

Shama Parveen vs State on 7 August, 2024

Author: Manoj Kumar Ohri

Bench: Manoj Kumar Ohri

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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 193/2022, CRL.M.A. 22363/2022
22364/2022, CRL.M.A. 7463/2023, CRL.M.A.

SHAMA PARVEEN

Through:

STATE

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI
ORDER

% 07.08.2024

1. By way of present application, the applicant seeks anticipatory bail in FIR No. 104/2021 registered under Sections 147/148/149/323/302/341/506/ 34 IPC and Sections 25/27 of the Arms Act at P.S. Crime Branch.

2. Mr. Dubey, learned Senior Counsel for the applicant contends that applicant was neither named in the initial Tehrir nor the FIR, which itself was lodged after a considerable delay. The injured eyewitness did not name the applicant in his initial statement, even though they lived in the same locality and were known to each other. It is submitted that the name of the applicant was taken by the witness subsequently, in order to implicate the entire family and is clearly an improvisation. He further contends that This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 23/08/2024 at 22:40:42 Investigating Officer has already filed the charge-sheet against the co- accused persons and a reading of the same would show that the deceased and his family were the actual aggressors. On the aspect of CCTV footage relied upon by the prosecution, it is stated that the applicant is not seen in

the footage to be giving any exhortation or taking any part in the incident and as such, her mere presence at the spot would not be enough to implicate her in a serious offence with the aid of Section 149 IPC. In support of his contentions, learned Senior Counsel has relied on the decisions of the Supreme Court in *Deepak Yadav v. State of U.P. & Anr.* reported as 2022 LiveLaw (SC) 562, *Mamta @ Anr. V. The State (NCT of Delhi) & Anr.* reported as 2022 LiveLaw (SC) 531, *Ms. Y v. State of Rajasthan & Anr.* reported as 2022 LiveLaw (SC) 384, *Centrum Financial Services Limited v. State of NCT of Delhi & Anr.*, reported as 2022 LiveLaw (SC) 103, *Rohit Bishnoi v. The State of Rajasthan & Anr.*, reported as 2023 LiveLaw (SC) 560, *Jagjeet Singh & Ors. v. Ashish Mishra @ Monu & Anr.*, reported as 2022 LiveLaw (SC) 376, *Sandeep Kumar v. The State of Haryana & Anr.*, reported as 2023 LiveLaw (SC) 573, *Surendra Singh v. State of Rajasthan & Anr.*, reported as 2023 LiveLaw (SC) 318 and judgment dated 03.11.2023 passed Crl. Appeal No. 524/2021 titled *Parshuram v. State of M.P.* Lastly it is submitted that in pursuance of the grant of interim protection, the applicant has joined the investigation and the other co-accused except Mehtab @ Natu have already been released on regular bail.

3. The application is vehemently contested by the learned APP for the State who is duly assisted by the counsel for the complainant. It is stated that the incident occurred in the night of 10.02.2021. As per the allegations, the deceased/Rinku was beaten up by all the accused persons including the This is a digitally signed order.

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4. I have heard the learned counsels for the parties and perused the entire material available on record.

5. A reading of the FIR would show that the parties were known to each and had prior enmity. The alleged incident took place on 10.02.2021 around 10-10.30 pm. As per the statement of injured eyewitness Aakash given to the police on 14.02.2021, the deceased/Rinku and his friends had gone to attend a birthday celebration at 'Masala Durbar restaurant' in Mangolpuri where an altercation had taken place between Jaahid@chingu, one of the accused, and one Sachin, belonging to the group of the deceased. Afterwards, the deceased left for his home Shortly afterwards while the friends of the deceased were standing in an alley near the deceased's house, Shama Parveen, the present applicant, who is the wife of one of the accused persons, Nasruddin @ Lali, came there, called on her relatives and while pointing at the deceased, exhorted them to attack him.

6. While the other co-accused were holding sticks in their hand, accused Mehtab @ Natu was having a knife. Accused persons were heard saying that a lesson has to be taught to the complainant as well as his brother (the deceased). The co-accused persons armed with sticks abused the deceased and when objected to, gave beatings to the deceased and his family whereafter Mehtab @ Natu inflicted

knife blow on the lower back of the This is a digitally signed order.

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7. The Supreme Court of India in the case of Ansar Ahmad v. State of U.P., reported as 2023 SCC OnLine SC 974 while dealing with a case where bail had been granted in a case of Section 302 read with 149 IPC having multiple witnesses, and the eyewitnesses had not been examined at the time of grant of bail had enumerated the factors which should be considered while deciding a bail application-

"10. There cannot be any quarrel with the submission advanced by Mr. R. Basant, the learned Senior Counsel appearing for one of the private respondents that the Court while granting bail is not required to give detailed reasons touching the merits or demerits of the prosecution case as any such observation made by the Court in a bail matter can unwittingly cause prejudice to the prosecution or the accused at a later stage. The settled proposition of law, in our considered opinion, is that the order granting bail should reflect the judicial application of mind taking into consideration the well-known parameters including:--

(i) The nature of the accusation weighing in the gravity and severity of the offence;

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(ii) The severity of punishment;

(iii) The position or status of the accused, i.e. whether the accused can exercise influence on the victim and the witnesses or not;

(iv) Likelihood of accused to approach or try to approach the victims/witnesses;

(v) Likelihood of accused absconding from proceedings;

- (vi) Possibility of accused tampering with evidence;
- (vii) Obstructing or attempting to obstruct the due course of justice;
- (viii) Possibility of repetition of offence if left out on bail;
- (ix) The prima facie satisfaction of the court in support of the charge including frivolity of the charge;
- (x) The different and distinct facts of each case and nature of substantive and corroborative evidence.

11. We hasten to add that there can be several other relevant factors which, depending upon the peculiar facts and circumstances of a case, would be required to be kept in mind while granting or refusing bail to an accused. It may be difficult to illustrate all such circumstances, for there cannot be any straight jacket formula for exercising the discretionary jurisdiction vested in a Court under Sections 438 and 439 respectively of the CrPC, as the case may be."

8. Supreme Court of India in the case of Kumer Singh v. State of Rajasthan, reported as 2021 SCC OnLine SC 511, while hearing an appeal against the grant of bail to the accused charged under S.302 read with S.149 IPC, the contention of the accused that they only had lathis while other accused had swords and other sharp weapons and that is why they were entitled to bail, said that-

"28. The submission on behalf of the accused that the accused were alleged to have been armed with lathis and therefore they were released on bail is concerned, at the outset, it is required to be noted that all the accused are charged for the offences This is a digitally signed order.

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Applying the above stated principle to the facts at hand, it is to be inferred that the fact that certain co-accused persons were carrying sticks while one of the accused was carrying a knife is immaterial as the rigours of Section 149 are to be applied in the same manner to all the accused persons i.e. the individual role of each accused person is not to be considered when they are part of an unlawful assembly. It is not necessary for the applicant to have struck the fatal blow, her being part of the unlawful assembly is sufficient for her being charged with S.302 read with S. 149.

9. The FIR has been filed, amongst other sections, under section 149 IPC read with S.302 IPC. The parties were known to each other, were living in the same locality and shared prior enmity. The

contention of the applicant that she was not present at the spot and has not played any role, is belied by the CCTV footage, which clearly shows the applicant pointing and carrying a stick in the hand. Moreover, the contention of the statements of the eyewitnesses being an improvement does not pass muster, on account of the fact that the injured eyewitness Mannu Sharma was not the only one who took the name of the applicant. Other witnesses have also given an account of the role of the applicant in the incident:-

i. Aakash, one of the injured eyewitness in his statement given to the police on 14.02.202 mentions the applicant as 'nasruddin@lalli ki gharwali' and says that she came out of a lane and shouted while pointing at the deceased, "iska bhi kaam tamam kardo" and called This is a digitally signed order.

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ii. Radha Sharma, the mother of the deceased in her statement recorded on 13.02.2021 clearly mentions the applicant by name and says that she along with her husband and other relatives came to the house of the deceased armed with sticks and weapons.

iii. Suraj in his statement recorded on 24.02.2021 the applicant, mentioned in the statement as 'nasruddin@lalli ki gharwali' came out of a lane and shouted while pointing at the deceased, "iska bhi kaam tamam kardo" and called her relatives.

iv. Rohit @ vishal @babu, mentions the applicant as 'nasruddin@lalli ki gharwali' and says that she came out of a lane and shouted while pointing at the deceased, "iska bhi kaam tamam kardo" and called her relatives.

10. Considering the nature of accusations, weighing the gravity and severity of the offence, the severity of punishment, and the fact that multiple eyewitnesses have given statements as regard to her presence at the spot of the incident, and the fact that applicant is clearly visible in the CCTV footage carrying a danda, no case is made out for pre-arrest bail. Accordingly, the anticipatory bail application of the applicant is dismissed and disposed of accordingly along with pending application.

11. Needless to state that nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case.

MANOJ KUMAR OHRI, J AUGUST 7, 2024/ga This is a digitally signed order.

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