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

+ **BAIL APPLN. 2597/2024 & CRL.M.As. 21572/2024, 21573/2024, 21652/2024**

GAYA PRASAD

.....Petitioner

Through: Mr. Adit S. Pujari, (DHCLSC), Mr. Zeeshan Thomas & Mr. Manvendra Singh Shekhawat, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Ms. Richa Dhawan, APP for State.
Insp. Chote Lal, PS Sarai Rohilla, Delhi.
Insp. Kuldeep Singh, PS Uttam Nagar, Delhi.

84

+ **BAIL APPLN. 2573/2024 & CRL.M.As. 21431/2024, 21432/2024**

VIJAY DASS

.....Petitioner

Through: Mr. Adit S. Pujari, (DHCLSC), Mr. Zeeshan Thomas & Mr. Manvendra Singh Shekhawat, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Ms. Richa Dhawan, APP for State.
Insp. Chote Lal, PS Sarai Rohilla, Delhi.
Insp. Kuldeep Singh, PS Uttam Nagar, Delhi.

85

+ **BAIL APPLN. 2574/2024 & CRL.M.As. 21434/2024, 21435/2024**

RAKESH

.....Petitioner

Through: Mr. Adit S. Pujari, (DHCLSC), Mr. Zeeshan Thomas & Mr. Manvendra Singh Shekhawat, Advocates.

versus



STATE OF NCT OF DELHI

.....Respondent

Through:

Ms. Richa Dhawan, APP for State.
Insp. Chote Lal, PS Sarai Rohilla,
Delhi.
Insp. Kuldeep Singh, PS Uttam
Nagar, Delhi.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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25.07.2024

1. By way of present petitions, the petitioners seek Regular Bail in FIR No. 609/2016 registered under Sections 302/34 of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC, 1860"*) at Police Station Sarai Rohilla, Delhi.
2. It is submitted that as per the chargesheet, the case of the prosecution is that on 02.11.2022, an information was received at Police Station Sarai Rohilla *vide* DD No. 37-A about an injured lying near Fatak No. 3, Vivekanand Puri Halt, Sarai Rohilla, Delhi. The injured was taken to Hindu Rao Hospital in PCR van. Thereafter, the MLC was conducted but because of the injuries, the injured was unable to give the statement.
3. It is also submitted that the crime scene was inspected by the Crime Team/North. The injured during the treatment succumbed to the injuries and his post mortem was done. Thereafter, an FIR No. 675/2022 under Section 302 of IPC, 1860 was registered.
4. It is further submitted that the petitioners had been arrested and their disclosure statements were recorded by the Investigating Officer. After the completion of investigation, the chargesheet has been filed against the petitioners before the learned Trial Court.



5. Learned Trial Court *vide* Order dated 31.08.2023 had framed the charges under Sections 302/34 of IPC, 1860 against the petitioners.
6. After the completion of examination of the material witnesses, the petitioners had applied for regular bail, however, the same were dismissed *vide* Order dated 15.04.2024 *qua* Gaya Prasad and *vide* Order dated 04.05.2024 *qua* Vijay Dass and Rakesh passed by the learned Trial Court.
7. The grounds on which the bail has been sought are that Vijay Dass was arrested on 05.11.2022 and Gaya Prasad and Rakesh were arrested on 03.11.2022 and since then, they have been incarcerated in jail for more than one year and seven months. The right to personal liberty and right to speedy trial *qua* the petitioners, as in the off-chance that the petitioners are acquitted, would be irretrievable loss for one year and seven months of their life which cannot be compensated in any manner.
8. It is submitted that the petitioners have been made scapegoat as the Police has failed to arrest the actual culprit of the crime. The Investigating Officer has implicated the petitioners falsely with the mere intention of proving wrong things right in order to clean the pendency of the cases in the police station.
9. It is also submitted that out of 29 witnesses, four witnesses have been examined and the cross-examination *qua* 25 witnesses are yet to be done by the prosecution which would further delay the trial. PW3/Sanjul and PW4/Om Prakash are planted witness only to falsely implicate the petitioners.
10. Learned Additional Public Prosecutor on behalf of the State has clarified that till date statements of six witnesses have been recorded and there is also a supplementary chargesheet has been filed in which there are



five more witnesses of the prosecution who are to be examined.

11. It is further submitted that the place where the deceased was allegedly beaten is situated near the railway tracks and it is impossible that the *jhuggi* of the petitioners would be situated between the railway tracks.

12. It is further submitted that FSL Report dated 08.08.2023 confirms that from the alleged weapon of crime, no blood had been detected.

13. Moreover, Sub-Inspector Kailash Tomar in his Statement under Section 161 of the Code of Criminal Procedure, 1973 has clearly stated that on 12.11.2022 (sic.) at 12:17, he received a call from the Control Room about a person lying near the railway tracks in an underwear and he was unable to tell his name.

14. It is submitted that the CDR location of the petitioners obtained through their mobile phone is not a credible evidence.

15. Learned counsel on behalf of the petitioners has placed reliance on the decision in State of Kerala vs. Raneef, (2011) 1 SCC 784, wherein it has been held that in deciding bail application, an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody.

16. It is submitted that the petitioners have been falsely implicated and they are willing to abide by any terms and conditions imposed by this Court and, therefore, the prayer is made that the regular bail be granted to the petitioners.

17. Learned Additional Public Prosecutor appearing on behalf of the State has submitted a copy of the testimony of PW1/Rajender Prasad,



PW2/Maninder Singh, Alternate Nodal Officer, Vodafone Idea Limited, PW3/Sanjula Devi, PW4/Om Prakash Yadav @ Ramesh @ Raju, PW5/S.I. Battu Singh, presently posted in PCR, North Zone and PW6/S.I. Kailash Tomar (Retd.) whose statements were recorded till now to submit that there is an eye-witness viz., PW4/Om Prakash who has fully corroborated the case of the prosecution. PW3/Sanjula Devi may have not supported the story of the prosecution, but that itself cannot be any ground to allow the acquittal of the petitioners at this stage and it is a question of appreciation of evidence which cannot be done threadbare at the stage of grant of bail.

18. Learned Additional Public Prosecutor further submits that the very fact that the two of the witnesses have supported the story of the prosecution which speak against the conduct of the petitioners.

19. It is evident that the witnesses who have not supported the prosecution's story as the accused/petitioners were the residents in the vicinity of these witnesses.

20. It is submitted that there is cogent evidence linking the accused/petitioners with the commission of the offence and looking at the gravity of the offence and PW4/Om Prakash has supported the prosecution's story and also identified the accused/persons as the perpetrators of the crime.

21. Furthermore, even the post mortem report is supporting that the deceased had died during the treatment because of injuries which were inflicted on him.

22. Therefore, the present petitions have been opposed on behalf of the State.

23. **Submissions heard.**

24. Though the information of the crime received by the Police on



02.11.2022 at about 12:30 P.M. but the genesis of the crime was one day prior i.e., 01.11.2022 at about 06:30/07:00 P.M. when allegedly the deceased had been beaten by the three accused/petitioners along with other people who were in the crowd with *danda* blows as the deceased was suspected to be a thief. It is these *danda* blows which left the deceased injured and he was left lying in the injured position near the railway track and subsequently, the deceased succumbed to the injuries. To say that these are two separate incidents, may not be correct.

25. Learned counsel for the petitioner has placed reliance on the decision in Mohd. Tahir vs. State (NCT of Delhi), decided by the Division Bench of this Court on 02.07.2024 vide CRL.A. 95/2024, wherein the testimony of last seen witness who had seen the deceased an hour before, was not considered to be convincing enough to uphold the conviction, is distinguishable for the simple reason that the said case was based purely on circumstantial evidence, while the present case which has its basis on the eye-witnesses.

26. Furthermore, what is relevant at this stage is to consider whether the case is made out for grant of Regular Bail.

27. Considering the gravity of the offence, no case is made out for grant of bail at this stage.

28. In view of the foregoing discussions, the present petitions along with pending applications are hereby dismissed.

29. However, it is made clear that the observations made herein are only for the purpose of deciding the bail petitions.

30. The Registry is directed to take the copy of the statements of PW1/Rajender Prasad, PW2/Maninder Singh, Alternate Nodal Officer,



Vodafone Idea Limited, PW3/Sanjula Devi, PW4/Om Prakash Yadav @ Ramesh @ Raju, PW5/S.I. Battu Singh, presently posted in PCR, North Zone and PW6/S.I. Kailash Tomar (Retd.) filed on behalf of the State on record.

NEENA BANSAL KRISHNA, J

JULY 25, 2024
S.Sharma