



2024:DHC:4366



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on:28.05.2024

+ **BAIL APPLN. 4133/2023**

ASHISH @ VIJAY @ BHOLA

..... Applicant

versus

THE STATE NCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Applicant : Adv. Kush Sharma, Adv. Vagmi Singh,
Adv. Shumbhankar & Adv. Nishchaya
Nigam.

For the Respondent : Mr. Utkarsh, APP for the State along with
Ms. Disha Malhotra, Adv. Insp. Sanjay
Kumar, PS Budh Vihar

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 grant of regular bail in FIR No. 68/2021 dated 15.03.2021, for offences under Sections 302/34 of the Indian Penal Code, 1860 ('IPC') and Sections 25/27 of the Arms Act, 1959, registered at Police Station Budh Vihar.

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

2.1 On 14.03.2021, an information was received that a person had been stabbed with a knife at Rajender Chowk, Sharma

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By: HARMINDER KAUR
Signing Date: 31.05.2024
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Colony, Budh Vihar Phase-II. On enquiry, it was found that the injured had been rushed to the hospital.

2.2 The present FIR was registered at the behest of the statement of the complainant, namely, Ravi who alleged that on 14.03.2021, at around 7:00 pm, Shivam Thakur (now deceased) – who he knew from before, met him at Panwari shop in Sharma Colony, Budh Vihar, Phase II, and informed him about a quarrel with co-accused Chetan and the applicant.

2.3 It is alleged that the deceased had invited the complainant to go for a stroll with him, and while they were riding on a motorcycle, they encountered the applicant in Gali No. 22 near Sharma Colony at around 7:15 pm. It is alleged that upon seeing the applicant, the deceased stopped his motorcycle, which led to scuffle and an exchange of abuses between the applicant and the deceased. It is alleged that during this confrontation, co-accused persons namely, Chetan and Pawan, came from a nearby auto and joined the scuffle. It is alleged that they accused the deceased of trying to be a “Dada”.

2.4 It is alleged that co-accused Chetan then attacked the deceased with a knife, and gave multiple blows, causing the deceased to fall near a drain and bleed profusely, while the applicant and co-accused Pawan stood by. It is alleged by the complainant that he and Pradeep Rana attempted to save Shivam Thakur by taking him to Balaji Hospital, but due to the severity of his injuries, he was referred to a larger hospital. It is alleged that



Shivam Thakur was then taken to Bhagwati Hospital, where he succumbed to his injuries during the treatment.

2.5 On 15.03.2021, co-accused Chetan was apprehended from his residence. It is alleged that he confessed his involvement in the alleged offence and also disclosed the involvement of the applicant and co-accused Pawan as well. It is alleged that co-accused Chetan led the police to the recovery of the blood-stained knife used during the crime and clothes, which were both seized through a seizure memo.

2.6 On 24.03.2021, the applicant was arrested.

2.7 It is alleged that on 05.04.2021, the postmortem report of the deceased was obtained, which indicated that his death was due to hemorrhagic shock from multiple injuries caused by a sharp-edged weapon. All the injuries were *ante-mortem*.

2.8 The applicant had preferred bail application before the learned Sessions Court, which was dismissed, by order dated 17.12.2021. Hence, the present application.

3. The learned counsel for the applicant submitted that the applicant is a young boy aged 21 years and he is a law-abiding citizen, who has been falsely implicated in the present case.

4. He submitted that the applicant has been in incarceration since 24.03.2021. The investigation in the present case is complete and the charge sheet has also been filed, and no purpose would be served by keeping the applicant in further custody.



5. He submitted that from the averments in the FIR and charge sheet, it is clear that the applicant was only standing near the place of the alleged incident and did not speak a single word or exhort the co-accused, and thus played no active role in the alleged offence.

6. He submitted that from a perusal of the charge sheet, there is no evidence connecting the applicant with the commission of the alleged offence, as no recovery has been made from the applicant's possession or at his instance.

7. He submitted that the applicant does not have any criminal antecedents and has not played any active role in the commission of the alleged offence hence, no case as alleged is made out against the present applicant. He submitted that co-accused Chetan caused multiple injuries to the victim, which led to his death.

8. He submitted that the eyewitnesses, that is, Ravi/complainant and Pradeep Rana, during the examination before the learned Trial Court had turned hostile and did not support the prosecution's story.

9. He submitted that the complainant was not present at the place of the alleged incident and did not take the injured to Bhagwati Hospital. Further, the eyewitnesses did not inform the police about the incident or notify the deceased's family members.

10. He submitted that the applicant did not have any knowledge that co-accused Chetan possessed a knife or that co-accused Chetan would inflict a fatal injury hence, common intention to commit murder cannot be attributed to the applicant.



11. *Per contra*, the learned Additional Public Prosecutor for the State opposed the bail application and submitted that the allegations against the applicant are grave and serious in nature. He submits that the applicant had an active role in the alleged incident.

12. I have heard the learned counsel for the parties.

13. 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.

14. However, prolonged incarceration as an undertrial militates against the right to life and personal liberty guaranteed under Article 21 of the Constitution, and the same is also a factor which has to be kept in mind at the time of deciding the question of grant or refusal of bail.

15. In the present matter, the prosecution has not alleged that the applicant inflicted the fatal injuries upon the deceased or possessed any arms for this purpose.

16. It is submitted by the learned counsel for the applicant that the distinction is pivotal, as mere presence at the *locus delicti* does not *prima facie* conclusively establish a common intention to commit the alleged murder without any demonstrable participation. Even as per the allegations made by the complainant in the FIR, the applicant was merely present at the place of the alleged incident when the alleged



offence took place. It is during this confrontation that co-accused Chetan and Pawan, arrived and a heated argument ensued. Subsequently, it is alleged that co-accused Chetan inflicted injuries upon the deceased. The allegations and defences in this regard are a matter of trial.

17. *Prima facie*, the allegations against the applicant do not point towards him being the principal perpetrator but rather reflect that he was standing with the co-accused during the alleged offence. The allegation in regard to common intention cannot be presumed and will be tested during the trial.

18. It is also pertinent to note that the eye witnesses namely, Ravi (complainant) and Pradeep Rana have turned hostile. It is settled law that the statement of a witness is only a piece of evidence, and for the purpose of conviction, the corroborated part of the evidence of a hostile witness regarding the commission of the offence is to be treated as admissible. [Ref. *Mrinal Das v. State of Tripura* : (2011) 9 SCC 479]. The Trial Court while deciding the case has to consider the entire material on record, and can definitely look into the circumstances and other evidence put forth by the prosecution while passing the judgment.

19. However, this Court while considering the application of bail at this stage, cannot ignore that the alleged eye witnesses did not support the case of the prosecution. From the statement of the eye witnesses, as discussed, the very foundation of the allegations, at this stage, becomes doubtful.



20. Furthermore, the applicant is a young boy of 21 years of age, and is in custody since 24.03.2021. Since the chargesheet in the present case has been filed, the custody may itself result in the denial of his fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India, when the trial is not likely to conclude in near future.

21. The Hon'ble Apex Court in the case of *Union of India v. K.A. Najeer* : 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.

22. The investigation in the present case already stands concluded with the filing of chargesheet followed by framing of charges 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. However, appropriate conditions ought to be put to allay the apprehension of the applicant tampering with the evidence or evading the trial.

23. Considering the aforesaid discussion, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹20,000/- 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 of the country 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 phone switched on at all times.

24. 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.

25. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

26. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

MAY 28, 2024