



2024:DHC:5753



\$~73

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

Date of decision: 29th JULY, 2024

IN THE MATTER OF:

+ **BAIL APPLN. 3588/2023**

YOGESH @ SONU

.....Petitioner

Through: Mr. Suraj Prakash Sharma, Advocate.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Ms. Richa Dhawan, APP for the State
Insp. Raj Malik, PS Narela, Insp.
Ram Manohar, Sabzi Mandi.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court for grant of bail in FIR No.834/2017 dated 31.10.2017 registered at Police Station Narela for offences under Section 307 & 34 IPC read with read with Section 27, 54 & 59 Arms Act but later on converted into one under Section 302, 34 & 120B IPC read with Section 27, 54 & 59 Arms Act.
2. The facts in brief are that on a statement given by one Vijay S/o Raj Singh, FIR No.834/2017 for offences under Section 307 & 34 IPC read with Section 27, 54 & 59 of the Arms Act was registered at Police Station Narela.
3. In the complaint, the Complainant stated that at about 9:00 PM, when he was standing outside his house, one Rajesh came along with his two associates on a scooty. They stood at some distance from the house of the



2024:DHC:5753



Complainant. In the meanwhile, his brother Ajay (deceased) came there and as soon as Ajay reached near his house, Rajesh and his associates stopped him. It is stated that Rajesh took out a pistol and fired upon his brother Ajay.

4. It is stated that as soon as the Complainant rushed to save him, the accused Rajesh and his associates fled away. On the said statement, the instant FIR was registered against the Petitioner under Section 307 & 34 IPC and the investigation was conducted. Material on record reveals that statements of witnesses were recorded and the site map was prepared.

5. The investigation revealed that at the time of the incident, one Savinder R/o Village Sannoth was also present there. Suspecting that the accused Savinder was also involved in the crime, search *qua* Savinder was conducted and he was apprehended. During his investigation, he disclosed the name of the assailants, namely, Rajesh, who had been identified by the Complainant himself, and Yogesh @ Sonu, i.e. the Petitioner herein and one Yudhvir.

6. Efforts were made to trace and arrest the Petitioner but the Petitioner could not be arrested. Non-bailable warrants were issued against the Petitioner. In the meantime the injured Ajay passed away on 24.11.2017 and upon his death, chargesheet for offences under Section 302, 120B & 34 IPC was filed against the Petitioner.

7. Since the Petitioner could not be apprehended, proclamation under Section 82 CrPC was issued against the Petitioner and the Petitioner was declared as a proclaimed offender on 13.02.2018. The Petitioner was arrested on 10.03.2018 with a country-made pistol in Case No.57/2018 under Section 25 of the Arms Act by the Special Staff Police Station South Rohini.



2024:DHC:5753



8. The Petitioner was in custody in an Arms Act case and was arrested in this case on 26.03.2018. At the instance of the Petitioner, a weapon which he had said was concealed at the roof of his house in Village Sannoth was recovered. The Petitioner has filed several bail applications which were rejected. The last of the bail applications was rejected on 02.09.2023 by the Trial Court.

9. Learned Counsel for the Petitioner contends that the Petitioner is in custody from 26.03.2018. He states that the Petitioner was given interim bail since his wife was not well and he never misused the interim bail which was granted to him.

10. Learned Counsel for the Petitioner states that the Petitioner has already spent about four years five months in incarceration. He states that all material witnesses have been examined. He also states that Savinder @ Pagal who is the co-accused has been granted bail *vide* Order dated 17.08.2023 and the Petitioner should also be enlarged on bail.

11. *Per contra*, learned APP for the State vehemently opposes the present bail application by contending that the Petitioner is guilty of a heinous offence of murder. He has shot a person dead and there is a possibility of his intimidating witnesses and since the Petitioner has already been declared as a proclaimed offender, the chances of the Petitioner fleeing from justice cannot be ruled out.

12. Heard learned Counsels for the parties and perused the material on record.

13. The parameters for grant of bail have been laid down by the Apex Court in several judgments. In Gurcharan Singh v. Delhi Administration, (1978) 1 SCC 118, the Apex Court has held as under:-



2024:DHC:5753



*“24. Section 439(1) CrPC of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike under Section 437(1) there is no ban imposed under Section 439(1), CrPC against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1) CrPC of the new Code. **The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) CrPC of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out.**” (emphasis supplied)*

14. In Ram Govind Upadhayay v. Sudarshan Singh, (2001) 3 SCC 598, the Apex Court explained the factors to be considered for granting bail, wherein the Apex Court has held as under:-

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course.



Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.



2024:DHC:5753



(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.” (emphasis supplied)

15. In Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr., **2010 (14) SCC 496**, the Apex Court has observed as under:-

“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;



2024:DHC:5753



(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.

[See State of U.P. v. Amarmani Tripathi [(2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] (SCC p. 31, para 18), Prahlad Singh Bhati v. NCT of Delhi [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] , and Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] .]

10. *It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal. In Masroor [(2009) 14 SCC 286 : (2010) 1 SCC (Cri) 1368] , a Division Bench of this Court, of which one of us (D.K. Jain, J.) was a member, observed as follows : (SCC p. 290, para 13)*

“13. ... Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided, but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence.”

(See also State of Maharashtra v. Ritesh [(2001) 4 SCC 224 : 2001 SCC (Cri) 671] , Panchanan Mishra v. Digambar Mishra [(2005) 3 SCC 143 : 2005 SCC (Cri) 660] , Vijay Kumar v. Narendra [(2002) 9 SCC



2024:DHC:5753



364 : 2003 SCC (Cri) 1195] and Anwari Begum v. Sher Mohammad [(2005) 7 SCC 326 : 2005 SCC (Cri) 1669] .)”

16. The aforesaid principles laid down by the Apex Court have been re-stated in several other subsequent judgments, viz., Neeru Yadav v. State of U.P., (2014) 16 SCC 508; Anil Kumar Yadav v. State (NCT of Delhi), (2018) 12 SCC 129 and Mahipal v. Rajesh Kumar, (2020) 2 SCC 118.

17. Applying the said facts in the present case, it is seen that the witnesses have deposed that PW-6, i.e., eyewitness/complainant-Vijay has identified that the Petitioner was one of the assailants who has shot the deceased. The testimony of eyewitness/complainant-Vijay also discloses that the deceased Ajay is also an accused in several FIRs.

18. A perusal of the deposition of PW-6 indicates that there is a *prima facie* and reasonable ground to believe that the Petitioner has committed the offence. The Petitioner is accused of a very serious offence which attracts the punishment of life imprisonment or death. The way the incident has taken place shows that the Petitioner is also likely to be part of other fights. The Petitioner was absconding which gives a reasonable apprehension and the Petitioner was arrested only because he was in custody in relation to some other offence and the Petitioner might flee from justice.

19. As rightly noted by the learned Trial Court, the fact that co-accused Savinder @ Pagal has been granted bail cannot be a reason to grant bail to the Petitioner and the Petitioner cannot claim parity. The role of Savinder @ Pagal and the role of the Petitioner is entirely different as the Petitioner is accused of firing shots. The fact that the weapon from which the Petitioner set out fire is not available or that the FSL report does not support the case



2024:DHC:5753



of the prosecution that the gun recovered was the same gun which was used in the present case is not a sufficient reason to come to a conclusion that the Petitioner has not committed the offence at this juncture. This Court, is therefore, not inclined to grant bail to the Petitioner in the facts of the present case.

20. The bail application is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JULY 29, 2024

hsk