

(2011) 12 DEL CK 0100
In the Delhi High Court
Case No : Bail Application No. 700 of 2011

Aman Gaur

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 23-12-2011

Acts Referred:

Arms Act, 1959 — Section 25, 27
Criminal Procedure Code, 1973 (CrPC) — Section 161, 439, 482
Penal Code, 1860 (IPC) — Section 120B, 147, 148, 302, 307

Citation : (2012) 188 DLT 216 : (2012) 1 JCC 415

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : S.S. Babbar, for the Appellant; Navin Sharma, APP for the State and Mr. Siddharth Luthra, with Mr. Gaurav Gaur, for the Complainant, for the Respondent

Final Decision : Allowed

Judgement

V.K. Shali, J.—This is an application, filed u/s 439 Cr.P.C. read with section 482 Cr.P.C. for grant of regular bail by the accused, Aman Gaur.

2. Briefly stated, the facts of the case are that an FIR No. 30/2010, u/s 302/307/34/147/148/323/325 IPC read with section 25/27 of the Arms Act was registered at P.S. Dabri, New Delhi, on the statement of one Vivek Gaur, s/o Sh. Virender Kumar Sharma, R/o C-25, New Krishna Park, Vikas Puri. He had stated that he, along with his family, has been residing at the above-mentioned address and is running a factory of manufacturing scooter parts at Khasra No. 38, Village Dabri, New Delhi. On 24.01.2010, at about 9.30/10 am Haryana Police came to Dabri, Delhi in connection with the investigation of case FIR No. 2/2010, u/s 380/342/147/148/448/506/511 IPC, registered by PS Manesar, District Gurgaon, Haryana, at the instance of one Sameer Gaur s/o Late Sh. R.K. Naseem. The Haryana Police had apprehended three accused persons from the factory of one Vinod Sharma, uncle of the complainant, which was also located in the same

Khasra No. 38, Dabri Village, New Delhi. At about 11 am, Vinod Sharma, his son Aman Gaur, the present petitioner, his driver Amrit Lal came to the spot. Neeraj, Rahul, Naresh Karotia, Sunita w/o Ram Mehar Singh, who were employee of Vinod Sharma also came to the spot. Thereafter, it is alleged that Vinod Sharma, his son Aman Gaur, the present petitioner, and his workers created an unlawful assembly with a common object to attack the rival faction. Sunita w/o Ram Mehar Singh and Laxman, another worker of Vinod Sharma brought danda (big wooden stick) from inside the factory. R.K. Naseem, a noted criminal lawyer, who was the uncle (Phoofaji) of the present complainant, had also come there and tried to pacify both the parties. It is alleged that when Sh. Naseem stood at one side, facing the factory of Vinod Sharma, the latter took a danda from his worker and hit it on the head of Sh. Naseem from the back with an intention to kill him. As a consequence of this, Sh. Naseem fell down and became unconscious. Aman Gaur, the present petitioner, is alleged to have taken out a revolver and fired three rounds with an intention to kill Sh. Rajiv Gaur and others but there was a narrow escape and nobody got injured. It is alleged that Aman Gaur threatened to kill while firing towards Sh. Rajiv Gaur and others. It is alleged that Neeraj, Ramesh Raghav, Kailash Khati, Naresh Karotia, Rahul and Amrit Lal belonging to the group of Vinod Sharma attacked the complainant's brothers, namely, Sunny and Monty with the help of sticks (danda) and fists.

3. On the basis of the aforesaid information, the aforesaid FIR was registered. Sh. Naseem was admitted to the hospital, where he unfortunately succumbed to his injuries after a few days without gaining the consciousness. Consequently, the offence u/s 302 IPC was subsequently added to the FIR.

4. On the basis of the aforesaid allegations, it is attributed to Aman Gaur that not only he formed a part of an unlawful assembly with a common object and prima facie attempted to murder by firing three rounds from his revolver and by uttering words like "jaan se maar dunga", "papa inhone toh naak mein dum kar rakha hai" and "aaj inka khatma kar do" etc. but also in furtherance of common object caused death of Sh. Naseem.

5. I have heard the learned counsel for the petitioner in extenso. Opportunity, was also given to the learned counsel for the complainant, Mr. Siddhartha Luthra to intervene and address arguments, on behalf of the complainant. In addition to these, the learned APP also made his submissions. Needless to say that this is one of the applications for grant of regular bail, which was very hotly contested by the parties. The effort of the learned counsel for the petitioner was obviously to convince the Court that it is a fit case for grant of bail during the pendency of trial. This was equally and ably resisted by Mr. Siddhartha Luthra, learned senior counsel appearing for the complainant, as well as by the learned APR. All the parties irrespective of the sides they represented, referred to the statements of various witnesses recorded u/s 161 Cr.P.C. as well as the attendant circumstances, as if the Court has to decide the question of guilt or acquittal of the accused person.

6. Apart from making oral submissions, both the sides were permitted to play CCTV footage, which were recorded at the spot from two different cameras, one from the camera of the complainant and the other from the camera of the accused persons. It may be pertinent to mention here that the factory premises of the accused/petitioner and the complainant are situated on the same Khasra and are almost adjoining to each other. There is a CCTV camera put up by both the sides on the two separate poles, which are outside their factory premises. The police had seized one of the CCTVs footage, ostensibly the one which was belonging to the victim party and converted that into a VCD and thereafter the same was played in Court room by the counsel for the complainant with the help of a DVD and a screen. Similarly, the footage recorded by the camera of the accused persons was also played in Court. Both the parties were also permitted to file a brief note of their respective submissions.

7. One of the submissions made by the counsel for the petitioner was that the police had been acting in a partisan manner in as much as they had not registered a cross FIR on the basis of the complaint lodged by them as a consequence of which they were forced to approach the Court which has issued summons to the complainant side.

8. The learned counsel for the parties have referred to the following judgments:

(I) Judgment cited by the learned counsel for the petitioner.

1. Ram Kumar Tyagi Vs. The State and another,
2. H.B. Chaturvedi Vs. CBI, 2010 (3) JCC 2109.
3. R. Vasudevan Vs. CBI, 2010 (1) JCC 642.
4. Brijlala Pd. Sinha Vs. State of Bihar, 1998 (4) SCALE.
5. Murari Vs. State,
6. Sarwan Singh Vs. State of Punjab, 1996 (7) SCALE.
7. Chenna Boyanna Krishna Yadav Vs. State, 2006 (13) SCALE.
8. CBI Vs. Abhishek Verma, 2009 (7) SCALE.
9. A. Kadar Mujawar Vs. State of Maharashtra, 2011 (1) SCALE.
10. Abdul Wahid Vs. State of Rajasthan,

(II) Judgments cited by learned counsel for the complainant.

1. State of Maharashtra Etc. Vs. Dhanendra Shriram Bhurle Etc.,
2. Sachin Jana and Another Vs. State of West Bengal,
3. Satish Jaggi Vs. State of Chhattisgarh and Others,
4. Triloki Nath and Others Vs. State of U.P.,

5. Omar Usman Chamadia Vs. Abdul and Another,
6. Ramesh Kumar Singh Vs. Jhabbar Singh and Ors., (2003) 10 SCC 195.
7. The State of Maharashtra Vs. Ritesh Wanjari,
8. Hari Om and Others Vs. State of U.P.,
9. Ram Singh and Others Vs. Ram Singh,
10. O.N. Bhatnagar Vs. Smt. Rukibai Narsindas and Others,
11. Chahat Khan Vs. The State of Haryana,

9. I have gone through the judgments cited by the learned counsel for the parties. In all these judgments, either the bail has been given or cancelled, keeping in view the facts and circumstances of the said case. But what is important is that in all these judgments, the parameters which the Court have to bear in mind while considering the application for grant of bail have been reiterated in different words.

10. At the outset, it is stated that this Court is only deciding the bail application of the petitioner and not the guilt of the accused and therefore, I am not purposely embarking on the detailed analysis of the statements of the witnesses as both the sides have attempted to do. This kind of exercise has not only been held to be impermissible by the Supreme Court but also such an exercise is going to prejudice either of the parties during the trial. But, I must candidly admit that while having a bird's eye view of the matter for the limited purpose of deciding the application for grant of bail, I have mainly taken into consideration the role played by the accused in two CCTV footages, which has been played by all the sides in the Court and the interpretation which has been given by them.

11. These parameters are as under:-

- (i) The severity of allegations against the accused persons and the quantum of sentence w.r.t. the offence alleged to have been committed by the accused.
- (ii) The nature of evidence, which has been gathered by the investigating agency and if the offence is proved the maximum sentence, which it may entail.
- (iii) Whether the accused will flee from the processes of law and also the fact as to whether he will tamper with the evidence, in case, he is extended the benefit of bail.
- (iv) The previous antecedents of the accused person or whether he has roots in the society or not.

12. Mr. Luthra, learned senior counsel has made extensive analysis of evidence in order to prove their claim in order to establish the, prima facie, guilt of the accused person being a member of unlawful assembly and also to show that not only he attempted to commit an offence of murder/culpable homicide by firing

shots from his revolver and uttering words like "jaan se maar dunga", "papa inhone ton naak mein dum kar rakha hai" and "aaj inka khatma kar do" etc. but also actively participated in furtherance of common object to cause injury on the person of Sh. Naseem, which turned out to be fatal and therefore opposed the grant of bail to the petitioner.

13. Mr. Babbar, the learned counsel for the petitioner, referred to the statements of various witnesses, namely, Vivek Gaur, Deepak Gaur, Sandeep Gaur, Sameer Gaur, Rajiv Gaur and Virender Sharma to contend that the incident is admitted to have taken place on 24.01.2010, on which date, statement of Vivek Gaur was only recorded. It is contended that statements of Deepak Gaur and Sandeep Gaur was recorded on 25.01.2010, while as the statements of the remaining witnesses was recorded on 28.01.2010. Referring to the recorded statements of these persons, it was contended that it would reflect that there has been a constant improvement in the statements made by these witnesses gradually, to testify against the present petitioner.

14. It was also contended that the investigating officer has not gathered even a single piece of evidence from the spot regarding the alleged firing and neither Dermile Nitrate Test was conducted to establish that he had fired the shots nor CCTV camera footage of the accused persons was seized and, therefore, all this clearly establishes that the prosecution was acting in a partisan manner and the evidence gathered against the petitioner was very weak as he had allegedly fired in self-defence.

15. Per contra, Mr. Luthra, learned senior counsel vehemently opposed the grant of bail to the petitioner. With regard to the allegations levelled against the petitioner, it is urged that this was the most heinous crime committed by the petitioner along with his father, which resulted in death of one of the leading members of the Bar. It was contended by him that the very utterances of the petitioner, which have been reflected in the statements of witnesses "jaan se maar dunga", "papa inhone toh naak mein dum kar rakha hai" and "aaj inka khatma kar do" etc. are reflective of the bent of mind of the petitioner that he had decided to liquidate the victim on that date. Further, he also referred to the motive of the petitioner, which was existing in conjunction with his father, to cause bodily injury on the deceased by stating that there was some dispute regarding the trade mark between the two families and this has resulted in civil litigation, apart from various criminal cases got registered by the complainant side against the petitioner, which furnished motive to the petitioner and to his father to commit the offence. With regard to the evidence, so far as the offence u/s 302 IPC is concerned, various factors like the petitioner going to the spot with a loaded licensed revolver, his shouting and gesturing to the victim, giving threats admitting that he had fired at least one shot show not only the severity of charges but also the prima facie evidence in sufficient measure to prove his guilt. Further, it is stated that the offences, carry the punishment, which may extend to life, if not death.

16. I have carefully considered the submissions. I feel that both the learned counsel for the petitioner and the learned senior counsel for the complainant had, while making submissions, gone into the merits and demerits of their respective cases and referred to the statements of the witnesses and all other attended circumstances including the display of the CCTV footage to persuade this Court to pass an order of bail which will be more in the nature of an order on merits.

17. The Supreme Court not once but repeatedly has observed that Courts, while exercising the discretion for grant of bail has to take a, *prima facie*, view of the matter and judicially exercise that discretion rather than doing critical analysis and judging the credibility of the witnesses.

18. I feel that, on the face of it, the charges against the petitioner have admittedly been framed for an offence u/s 307 IPC, i.e., attempt to murder and section 302 IPC read with the offence of unlawful assembly formed with a common object to commit various offences, which caused death of a person, are very serious charges. *Prima facie*, it entails life imprisonment, if not death, in case the charges against the petitioner are proved. On this parameter, there can be, no doubt, that there are very serious allegations against the petitioner. But, the question which needs to be considered is whether the framing of these charges in itself is good enough to deny the bail? The answer to this question would have been in affirmative, had there been no CCTV footage recorded. But, if one sees the CCTV footage of either of the parties at the crucial time between 10.30 am to 11.05 am or so one is tempted to say that both the parties were in aggressive mood taking position so as to show the other faction down.

19. Seen, in this background, when everybody gathers outside the factory of Vinod Sharma, Sh. Naseem is seen talking to somebody near the factory of Vinod Sharma. It is, at this stage, Vinod Sharma abruptly snatches a wooden danda and hits on the head of Sh. Naseem with such a force that he tumbles. There is no interaction between the present petitioner and Vinod Sharma, the main accused. The petitioner was also around, like the other persons from both the sides. Therefore, this one aspect that the petitioner is not the direct perpetrator of the fatal blow though his liability as a member of alleged unlawful assembly will unfold only during trial.

20. The second stage of CCTV footage is when the fatal blow is given, the danda is snatched from Vinod Sharma by one of the persons and he hits with the same danda in a merciless manner and the others, also from the same faction, join him by kicking and boxing the assailant. It is, at this stage, that the petitioner tries to rescue his father and takes out a loaded revolver and allegedly fires a shot, which fortunately does not hit any person. It is also debatable as to whether one shot or three shots were fired. Seen in this perspective, no doubt, the action of the petitioner cannot be justified by any standards as it could have resulted in a second fatality but other view is that it was the result of cause and effect. On seeing the visuals, I feel that notwithstanding the fact that he is

charged with very serious offences, I am inclined to give the benefit of bail to him because he did not give the fatal injury to the deceased. This benefit is being given on account of two/three additional factors which I will refer to hereinafter.

21. Mr. Luthra, learned senior counsel had referred to the judgment regarding common intention and common object so as to show the complicity of the petitioner to deny him the benefit of bail. I have gone through all these judgments. It would suffice to say that there is a difference in deciding the guilt of the accused and the concept of common object or common intention being decided on merits as against a case where only a bail application is to be decided. It is further stated that this is a case where bail application is being decided.

22. The next point, which was urged by the learned senior counsel, was veracity and the creditworthiness or reliability of the tape recorded evidence and the danger of relying on the same. I am cognizant of this fact. This is a double edged weapon and one cannot rely on the CCTV footage seized by the prosecution alone, say that the tape recording, visual or audio does not have credibility if it is produced by the opposite side. The Court feels that there is not much of discrepancy in the CCTV footage of the accused persons, then certainly, prima facie, view could be formed by the Court by referring to the same. I have already observed after seeing both the footages that this has been one of main factor which has persuaded the Court to extend the benefit of bail to the petitioner because his role is not as is sought to be projected from the mere reading of the statements u/s 161 Cr.P.C. I did not find any major variations in either of them, which will make the Court rely on one and discard the other.

23. In my considered opinion, giving any categorical observation at this point of time as well as examining the evidence minutely and thereafter deciding as to whether the evidence produced is sufficient to prove the offence of the accused or not would be only touching upon the merits of the case and it is bound to create prejudice to one of the parties.

24. The petitioner has already been in custody for almost two years and the trial is at the threshold when the evidence is yet to start and it is going to take considerable period of time before the entire evidence is concluded. I am cognizant of the fact that the delay in conclusion of the trial shall not be the only consideration, for grant of benefit of bail to an accused but at the same time, it does play a vital role in case the other factors are taken cumulatively to decide as to whether they go against the petitioner or in his favour. I feel that the fact of the petitioner having remained in the custody for almost two years, the trial is likely to take a considerable period of time.

25. Mr. Luthra, learned senior counsel had contended that the petitioner himself has been responsible for delay as he has been filing repeated applications, co-accused have been absconding and above all charges have been challenged by him, and therefore, they cannot take advantage of the same.

26. I do not agree with this contention of the learned senior counsel that challenge to the charge can be construed as a reason for delay being caused by the petitioner. The State or the complainant has not placed the copies of the orders passed by the learned Trial Court from time to time, on record. Therefore, there is no reason for this Court to assume that the petitioner has been guilty of delay in trial.

27. Another factor, which has weighed this Court, while extending the bail to the petitioner is that it should not be denied by way of punishment. The petitioner is to face trial for the offences for which he has been, charged and prove his innocence, but in my view, his incarceration is also causing deprivation of his legal defence, which a person who is at liberty can conduct in a much better manner. The father and the son are on trial. There is no other adult member in the family who can conduct their defence. Therefore, deprivation of bail in this case would tantamount to imposing of punishment on the petitioner keeping in view his role in the commission of the offence.

28. The petitioner's sister is also stated to have been divorced after the arrest of the petitioner and she is stated to be living with the mother and wife of the petitioner. It has been stated that in the absence of any male member, the petitioner's family have not been able to attend the business and it has gone into losses. I feel that these factors are also relevant which have persuaded the Court to extend the benefit of grant of bail so that the family is able to attend to business and generate income, which is very essential for survival.

29. The other parameter with regard to the fleeing away from the processes of law and tampering with the evidence including the past antecedents of the petitioner are concerned, the learned counsel for the complainant did not urge that the petitioner will flee from the processes of law nor is this the case of the prosecution. I also do not feel that the petitioner will flee from the processes of law as he is a married person and has roots in the society, apart from the business interests. Therefore, there is a very bleak possibility of his fleeing away from the processes of law. But so far as the tampering with the evidence or threatening the witnesses is concerned Mr. Luthra, the learned senior counsel for the complainant, has made a very serious allegation that the petitioner has the criminal proclivity and has every potential of tampering with the evidence and thus contended that he does not deserves to be enlarged on bail.

30. I am of the view that this submission of Mr. Luthra, the learned senior counsel, is grossly exaggerated and is actuated from the previous enmity and long drawn feud between the two sects of the same family.

31. There is no eyewitness to the incident, who may not be associated with either of the camps. The witnesses cited by the prosecution for proving the murder either are the members of the family of the victim or the employees of Virender Sharma or connected with their family. Where the battle lines between the two sides have been drawn to such an extent, where each group is trading

charges and counter charges, I feel that there is hardly any occasion for the accused to approach any of the witnesses and influence his testimony and in case if he does so, he may not meet the success. Apart from this, he runs the risk of recall of the order of bail. Further conditions can be put to allay this fear of the complainants.

32. Another aspect, which was, highlighted, in this regard, was the previous involvement of the petitioner in at least three cases, details of which are as under:

(i) FIR No. 2/2010, u/s 380/342/147/148/448/506/511 IPC, registered by PS Manesar, District Gurgaon, Haryana;

(ii) FIR No. 438/2006, u/s 420/465/467/471/474/120-B/34 IPC registered at PS Dabri, New Delhi; and

(iii) FIR No. 830/2006, u/s 420/465/467/471/474/120-B/34 IPC, registered at PS Dabri, New Delhi.

33. It was contended that it is noticeable that the petitioner had a criminal proclivity and when the present offence was committed by the petitioner he was on interim bail in respect of FIR No. 2/2010, u/s 380/342/147/148/448/506/511 IPC, registered by PS Manesar, District Gurgaon, Haryana and since the present offence was committed by him while he was on interim bail, accordingly, that said bail itself was denied and this also shows that the petitioner is not a safe person to be granted the benefit of bail as he may again hamper the fair trial. On questioning by the Court, it was learnt that the three cases, to which reference was made by the learned senior counsel for the complainant, the informant or the complainant in these cases are persons belonging to the camp of the complainant side. Therefore, this cannot be treated as a basis for this Court to observe that the petitioner has a criminal proclivity of such a nature that he had either committed the offence while he was on interim bail or that he is a habitual criminal who deserves to be denied the benefit of bail in the instant case. All these complaints are lodged by the side of the complainant or their camp. It is also not in dispute that the parties though related by blood have been aligning in different camps and are having running feud in respect of certain business interests of one side or the other and, therefore, in order to show a upper hand and a brinkmanship these cases have been got registered. Therefore, I do not attach any importance to the previous cases having been registered against the petitioner as a ground to condemn him as a person with a criminal proclivity and so far as the question of a tampering with the evidence is concerned, prima facie, I feel as the witnesses belong either to the side of the complainant or are their employees, it is impossible to influence or for that purpose even to approach such witnesses. In any case sufficient conditions can be imposed so as to prevent the same.

34. It may also be pertinent here to mention that Mr. Babbar during the course of arguments had voluntarily stated that the petitioner is prepared to live at a place

other than Dwarka, which happens to be near the place of incident and that he would not visit his place of work in order to allay the fears of the victim's family that he will tamper with the evidence. As a matter of fact, Mr. Babbar, has suggested that the petitioner is prepared to suffer voluntarily condition that he will not visit within the radius of nearly 10 KMs from the place of incident.

35. Keeping in view the aforesaid facts and the reasons mentioned therein, I feel that it is a fit case where the discretion of grant of bail deserves to be extended to the petitioner as he has already been in custody for a period of almost two years. No doubt, the nature of allegations and the charges against him are serious yet the nature of evidence, which prima facie is placed by showing the CCTV footage, he alone cannot be held responsible either for the quarrel, which had taken place on the date of incident or responsible as a perpetrator for having caused death of Sh. R.K. Naseem, as he had not given the fatal blow.

36. For the foregoing reasons, I direct that the petitioner, Aman Gaur, be admitted to bail on his furnishing a personal bond in the sum of Rs. 1 lac with one surety of the like amount to the satisfaction of the Trial Court/ACMM/Duty Magistrate. This shall be subject to the following conditions:

(i) That, the petitioner shall not visit his place of work or the residence within a radius of 10 KMs;

(ii) That, he shall not visit the place of incident, i.e., Khasra No. 38, Village Dabri, New Delhi;

(iii) That, he shall not visit the factory at Manesar, Haryana without the permission of the Court;

(iv) That, the petitioner shall not create conditions, which are not conducive to the holding of a fair trial;

(v) That, the petitioner shall not leave the National Capital Region of Delhi without the permission of the Court, which permission may be granted after obtaining necessary itinerary from him; and

(vi) That, the petitioner shall not threaten any witnesses or tamper with the evidence or commit any further offence, if done so, the prosecution shall be free to file an appropriate application for recalling the order of grant of bail.

37. These conditions have been imposed on the petitioner only in order to avoid his coming in contact with any of the members of the family of the victim or the complainant, so that there is no chance of threatening the witnesses or tampering with the evidence.

38. With these directions, the bail application of the petitioner is allowed.

39. Expression of any opinion, hereinabove, may not be treated as an expression on the merits of the case as these are the tentative views formed only for the purpose of deciding the present bail application.

40. DASTI.