

(2023) 08 DEL CK 0154

In the Delhi High Court

Case No : Bail Application No. 1595 Of 2023

Manish Kumar @ Boxer

APPELLANT

Vs

State (Govt. Of Nct Of Delhi)

RESPONDENT

Date of Decision : 22-08-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 161, 174, 439
Indian Penal Code, 1860 — Section 34, 302, 323

Citation : (2023) 08 DEL CK 0154

Hon'ble Judges : Amit Sharma, J

Bench : Single Bench

Advocate : Pradeep Rana, Inderpreet Singh, Ankit Rana, Tushar Rohmetra, Aman Usman

Final Decision : Disposed Of

Judgement

Amit Sharma, J

1. The present application under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeks regular bail in case FIR No. 307/2020, under Sections 302/323/34 of the Indian Penal Code, 1860 ('IPC') registered at PS Begumpur, North-West.

2. The facts of the present case, as stated in the status report dated 24.07.2023, authored by SHO, PS Begumpur, are as under:

i. The present FIR was registered on 03.10.2020, at the instance of Smt. Sunita Devi (mother of the deceased) who alleged that on 28.09.2020, at about 04:30 PM, the accused persons, namely, Manish @ Boxer (the present applicant), Deepak and Narsingh @ Naresh @ Narshi beat her son, Sunder Yadav (the deceased), at a spot behind a school. She further alleged that thereafter, after the deceased returned home, the accused persons came to their house and beat the deceased again with dandas and kicks.

ii. The complainant further alleged that on the next day, i.e., 29.09.2020, she

took her son to Dr. Baba Saheb Ambedkar Hospital, Rohini, Delhi for treatment, from where he was discharged at about 04:00 PM on the same day. Thereafter, it was stated that she took her son to the said hospital again on 30.09.2020. He was declared brought dead.

iii. As per the post-mortem report of the deceased, it was stated that his death was caused due to perforation of the intestine due to blunt trauma to the abdomen. It was further opined that the injury to his abdomen had been caused by a soft blunt object, recently before his death and was sufficient to cause death in the ordinary course of nature. It was also opined that the external injuries were also recently caused before his death by blunt force.

iv. Subsequently, the present FIR was registered on 03.10.2020 under Section 302/34 of the IPC.

v. On 05.10.2020, co-accused Sandeep @ Harshu and Deepak @ Lala were arrested. The weapon of offence, i.e., the danda was recovered at the instance of Sandeep @ Harshu.

vi. On 06.10.2020, co-accused Narsingh @ Naresh @ Narshi and the present applicant were arrested. Two motor-cycles bearing registration numbers DL-I IS B-97079, belonging to Deepak @ Lala and DL-8SCB4540, belonging to Narsingh @ Naresh @ Narshi, which were allegedly used in the commission of the offence were recovered.

vii. One eye-witness, namely, Manoj Kumar was also injured in the present case. As per the MLC, the injury sustained by him was 'simple'. Hence, Section 323 of the IPC was also added in the present FIR.

viii. During further course of investigation, the CCTV footage from a camera installed near the place of occurrence and Call Detail Records of the accused persons were also obtained. Statements of witnesses were recorded under Section 161 of the CrPC. Upon completion of investigation, the chargesheet in the present case was filed under Sections 302/323/34 of the IPC.

3. Learned counsel for the applicant submitted as under:-

3.1. It was submitted that there is an unexplained delay in the registration of the FIR which renders the case of the prosecution doubtful. To substantiate the said contention, learned counsel for the applicant submitted that:

i. The alleged incident took place on 28.09.2020. However, no complaint was made by the complainant or the deceased on that day.

ii. On the next day, i.e., 29.09.2020, the deceased allegedly visited Dr. Baba Saheb Ambedkar Hospital because he was experiencing shoulder pain. He was given medication and discharged on the same day. On 29.09.2020 as well, no complaint regarding the alleged incident was made by the deceased or the complainant.

iii. On 30.09.2020, the deceased was declared brought dead at the hospital, however, as per the version of the prosecution case, the complainant had still not made any complaint. The matter was reported by a police officer who was present at the spot.

iv. The complainant had given her written statement to the police on 01.10.2020, however, the FIR was registered two days thereafter, i.e., on 03.10.2020.

3.2. It was submitted that after the information regarding the death of the complainant's son was received, the Investigating Officer reached the hospital on 30.09.2020 and recorded the statement of the complainant. In the said statement, the complainant did not name the present applicant. She made allegations qua co-accused Sandeep. A second statement of the complainant was recorded on 01.10.2020, wherein allegations qua other accused persons, including the applicant were made. It is pointed out that the said statement is not signed by the complainant

3.3. It was submitted that the postmortem of the deceased was conducted by the doctor on 30.09.2020 between 1430 hours and 1530 hours, i.e., after nearly 46 hours of the alleged incident. As per the opinion given by the doctor, all the injuries sustained by the deceased were fresh and had been recently caused. Further, it was submitted that the colour of all the injuries was radish which also goes to show that they were sustained recently prior to the death, and, therefore, the said injuries could not have been caused on the date of the alleged incident, i.e., 28.09.2020.

3.4. Learned counsel for the applicant further submitted that the alleged independent witnesses, i.e., Manoj Kumar (PW-2), friend of the deceased who was also beaten initially and another independent witness, Veena (PW-3) have not supported the case of the prosecution. It was submitted that Manoj Kumar (PW-2), who was allegedly injured in the incident, failed to identify the accused persons in the Trial Court. Veena (PW-3), from whom as per the case of the prosecution, the accused persons had asked for directions to the house of the deceased also did not support the version of the prosecution. In her testimony recorded before the learned Trial Court, the said witness stated that she had told the police that no one visited her shop asking about the deceased on the day in question.

3.5. It was submitted that as per the CCTV footage supplied by the prosecution, the applicant, although is seen therein, but it is apparent that he did not hit the deceased. The footage showed that he was trying to stop the other co-accused Harshu @ Sandeep. In any case, it is submitted that the place of incident was not covered by the CCTV footage, as the same was away from the place of which footage has been placed on record. It is pointed out that at the actual place of incident, as per the case of the prosecution, no CCTV footage is available and the only evidence which has been placed on record is the statement of the complainant and the other two witnesses, who have not supported the case of

the prosecution.

3.6 It was submitted that the applicant was arrested on 06.10.2020 and has been in judicial custody since then. The investigation in the present case is complete. The chargesheet is filed and the trial is ongoing. It was submitted that the prosecution has cited 30 witnesses out of which only 3 have been examined so far. The material witnesses, i.e., the complainant and the independent witnesses have been examined and the trial is likely to take a long time. The Applicant has been in judicial custody since 06.10.2020 and there are no previous involvements. In view thereof, it was submitted that no useful purpose will be served by keeping the applicant in custody any further.

4. Per contra, learned APP for the State submits that the case of the prosecution is that on 28.09.2020 at about 4:45 P.M. and thereafter from 5:15 P.M. to 5:30 P.M., a quarrel took place between the deceased and the accused persons, including the present applicant but the same was not reported at the police station. As far as the alleged delay in registration of the FIR is concerned, it was submitted that:

i. It is pointed out that the CCTV footage placed on record is with respect to the incident which happened at 4:45 P.M. Thereafter, it is the case of the prosecution that the accused persons including the applicant, went looking for the deceased to his house, where the actual incident causing death of the deceased took place.

ii. It is submitted on 29.09.2020, the injured was taken to hospital but after first aid, he was discharged and the matter was not reported to police.

iii. It is stated that on 30.09.2023, the deceased was taken to hospital where he was declared brought dead. Information regarding the same was given to the police station and ASI Subhash Dhaka was deputed with the said information.

iv. It is submitted that on 30.09.2020, the post-mortem was conducted during proceedings under Section 174 of the CrPC, ASI Subhash Dhaka recorded the statement of the deceased's mother and one named, Hariom.

v. It is pointed out that on 01.10.2020, the aforesaid Sunita Devi (complainant) gave a written complaint to the police station but the case was not registered for want of post-mortem report as there was no visible injury suggesting murder.

vi. It is submitted that on 01.10.2020, after conducting the post-mortem, the present case was registered under Section 302/34 of the IPC. The said case was registered on the complaint made by Sunita Devi on 01.10.2020.

4.1 It is pointed out that the complainant, in her deposition before the learned Trial Court, has stood by her statement and has identified the accused persons including the present applicant for mercilessly beating the deceased. On 04.10.2020, Manoj, friend of the deceased, who was also beaten, was also medically examined. It is pointed out by the learned APP that on 30.09.2020, the statement of the complainant was recorded by ASI Subhash Dhaka during the

inquest proceedings and since she was in trauma due to sudden death of her only son, her statement could have been influenced on account of the same. It is further submitted that the reasons for delay in registration of the FIR was sufficiently explained as the complainant wanted her son to recover and therefore did not report the matter to the police and only on his death on 30.09.2020, she made a complaint on 01.10.2020. Further, it is submitted that since there was no visible injury over the body of the deceased, the police waited for the post-mortem report and on receiving the same on 03.10.2020, the present case was registered.

5. Heard the learned counsel for the parties and perused the record.

6. This Court, while hearing the present application for bail, had seen the CCTV footage placed on record by the prosecution in the Court, wherein it was seen that the present applicant, as pointed out by the Investigating officer comes on his motorcycle but is not seeing hitting anyone. In any event, as per the case of the prosecution, the main incident is not a part of the said footage.

7. The attention of this Court was drawn to the statement made by the complainant on 30.09.2020 wherein she had stated that on 28.09.2020 at about 5:00 P.M., her son had consumed liquor and was with his friend namely, Babu. Her son, Sundar said 'Ram Ram' to Sandeep's wife. It is stated that Sandeep's wife complained to the former that Sundar had said 'I Love you', and for the said reason there was a fight between Sandeep and her son. It is further stated that she did not make any complaint with regard to the said fight on 29.09.2020. It is stated that her son was not feeling well and therefore she had taken him to BSA Hospital. It is stated that after the check up, the doctor told them that everything is all right and her son can be shown at the OPD. It is further stated that on 30.09.2020, when she brought her son to OPD, his condition deteriorated and when he was taken to emergency, the doctor after checking him, declared him dead. The said statement was signed by the complainant and recorded by the ASI Subhash Dhaka on 30.09.2020.

8. It is matter of record that thereafter on 01.10.2020 a complaint was given by the mother of the deceased wherein, apart from Sandeep, the names of the other accused persons including the present applicant have been taken. It is also matter of record that in her cross-examination, she admits giving the aforesaid statement on 30.09.2020. Although the learned APP submits that the said statement is not relied upon document but he does not dispute the genuineness of the same. As to why no FIR was registered on the basis of the statement is something for the Investigating Officer to explain before the learned Trial Court, at the time of his examination. But the statement made at the very first instance by the mother of the deceased cannot be ignored for the purposes of deciding the present application for bail. The aforesaid statement is specific about the name of co-accused Sandeep, date, time and place of incident. This, coupled with the fact that the other independent witnesses have not supported the prosecution's case have to be given due consideration for present bail

application. It is matter of record that the statement of the complainant on 01.10.2020 is surprisingly not signed by her.

9. In the instant case, the gravity and seriousness of the offence cannot be denied. It is also a matter of record that the independent witnesses cited have not supported the prosecution's case. Admittedly, there is no other public witness which has to be examined by the prosecution. It has been held time and again that bail is the rule and jail is the exception. It is also well settled that at the stage of grant of bail, the Court is not required to dwell upon detailed analysis of the evidence on record as that would be a matter of trial. At the same time, gravity of the offence cannot be the sole basis for denial of bail as has been held in *Prabhakar Tewari v. State of Uttar Pradesh and Another*, (2020) 11 SCC 648 wherein the Hon'ble Supreme Court held that despite alleged offence being grave and serious and also the fact that there are criminal cases pending against the accused, these would not by themselves be the basis for refusing bail.

10. As per the nominal roll dated 22.07.2023, the present applicant has been in judicial custody for 02 years 08 months and 09 days, since 06.10.2020. It is further reflected in the nominal roll that the present applicant is not involved in any other offence.

11. In totality of the facts and circumstances, the applicant is admitted to bail upon his furnishing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount to the satisfaction of the learned Trial Court/Link Court, further subject to the following conditions:

i. The memo of parties shows that the applicant is residing at H. No. 409, Village Begumpur, Delhi - 110086. In case of any change of address, the applicant is directed to inform the same to the learned Trial Court and the Investigating Officer.

ii. The applicant shall not leave India without the prior permission of the learned Trial Court.

iii. The applicant is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.

iv. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witnesses in any manner.

v. The applicant shall join the investigation, as and when required by the Investigating Officer.

vi. In case it is established that the applicant tried to tamper with the evidence, the bail granted to the applicant shall stand cancelled forthwith.

12. The application stands disposed of along with all the pending application(s), if any.

13. Needless to state, nothing mentioned hereinabove is an opinion on the merits

of the case pending before the learned Trial Court.

14. Let a copy of this judgment be communicated to the concerned Jail Superintendent for necessary information and compliance.

15. Judgement be uploaded on the website of this Court forthwith.