

(2019) 11 DEL CK 0562

In the Delhi High Court

Case No : Bail Application No. 954 Of 2019

Ashish Kumar @ Vicky

APPELLANT

Vs

State (Govt Of Nct Of Delhi)

RESPONDENT

Date of Decision : 21-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 307, 324
Code of Criminal Procedure, 1973 — Section 439

Citation : (2019) 11 DEL CK 0562

Hon'ble Judges : Brijesh Sethi, J

Bench : Single Bench

Advocate : Pawan Bahl, G. M. Farooqui

Final Decision : Dismissed

Judgement

Brijesh Sethi, J

1. Vide this order I shall dispose of a bail application filed u/s. 439 CrPC by the petitioner Ashish Kumar in FIR No. 181/2017 u/s. 302/307/34 IPC, P.S.Malviya Nagar.

2. Ld. Counsel for the petitioner has prayed for bail on the ground that petitioner is innocent and has been falsely implicated. It is submitted that petitioner was not named in FIR by the prosecution and he was arrested on the basis of suspicion on 08.06.2017 and since then he is in jail. After completion of investigation, the police filed the charge-sheet against the petitioner and two other accused persons namely Robi Bahadur @ Ravi and Aman Sethi @ Golu @ Aman for the alleged murder of Karan @ Aman. Nothing was recovered from the petitioner during the investigation. It is submitted that prosecution has so far examined PW-1 Amit Kumar on various dates and he also been cross-examined by the Addl. PP. The petitioner has not been identified by the alleged main eye-witness. Ld. ASJ vide order dated 03.10.2019 has dismissed the bail application moved by the petitioner. It is submitted that Ld. ASJ has failed to appreciate that

PW-1 has clearly stated that he is not able to identify the petitioner Ashish @ Vicky. It is submitted that there is no other cogent evidence except the witness Amit Kumar. It is, therefore, prayed that petitioner be released on bail in the interest of justice.

3. Ld. APP for the state has opposed the bail application on the ground that allegations against the petitioner are serious in nature. He has, therefore prayed for dismissal of the bail application.

4. I have considered the rival submissions. According to prosecution, on 05.05.2017, a PCR call vide DD No. 48-A regarding murder was received at PS Malviya Nagar which was marked to SI Suraj. SI Suraj along with staff reached at Flat No. E-12/43,, Hauz Rani, Delhi. where it came to notice that injured persons had already been taken to Max Hospital, Saket. One injured namely Karan @ Aman was declared brought dead by the doctors whereas another injured Amit Kumar was admitted in the hospital. He was declared fit for statement by the doctors. On enquiry, he stated that on 05.05.2017 at about 9.30 pm., he along with his friends namely Tajender @ Golu & Karan @ Aman went to meet with their another friend Gaurav. At about 10:45 PM, 4-5 persons namely Aman Sethi @ Golu, Robi, Nikki, Akshu and Hemant along with stick canes and knives in their hands, entered there. Aman Sethi @ Golu started attacking Karan @ Aman with Knife. On seeing this, he ran towards toilet to save himself. He further stated that one stout bearded man attacked on his face & shoulder with base ball stick. After that, Robi attacked him with fist and kicks and also caught his hands. Akshu took knife from Nikki and attacked on his legs. They ran away from there when he shouted for help. After that, he went at upper floor of building for help. He made call to Tajender @ Golu from there. On the statement of injured/eye witness - Amit Kumar, a case vide FIR no. 181/2017 u/s 302/324/34 IPC was registered at PS Malviya Nagar.

5. The prosecution version is that on 7.05.2017, accused Robi Bahadur @ Ravi was arrested and interrogated and he disclosed that he and other co-accused are involved in the crime. During course of investigation, it came on record that after committing the crime accused Roby Bahadur got injured and with the help of his associates he reached at Majidia Hospital. In Majidia Hospital accused Roby Bahadur @ Ravi has given his details by mentioning the father name, address and mobile number of petitioner Ashish. The SIM Card of the mobile phone number 9999775820 was also found to be registered in the name of petitioner Ashish. The CDR of mobile phone number 9999775820 was obtained and on analysis, the location of abovementioned mobile no. 9999775820 was found in saket (where the accused gathered before committing crime), Hauz Rani (Place of occurrence) and Majidia Hospital (where the accused person gathered after committing crime) which corroborated with the disclosures of other accused persons.

6. Complainant Amit Kumar identified petitioner at Police Station and stated that he was the person who had hit him with the baseball bat on his face and

shoulder on 05.05.2017. Though it is submitted by Ld. Counsel for the petitioner that PW-1 Amit Kumar has not identified the petitioner. It is a settled law that evidence cannot be discussed in detail at the stage of consideration of bail application since no mini trial can be conducted at that stage. The Ld. Trial Court will no doubt discuss the evidentiary value of the statement of PW-1 at the appropriate time. However, this fact cannot be ignored that the petitioner has also been charged with an offence u/s. 302/34 IPC besides Section 307 IPC. There is still other evidence on record and whether it will help the prosecution or not and whether it will prove to be relevant or not will be decided by the Ld. Trial Court. The Court can also not ignore the fact that complainant/ injured in examination in chief has deposed about the threat extended to him and it runs as under:-

"After the present incident, on 2-3 occasions, outside my house, some boys including Bittoo, Nikki, Babu and other boys came and they shouted 'kya chahta hain, gawahi thodega ya nahi thodega'.

7. With the above threat extended to the witness coupled with above discussion and also in view of the nature of allegations leveled against the petitioner, no grounds for bail are made out. The bail application is, therefore, dismissed.