

Aman @ Pintu @ Bhola vs The State Govt. Of Nct Delhi on 18 August, 2020

Author: Suresh Kumar Kait

Bench: Suresh Kumar Kait

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ BAIL APPLN. 1876/2020 & CrI.M.A.9858/2020
AMAN @ PINTU @ BHOLA Petitioner
Through Mr. Vishal, Adv.

versus

THE STATE GOVT. OF NCT DELHI Respondent
Through Mr. Izhar Ahmad, APP for State
SI Rahaul, PS Bhajanpura.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
ORDER

% 18.08.2020 The hearing has been conducted through video conferencing.

1. Present petition has been filed by the petitioner under section 439 Cr.P.C. for grant of regular bail in pursuance to FIR No.28/2020 for the offences punishable under Sections 302/34 IPC r/w 27 of Arms Act registered at police station Bhajanpura.

2. Learned APP has opposed the present petition by submitting that on 14.01.2020, Rajesh came at about 10:00 am and informed the police that his son Gaurav Kumar Singh @ Kittu had not returned home since the previous day. He further informed that he had come to know that someone had murdered his son. Accordingly, Insp. Ram Swaroop recorded statement under Section 161 Cr.P.C. whereby he stated that his son Gaurav Kumar Singh @ Kittu, who was in bad company and got into enmity with petitioner herein and due to fear of Aman @ Pintu @ Bhola, he along with his family had started residing in Dayalpur, Delhi. On 13.01.2020 in the night at about 10:00 pm, his son came, and after sometime while his son was leaving the house, he asked him where he was going to which he replied that he was going to Amit @ Pandit and petitioner herein AMAN @ PINTU @ BHOLA at village Gamri as they were calling him for compromise. At that time, his son had consumed liquor. He objected him from going out but his son stated that he would come within 10 minutes. However, his son did not come for a long time. Waiting long he slept. However, in the morning it was found that someone has murdered his son by shooting him.

3. On 27.01.2020, ASI Satish Rana vide DD no. 43B arrested the accused Aman@Pintu@ Bhola i.e petitioner herein. Inspector Ram Swaroop obtained the documents of arrest of accused

Aman@Pintu@Bhola and Parveen@Amit@Pandit and on 28.01.2020 by obtaining permission of the Court, arrested both the accused in the case and interrogated both the accused persons separately.

4. On interrogation, petitioner herein disclosed that "I was born 31 years ago in village Gamri and I am residing there since birth. I have two brothers and three sisters. I have studied upto 9th class and I am Property Dealer. Earlier also on several occasions I have gone to jail. Kittu@Gaurav was also residing earlier in village Gamri and he was also a criminal person. Once he had taken loan of Rs.15,000/- from me and he had refused to repay saying that if you have courage, then show me and take the money. In this regard I had also given beating to him, since then the enmity between us was started. Parveen@Amit@Pandit resides in my neighbourhood, who is my fast friend, who was beaten by Gaurav@Kittu several times. On dated 13.01.2020 Amit@Pandit called me and told that Gaurav@Kittu is extending threat to shoot his family and is abusing in very filthy language. I talked to Gaurav Singh@Kittu over call conference, during the conversation Gaurav Singh@Kittu was also abusing me and was threatening to murder and he was appearing in influence of liquor. I made a lot of efforts to make him understand but he did not stop. After the conversation over phone Parveen@Amit@Pandit came to me and said that Bhola Bhai, it is too much, now the water has crossed over the head, let's finish it. At that time we both were possessed with pistol. We both made plan to kill Kittu. Amit@Pandit was driving splendor M/Cycle and I was riding pillion. As we reached main Gamri Road, Kittu was seen coming on foot. Amit@ Pandit hit him with M/Cycle swiftly. I shot Kittu with a bullet. Kittu started trying to snatch my pistol. Then Amit@ Pandit hit Kittu by a bullet from his pistol. Kittu fell down and after he has fallen down Amit@Pandit hit him with one more bullet and we, after being satisfied that he was dead, ran away by our Splendor M/Cycle. Amit@Pandit earlier has been arrested. Yesterday the A.A.T.S. Staff had also arrested me at Loni Golu Chakkar. The pistol used to shoot Kittu, I can get recovered from Ghaziabad."

5. Learned APP further submits that CDR of accused persons namely Amit@Pandit and petitioner herein and witnesses Rishi Kumar@Mannu, Sourabh Srivastava were obtained which revealed that on the date of incident Sourabh Srivastava called up Rishi Kumar@Mannu, Rishi Kumar@ Mannu called up Amit@Pandit and Amit@Pandit called up petitioner herein. Mobile phone of Rishi Kumar@Mannu was seized because it contains the voice call recording of Amit@Pandit, petitioner herein, Rishi Kumar@ Mannu and Gaurav@Kittu (who was using phone of Sourabh Srivastava at that time). Voice sample of above four persons are yet to be taken so that authenticity of recording could be proved. The supplementary chargesheet will be filed after the completion of further investigation.

6. Learned APP submits that as per the record uploaded on SCRB website, accused Aman@Pintu@Bhola is involved in 08 criminal cases ranging from hurt, restraint, attempt to culpable homicide not amounting to murder, house trespass, theft, electricity theft to murder which are as follows:

(i) Case FIR No.398/2004 u/s 323/341/34 IPC PS Bhajanpura

(ii) Case FIR No.409/2007 u/s 308/452/323/34 IPC PS Bhajanpura

- (iii) Case FIR No.76/2008 u/s 135 Electricity Act Bhajanpura
- (iv) Case FIR No.135/2012 u/s 302/34 IPC PS Bhajanpura
- (v) Case FIR No.91/2012 u/s 186/353/332/34 IPC PS Bhajanpura
- (vi) Case FIR No.134/2012 u/s 448/427/380/34 IPC PS Bhajanpura
- (vii) Case FIR No.484/2019 u/s 323/341/336 IPC PS Bhajanpura
- (viii) Case FIR No.28/2020 u/s 302/34 IPC & 25/27 Arms Act PS Bhajanpura

7. Thus, the present petitioner is a habitual offender and granting bail at this stage will hamper the evidence and influence the witnesses.

8. Case of the petitioner is that entire case is based on uncorroborated testimony and hence at the outset learned counsel for petitioner submits that prosecution has cooked up false story and the same is evident from their status report as they are making contradictory statements. They are giving different facts before every court. The said fact demonstrates that petitioner has been wrongly framed in the present matter.

9. In the charge sheet prosecution witness Monu @ Rishi has categorically stated he received a call from Sourabh Srivastava and thereafter the deceased asked Monu@ Rishi to call Amit @ Parveen and since deceased was drunk and abusing Amit @ Pandit on call and Amit @ Parveen disconnected the call. Whereas, in the Status Report prosecution has stated that petitioner was also part of the conversation and forensic analysis of the telephone call is yet to be done.

10. Case of the petitioner is that prosecution is in custody of entire evidence since 28.01.2020 and even after expiry of eight months, the forensic analysis of the call has not been done. Further, prosecution is purposely dragging the investigation and delaying the process as they are aware that the said calls nowhere co-relate with the petitioner. CDR report filed along with the charge sheet also do not support the claims of the prosecution.

11. Petitioner in the present bail application has contended that CDR report filed along with the chargesheet do not show the presence of the petitioner at the crime scene. Neither in the chargesheet nor in the status report, the said fact has been mentioned. Further CDR filed along with the chargesheet do not show any communication between petitioner and the deceased and neither the theory of enmity is proved as there is no iota of evidence which states that petitioner and deceased were having any such enmity. Moreover, father of the deceased in his statement under Section 161 Cr.P.C. stated that deceased left the home to meet the petitioner but the CDR do not support the statement of deceased's father as there is no call between petitioner and the deceased nor there is any such evidence which support the contention of the deceased's father. In addition, as per the statement of the prosecution witness Sourabh Srivastava, he states that deceased had come to celebrate his birthday where he consumed alcohol and was seen last time.

12. Further prosecution in the chargesheet as well as in the status report has stated that co-accused Amit@Parveen and petitioner herein were arrested by special team on a tip and they have recovered the Pistol and three live Cartridges from the co-accused Amit@Parveen which were used in committing the crime. The prosecution is in custody of the same since 23.01.2020 and after of expiry of around 7 months, the most crucial piece of evidence i.e. ballistic report has not been obtained till date.

13. In addition to above, prosecution has wrongly stated before the Ld. Session Judge that 15 cases are pending against the petitioner, whereas in the chargesheet in the column-previous conviction/involvement record-it is stated that 6 cases and before this Court they have stated that in 8 criminal cases petitioner name was found.

14. Now, it is not in dispute that total eight cases are in credit of the petitioner. It is also in dispute that it is also not in dispute that petitioner acquitted in five cases and convicted in FIR no. 91/2012 for the offences punishable under Section 186/353/332/34 IPC for 240 days already undergone. In case FIR No. 484/2019 registered at Police Station Bhajanpura for the offences punishable under Section 323/341/336 IPC wherein complainant is his own sister, is pending trial.

15. As stated by counsel for the petitioner that the deceased was a history sheeter of the area and had enmity with many persons, therefore, some of them might have murdered him. However, the petitioner is innocent and falsely implicated in the present case.

16. Thus, in view of facts recorded above, the status report filed before the Sessions Court wherein stated that there are 15 cases against the petitioner is totally false. Moreover, there is no case of such similar nature, however, without commenting on the merits of the prosecution case, I am of the view that petitioner deserves bail.

17. Accordingly, he shall be released on bail forthwith on his furnishing a personal bond of Rs.25,000/- and a surety of the like amount to the satisfaction of Trial Court.

18. Petitioner shall not directly or indirectly influence any witness or tamper with the evidence.

19. The Trial Court shall not get influenced by the observation made by this Court while passing the order.

20. The petition is, accordingly, allowed and disposed of.

21. Pending application also stands disposed of.

22. Copy of this order be transmitted to the Jail Superintendent concerned and Trial Court for information and necessary compliance.

23. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through email SURESH KUMAR KAIT, J AUGUST 18, 2020 ms