

Danish @ Chintu vs State Of Nct Of Delhi on 29 July, 2024

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Pronounced on

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BAIL APPLN. 516/2023

DANISH @ CHINTU

Through:

Mr. Pankaj Vivek, Mr. S
Malhotra and Mr. Himans
Advs.

versus

STATE OF NCT OF DELHI

Through:

Mr. Ritesh Kumar Bahri,
State with SI Deepak Sa
Prahladpur

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in connection with FIR No. 0258/2017 under sections 302/307/341/427/120B/147/148/34 IPC and Sections 25/54/59 Arms Act.

2. Vide order dated 16.02.2023, notice was issued in the bail application and the State was directed to file a Status Report. The State has filed a Status Report dated 26.07.2023, which forms part of the record.

3. The case of the prosecution as borne out from the status report is that on 12.12.2017, an information regarding stabbing at Lal Kuan petrol pump, Sunday market, Pul Prahladpur was received and the S.I. rushed to the place of incident and it was brought to the knowledge of the S.I. that the injured persons have been moved to the Hospital.

4. On reaching the ESI Hospital, the S.I came to know that Rahul @ Doodha succumbed to injuries at the Hospital vide MLC No. 542/17. The other injured persons were admitted at Safdarjung Hospital vide MLC No. 374509/17 & 374510/17 & from there they were taken to Batra Hospital for further treatment.

5. Thereafter, the police reached Batra Hospital and the statement of injured Tara Chand was recorded wherein he stated that "On 12/12/17 at about 7:30PM, he was sitting in his Brezza car bearing no. DL 3C CM 5474 at Peer baba Chowk, Sunday Bazar, Lalkua near his home. Suddenly one Rajesh Vanar along with his associates namely Danish @ Chintoo (present petitioner), Tinkle @ Mohan came and broke the glass pane of his car. They started beating and threatening him as to why he had lodged a kidnapping case against Rajesh @ Vanar. On making hue and cry, family

members of the complainant namely Suva Lal (father), Rahul @ Dooda (bhanja) and brother Anil along with his wife went to rescue him and all the alleged persons ran away."

6. He further stated that "After a while, Rajesh @ Vanar, Danish @ Chintoo, Tinkle @ Mohan accompanied by other accomplices came with preparation and Tinkle @ Mohan caught hold of the complainant and Rajesh @ Vanar stabbed him in his left thigh. Danish and Tinkle were also instigating Rajesh @ Vanar to kill the complainant so that he could not initiate any legal action in future. Further on the intervention of the family members of the complainant, Rajesh and Danish assaulted them with knife and all the accused persons gave beatings to them by using the knife, rod and wooden stick resulting in the death of one Rahul @ Doodha". This led to the registration of the aforesaid FIR on the instance of the complainant Tara Chand.

7. The learned counsel for the petitioner at the outset submits that the petitioner has been falsely implicated in the present case. He submits that the applicant was not present at the spot of incident at the time of commission of offense and this fact can be corroborated by tracking the location of the petitioner's mobile phone.

8. Placing reliance upon the testimonies of PW-1, PW-2, PW-4 & PW-6, the learned counsel for the petitioner submits that a straightforward review of the testimonies of the said witnesses reveals that nothing incriminating has come against the present petitioner and the said witnesses have not identified the petitioner nor any witness stated that the petitioner was present at the place of incident.

9. He contends that the petitioner is in Judicial Custody since 13.12.2017 and has been incarcerated for almost 6 years and 6 months. He further submits that since the material witnesses have already been examined, there is no possibility of petitioner influencing them or extending any threats. In this backdrop the learned counsel for the petitioner urges that the petitioner may be enlarged on regular bail.

10. Per contra, the learned APP appearing on behalf of the State has argued on the lines of the Status Report. He submits that the petitioner has been accused of a grave and serious offence, therefore, he may not be enlarged on bail.

11. He submits that the weapon of offence i.e., the knife was recovered at the instance of the Danish @ Chintoo. He submits that a perusal of the FSL report reveals that the blood stains found on the knife which was recovered at the instance of the petitioner matches with the blood of the deceased. Further, a black cap allegedly worn by the petitioner was also found at the place of incident along with a Pulsar Motorcycle bike which was allegedly used by CCL and Danish to reach the place of occurrence. He further submits that the Postmortem report of Rahul opines the cause of death as Hemorrhagic shock as a result of injury no. 1 which is sufficient to cause death in the ordinary course of nature.

12. He contends that the investigation of the case revealed that the genesis of the incident was another case which was registered by the complainant's family members against Rajesh @ Vanar

vide FIR No. 56/16 u/s 363 IPC at PS Pulprahladpur, Delhi and to settle the score all the accused persons hatched a conspiracy with the common intention to eliminate the complainant.

13. He submits that the accused Danish @ Chintoo is a hardcore criminal & there is a strong apprehension that he may again develop a syndicate to commit various crimes in Delhi/NCR if released on bail. Inviting the attention of the court to the SCRB report attached with the status report, the Ld. APP submits that the petitioner is involved in about 43 cases of snatching, robbery, dacoity, theft and NDPS registered all over Delhi in various police stations, which in itself makes a ground for rejection of the present bail application.

14. I have heard the learned counsel for the petitioner, as well as, the learned APP for the state and have perused the record.

15. As per the case of prosecution the injury caused to deceased has been attributed to co-accused namely Rajesh @ Vanar. Undisputedly, as per prosecution version no injury inflicted to the deceased has been ascribed to the petitioner.

16. The allegation qua the petitioner, as borne out from the statement of complainant Tara Chand which became the basis of FIR, is that the petitioner along with co-accused Tinkle instigated Rajesh @ Vanar to kill the complainant (Tara Chand). Evidently, it is not the case of the prosecution that the petitioner had instigated Rajesh @ Vanar to kill the deceased. Thus, the instigation, if any, is only to kill the complainant, who is not the deceased in the present case.

17. Further, the prosecution has already examined the four material/eye- witnesses namely, Tara Chand (complainant/maternal uncle of deceased); Suwa Lal (maternal grand-father of the deceased); Ms. Nagina wife of Tara Chand (complainant) and Ms. Narangi (sister of the complainant).

18. A perusal of the testimony of Tara Chand, who is complainant/injured witness and was examined as PW1, shows that he has failed to identify the present petitioner. Likewise, Suwa Lal, who was examined as PW2, also did not identify the present petitioner. Both the witnesses also stated to the effect that they had not seen the petitioner at the spot. Both the said witnesses were declared hostile and the learned APP for the State was allowed to cross-examine them. Even in their cross-examination, nothing could be elicited by the prosecution against the present petitioner.

19. Another material witness namely, Ms. Nagina wife of Tara Chand (complainant) has failed to establish the presence of accused person at the place where the fight allegedly took place. The said witness who was examined as PW4 though categorically stated with regard to the presence of other accused persons at the spot but was conspicuously silent as regard the presence of the present petitioner. However, when cross-examined by the learned APP after being declared hostile, she denied the suggestion put to her concerning the presence of the present petitioner at the spot.

20. Similarly, fourth material witness namely Ms. Narangi (sister of the complainant) who was examined as PW6 has also stated that the petitioner was not present at the time of the incident.

Thus, the complainant and all his family members have not stated about any involvement of the petitioner.

21. Another circumstance which has been pressed against the present petitioner by the prosecution is the recovery of knife used in the commission of offence, at the instance of the petitioner. It is also the case of the prosecution that the blood stains found on knife matched with the blood of the deceased on the basis of DNA profiling, as per the FSL report. In this regard, to be noted that apart from the said recovery there is no substantive piece of evidence against the petitioner, especially when the material/eye- witnesses have failed to identify the petitioner.

22. It is trite law that recovery is not a substantive piece of evidence and it is to be used only for corroboration. Reference in this regard may be had to the decision of the Hon'ble Supreme Court in *Suryavir v. State of Haryana* (2022) 3 SCC 260, wherein it was observed as under:

18. That leaves us with subsidiary evidence regarding recovery, which in the absence of substantive evidence, by itself would not be sufficient. In the circumstances, in our considered view, the prosecution failed to establish its case beyond reasonable doubt. The appellant would, therefore, be entitled to acquittal.

The instant appeal is thus allowed acquitting him of the charges levelled against him.

(Emphasis Supplied)

23. Likewise, recovery of black cap and motorcycle also have no relevance at this stage. So far so, there is no evidence to connect the petitioner with the black cap or to the pulsar motorcycle.

24. In so far as the petitioner's involvement in various cases as mentioned in the status report is concerned, suffice it to say that in the absence of any substantive evidence against the petitioner in the present case, incarceration of the petitioner cannot be continued merely on the basis of his previous involvement in other criminal cases. Even otherwise, involvement in other criminal cases cannot be the sole ground for denying the bail to the petitioner, as held by the Hon'ble Supreme Court in *Prabhakar Tiwari vs State of Uttar Pradesh* (2020) 11 SCC 648.

25. Further, it cannot overlooked that the prosecution in the present case has cited as many as 36 witnesses, out of which only 9 of witnesses have been examined, therefore, inevitably the trial is going to be protracted one and the given facts and circumstances do not justify keeping the petitioner behind bars to await the outcome of trial, solely for the reason that he is found to be involved in other cases as well.

26. The apprehension of the prosecution that if released on bail, the petitioner might flee from the administration of justice and might resort to criminal activities can be dispelled by imposing strict conditions on the petitioner while enlarging him on bail.

27. Considering the aforesaid circumstances in entirety, this Court is of the opinion that the present petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is enlarged on regular bail subject to his furnishing a Personal Bond in the sum of Rs.50,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:

- a) Petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- b) The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to the complainant or any of the prosecution witnesses or other persons acquainted with the facts of the case.
- c) The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.
- d) The petitioner 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 petitioner shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.
- f) The petitioner shall mark his attendance with the SHO/IO concerned on every Saturday between 11:00AM to 12:00 noon during the pendency of the trial and he shall be released by the IO/SHO not later than 01.00 P.M.

28. The petition stands disposed of.

29. It is clarified that any observation made herein-in-above is only for the purpose of deciding the present bail application and same shall not be construed as an expression of opinion on the merits of the case.

30. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.

31. Order dasti under signatures of the Court Master.

32. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J.

JULY 29, 2024 N.S. ASWAL