

(2005) 02 DEL CK 0091
In the Delhi High Court
Case No : Bail Appln 2134 of 2004

Kehar Singh

APPELLANT

Vs

The State (N.C.T. of Delhi)

RESPONDENT

Date of Decision : 21-02-2005

Acts Referred:

Citation : (2005) 118 DLT 86 : (2005) 3 RCR(Criminal) 281

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : L.K. Verma, for the Appellant; Pawan Sharma, for the Respondent

Judgement

Badar Durrez Ahmed, J.—The learned counsel for the petitioner (Kehar Singh S/o Chotu Ram) submits that he is an old man of 67 years and no injury has been attributed to him. According to him, the role ascribed by the prosecution is that he caught hold of Naveen when he was attacked by Lilly with a farsa. He further says that he is in no way responsible for the death of Anil, who died due to blows given by other persons. He further submits that cross cases have been lodged between the complainant partly and the accused part with regard to the same incident. Further, he submits that the charge-sheet has been filed on the basis of FIR No. 73/2003 registered at Police Station J.P. Kalan under, inter alia, Section 307 of the IPC. However, all those accused in that case are on anticipatory bail, whereas all the accused in the present case are in judicial custody. The petitioner has been in custody for over two years. He relied upon the decision of the Supreme Court in the case of Shriram and Anr. v. State of Maharashtra: 2 (2001) CCR 5 (SC), the material portion of which reads as under:-

""1. There are two rival versions of one incident. The police after completing the investigation charge-sheeted both cases. Appellants are accused in the case involving offences u/s 302 read with Section 149 of the Indian Penal Code whereas the informant and others are the accused in the counter-case involving offences u/s 307 read with Section 149, IPC etc. As the charge-sheet has been laid in both the cases we think that appellants can be released on bail during the

pendency of the trial. We, Therefore, order that appellants be released on bail on executing a bond each with two solvent sureties to the satisfaction of the Trial Court.""

According to him, the situation is entirely the same as that obtaining in the case before the Supreme Court and there is no reason as to why the petitioner ought not to be released on bail.

2. The learned counsel for the State opposed the grant of bail and relied upon two decisions:-

i) Sunil Kumar and Anr v. State of Rajasthan: 2005 1 AD SC 313, in particular, paragraph 17 thereof which reads as under:-

""17. Where a group of assailants who were members of the unlawful assembly proceeds to commit the crime in pursuance of the common object of that assembly, it is often not possible for witnesses to describe the actual part played by each one of them and when several persons armed with weapons assault the intended victim, all of them may not take part in the actual assault. Therefore, it was not necessary for the prosecution to establish as to the specific overt act was done by each accused.""

ii) Rameshwar Dayal and Ors. v. State of Madhya Pradesh and Anr.: 2002 I AD SC 337, particularly, paragraph 5 thereof.

3. The gravamen of the contention on behalf of the learned counsel for the State is that when there is a group of assailants and a crime is committed in pursuance of a common object, it is often not possible for the witnesses to describe the actual role played by each one of them and, Therefore, it is not necessary for the prosecution to establish the exact overt act done by each accused. In the present case this is not the position as in the FIR itself specific roles have been ascribed. These decisions would not be applicable to the fact situation as obtaining in the present case.

4. I am inclined to agree with the contention of the learned counsel for the petitioner, particularly, in view of the decision of the Supreme Court in the case of Shriram and Anr (supra) as well as because of the fact that the petitioner is an old man of 67 years of age and no specific injury has been attributed to him, although in the FIR specific roles have been ascribed to the other accused.

5. In view of the foregoing, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 20,000/- with one surety of the like amount to the satisfaction of the trial court concerned.

The application stands disposed of.