Golu, is present in the court today (correctly identified by the witness). Witness stated that he is the person who fired upon Sunil”. He also stated, “After registration of the case about six months I received a call of one person who claimed that he is Pradeep and he threatened me”.

(emphasis added)

Analysis

11. It is evident from the testimonies of four eyewitnesses, at least *prima facie*, that the petitioner/accused was the one who had fired upon the deceased. Minor contradictions in their statements may not be significant, considering the incident occurred at 10:00 P.M., and they were accosted by 3-4 boys in front of the farmhouse. Furthermore, the status report highlights



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certain factors, in addition to the testimonies mentioned above, that weigh against granting bail to the petitioner.

12. *Firstly*, the petitioner is a habitual offender and has been involved in approximately 16 cases, including offences under Sections 392/394/397 of the IPC, and the Arms Act. An extract of the SCRB report provided by the State is reproduced as under:

From Online Criminal Dossier

CR No. : 103890
Full Name : PARDEEP
Alias Name : GOLU
Father/Husband Name : MAHENDER NAGPAL
Permanent Address : TEJ COLONY NEAR ICE FACTORY ROHTAK
HARYANA
Present Address : H.NO-G-7, 167, SECTOR-16, NEAR SECT-16-17,
DIVIDER ROAD, ROHINI, DELHI



District	PS	Fir No/Year	Under Section	Status of Accused
ROHINI DISTT.	K.N. KATJU MARG	121 / 2012	302 IPC	
MAHENDERGARH	ATELI	124 / 2011	25/54/59 ARMS ACT & 411 IPC	
MAHENDERGARH	MAHENDERGARH	117 / 2011	25/54/59 A ACT	
ROHTAK	ROHTAK CITY	279 / 2010	398/401 IPC & 25/54/59 ARMS ACT	
ROHTAK	ROHTAK CIVIL LINES	145 / 2010	387/506 IPC	
ROHTAK	ROHTAK CIVIL LINES	716 / 2011	307 IPC 25/54 ARMS ACT	
DWARKA DISTT.	DWARKA SECTOR 23	73 / 2016	392/34 IPC	JUDICIAL CUSTODY
CRIME	CRIME BRANCH	48 / 2016	25/54/59 ARMS ACT	JUDICIAL CUSTODY
SHAHIDARA DISTT.	FARSH BAZAR	491 / 2017	392/397/411/34 IPC & 25& 27 ARMS ACT	JUDICIAL CUSTODY

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* ROHINI-DISTT.	K.N. KATJU MARG	149 / 2012	25/54/59 A ACT	JUDICIAL CUSTODY
SPECIAL BRANCH	SPECIAL CELL	76 / 2017	186/353 IPC & 25/27 ARMS ACT	ARRESTED
SPECIAL BRANCH	SPECIAL CELL	32 / 2018	25 A.ACT	ARRESTED
NORTH-WEST DISTT.	SUBHASH PALACE	198 / 2016	392/397/34 IPC	ARRESTED
NORTH-WEST DISTT.	SUBHASH PALACE	254 / 2016	392/34 IPC	ARRESTED
ROHINI DISTT.	BEGUM PUR	249 / 2016	392/397/307/411/34 IPC	ARRESTED
WEST DISTT.	PUNJABI BAGH	51 / 2018	392/34 IPC	WANTED
OUTER NORTH DISTT.	NARELA	86 / 2018	302/34 IPC & 25/27 ARMS ACT	WANTED
OUTER NORTH DISTT.	SAMAI PUR BADLI	242 / 2018	394/397/34 IPC	WANTED

13. *Secondly*, even as per the nominal roll, it is recorded that the petitioner was convicted in the year 2019 in FIR No.249/2016 under Sections 392/397/34 of IPC at PS Samaypur Badli, where he was sentenced to rigorous imprisonment for 07 years and a fine of Rs.26,000, in default, simple imprisonment of 08 months.

14. *Thirdly*, there are distinct and categorical assertions made by at least two witnesses, namely, PW-6/Vijay Kalkal and PW-11/Pradeep, stating that they received threatening phone calls warning them not to depose in the case, failing which they would be killed.

15. *Fourthly*, the Court's opinion is also informed by the following decisions of the Supreme Court, relevant extracts being as under:

(i) ***Chaman Lal v State of UP***, (2004) 7 SCC 525.

“9. There is a need to indicate in the order, reasons for prima facie concluding why bail was being granted, particularly where an accused was charged of having committed a serious offence. It is necessary for the courts dealing with application for bail to



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consider among other circumstances, the following factors also before granting bail, they are:

- 1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.*
- 2. Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.*
- 3. Prima facie satisfaction of the court in support of the charge.*

(emphasis added)

(ii) ***Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and Another***, (2004) 7 SCC 528.

“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.*



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(See Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598; 2002 SCC (Cri) 688] and Puran v. Rambilas [(2001) 6 SCC 338; 2001 SCC (Cri) 1124].)

(emphasis added)

(iii) ***State of Maharashtra v. Sitaram Popat Vetal***, (2004) 7 SCC 521.

“9. The High Court has lightly brushed aside the factum of recovery of the weapons and identification at the test identification parade. Its conclusion that political rivalry has a double-edged effect was based on surmises without any material before it to show that a false case had been foisted because of political rivalry. Further, the antecedents of the present respondents though noticed were also lightly brushed aside on the ground that they were not of recent past. Even though criminal antecedents are always not determinative of the question whether bail is to be granted, yet their relevance cannot be totally ignored. It was submitted that the accused Sitaram Vetal is not appearing in court on the date fixed. If that is really so, it is open to the trial court to take such action as is available to be taken in law.”

(emphasis added)

(iv) ***Masoor v. State of Uttar Pradesh and Another***, (2009) 14 SCC 286.

“15. There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society



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in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case.”

(emphasis added)

(v) ***Prasanta Kumar Sarkar v. Ashis Chatterjee***, (2010) 14 SCC 496.

“9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail.”*

(emphasis added)



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(vi) ***Neeru Yadav v. State of U.P.***, (2014) 16 SCC 508.

“17. Coming to the case at hand, it is found that when a stand was taken that the second respondent was a history-sheeter, it was imperative on the part of the High Court to scrutinise every aspect and not capriciously record that the second respondent is entitled to be admitted to bail on the ground of parity. It can be stated with absolute certitude that it was not a case of parity and, therefore, the impugned order [Mitthan Yadav v. State of U.P., Criminal Misc. Bail Application No. 31078 of 2014, decided on 22-9-2014 (All)] clearly exposes the non-application of mind. That apart, as a matter of fact it has been brought on record that the second respondent has been charge-sheeted in respect of number of other heinous offences. The High Court has failed to take note of the same. Therefore, the order has to pave the path of extinction, for its approval by this Court would tantamount to travesty of justice, and accordingly we set it aside.”

(emphasis added)

(vii) ***Sudha Singh v. State of U.P.***, (2021) 4 SCC 781.

“11. There is no doubt that liberty is important, even that of a person charged with crime but it is important for the courts to recognise the potential threat to the life and liberty of victims/witnesses, if such accused is released on bail.”

(emphasis added)

(viii) ***Brijmani Devi v. Pappu Kumar & Anr.***, (2022) 4 SCC 497.



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“35. While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record so as to enable a court to arrive at a prima facie conclusion. While considering an application for grant of bail a prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis-à-vis the offence(s) alleged against an accused.

...

39.4. The respondent-accused herein has been named in about eight cases and though he may have been acquitted in a few of them, there are still cases pending against him. Thus, it is inferred that the respondent-accused has criminal antecedents.

...

39.7. Thus, there is a likelihood of the respondent-accused absconding or threatening the witnesses if on bail which would have a vital bearing on the trial of the cases.”

(emphasis added)

16. Having considered the facts of the present case, this Court is of the opinion that the petitioner is not entitled to bail, particularly in view of the reasons mentioned above, *inter alia*, the testimonies of four eyewitnesses,



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including the identification of the petitioner. The crime in question is a heinous murder committed without provocation, and the circumstances under which it was committed, exhibits a propensity to crime. Furthermore, there are distinct complaints of threats made by the accused to witnesses, and according to the SCRB report, the petitioner/accused has 16 previous involvements of the petitioner/accused in criminal activities.

17. This bail petition is, therefore, dismissed. Needless to state the right to seek bail subsequently is not foreclosed. These observations are for the purposes of assessing the plea of bail only and the respective contentions will finally be subject to proceedings in trial.

18. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

AUGUST 30, 2024/MK/tk