

**(2008) 11 DEL CK 0023**

**In the Delhi High Court**

**Case No : Criminal Bail A. No. 872 of 2008**

Narender Mann

APPELLANT

Vs

State (NCT of Delhi)

RESPONDENT

**Date of Decision : 03-11-2008**

**Acts Referred:**

Arms Act, 1959 — Section 25, 29

Criminal Procedure Code, 1973 (CrPC) — Section 439, 439(2), 482

Evidence Act, 1872 — Section 26, 27

Penal Code, 1860 (IPC) — Section 120B, 201, 3, 302, 323

**Citation : (2008) 154 DLT 387**

**Hon'ble Judges : Kailash Gambhir, J**

**Bench : Single Bench**

**Advocate : Sandeep Sethi, Anurag Jain and Sanjay Kumar Jha, for the Appellant; Manoj Ohri, APP, for the Respondent**

**Final Decision : Dismissed**

## Judgement

Kailash Gambhir, J.—This order shall dispose of petition filed by the petitioner u/s 439 Cr.P.C. read with Section 482 Cr.P.C. seeking grant of bail in FIR No. 200/06 registered under Sections 302/120-B/201/34 IPC read with Section 25/54/59 Arms Act with PS Mangol Puri. Brief facts which led to the registration of the said FIR against the petitioner and other accused persons are that on 21.3.2006 at about 4.30 p.m. the complainant Smt. Kanta Devi wife of the deceased Shri S.N. Gupta was present in her house along with her husband when she heard call bell and in response, she went to the main gate of her house where she found a boy aged 25-30 years wearing glasses/specs, having beard with black cap and one hanging bag. On enquiry, the said boy told the complainant that he brought a courier for S.N. Gupta. When asked to deliver the courier to the complainant, then he said, he had come from the bank and courier would be delivered only to Mr. S.N. Gupta and not to her. At this, the complainant went inside the house and told everything to her husband Mr. S.N. Gupta and thereafter the deceased went towards main gate while the complainant went towards the kitchen. In the

meanwhile complainant heard sound of 2-3 bullets. She rushed towards the gate of the house. In the meantime her domestic aid Seema shouted to call the complainant. The complainant saw that near the gate of the house her husband was lying on the floor and blood was oozing out from his chest. After seeing her husband, the complainant also screamed due to which the neighbours gathered and with their help the deceased was taken to Jaipur Golden Hospital where he was declared brought dead. The complainant thereafter lodged the said FIR. After the registration of the FIR the investigation was carried out by the police and it was found that conspiracy was hatched by one Shiv Charan Bansal, his son Sachin Bansal with the petitioner to eliminate the deceased S.N. Gupta. It was also found that the actual commission of the said crime was committed by one Joginder Singh Sodhi. It was also found that one Shailender Singh had supplied the weapon of offence and one Raju @ Rajbir Singh, a practicing lawyer advised the petitioner. It is also found that the co-accused Lalit Mann @ Nanhe had also joined the conspiracy and had agreed to commit the offence, initially but later on backed out. The motive to commit the said crime ascertained in the investigation was that the petitioner had given a loan of Rs. 7 lakhs to one Shri Naveen @ Cheenu on the recommendation of co-accused Sachin Bansal, which amount had swelled to about Rs. 16 lakhs after adding the interest. It was also found that the petitioner was unable to recover his money from Naveen, therefore, he insisted upon the co-accused Sachin Bansal to return his money since the money was lent by the petitioner at the instance of Sachin Bansal. It was further found by the prosecution that co-accused Sachin Bansal owed a sum of Rs. 70-80 lakhs to Mr. S.N. Gupta in connection with some committee and he told the petitioner that if S.N. Gupta could be killed then he would get back his money as after his murder Sachin Bansal and his father Shiv Charan Bansal would get absolved to pay the said money of Rs. 70-80 lacs besides their factory dispute with S.N. Gupta would also be solved. On the disclosure stated dated 29th March, 2006 made by the co-accused, Sachin Bansal, the petitioner along with co-accused, namely Lalit Mann and Raju @ Rajbir Singh were arrested while they were travelling in a Maruti Esteem Car bearing registration No. DL-3C-AG-6565 and when the said car was searched, one marriage photo album having one empty photo frame; one black cap; one goggle and one photo of the deceased were recovered. Disclosure statement of the petitioner was also recorded on 29.3.2006. On 30th March, 2006 co-accused Joginder Singh Sodhi, the person who had committed the offence was arrested and his disclosure statement was also recorded. Weapon of offence was recovered from the office of co-accused Shailender Singh at the instance of the petitioner and co-accused Joginder Singh Sodhi at flat No. A-1/35, Sector -7, Rohini, Delhi-85. It was found that the said pistol of 7.65 m.m. contained two live cartridges. This weapon was unlicensed revolver. The accused Sachin Bansal on 31.3.2006 got recovered one licensed pistol registered in the name of the petitioner of the same bore along with 11 cartridges from his factory at T-1/111, Industrial Area, Phase-I, Mangolpuri, Delhi. The co-accused Joginder Singh Sodhi also got recovered one black goggle and cap which he was allegedly wearing at the time of committing the murder.

2. During the pendency of the investigation the petitioner had applied for grant of bail and the same was granted vide order dated 9th June, 2006 primarily on the ground that there was no evidence against the petitioner except a disclosure statement. Feeling aggrieved by the said order dated 9th June, 2006 the prosecution filed an application u/s 439(2) Cr.P.C. seeking cancellation of the said bail and during the pendency of the said cancellation application another FIR was registered against the petitioner u/s 323/341/506/120B/34 IPC read with Section 25/54/59 of the Arms Act vide FIR No. 524/06 dated 4.7.2006 with P.S. Prashant Vihar, Delhi on the allegations that the complainant and the witnesses were being threatened and beaten by the parokars of the accused persons to intimidate them not to pursue the matter in Court. The petitioner had moved bail application seeking bail in FIR No. 524/06 and the said bail application of the petitioner was rejected vide order dated 24th August, 2006. The bail granted to the petitioner in the present FIR was cancelled by the Court of Mr. Yogesh Khanna, Additional Sessions Judge, vide orders dated 24th August, 2006 mainly on the ground that the petitioner had tried to interfere in the administration of justice by misusing the concession of the bail. Feeling aggrieved with the said cancellation order the petitioner preferred a Crl.R. No. 610/06. Simultaneously, the petitioner also moved a bail application seeking his bail in FIR No. 524/2006. By common order dated 17th April, 2007 the Hon"ble Court of Justice Badar Durrez Ahmed disposed of the Crl. Rev. No. 610/2006 and bail application No. 3362/2006 both filed by the petitioner. In the said order the Court gave directions for setting aside of the cancellation order and gave direction to the Additional Sessions Judge to reconsider the bail application of the petitioner on merits de hors the alleged incident of 4th July, 2006. Pursuant to the said direction the petitioner filed an application seeking grant of bail before the Additional Sessions Judge and vide order dated 17th march, 2008 the said bail application of the petitioner was rejected on the ground that the significant material has been recovered at the instance or from the possession of the present accused, which includes weapon of offence. The Trial Court has also framed charges against the petitioner u/s 302/201/34 IPC read with Section 25 and 29 (b) of the Arms Act while the Court has discharged the other co-accused persons Rajbir Malik, Lalit Mann and Shiv Charan Bansal as no prima facie case was found against them. After rejection of the said bail application the petitioner has now preferred this petition so as to seek his regular bail.

3. Mr. Sandeep Sethi, Senior Advocate appearing for the petitioner submitted that there is no evidence much less legally admissible evidence against the petitioner. Counsel for the petitioner further submitted that the petitioner has not been charged u/s 120B of the Indian Penal Code, but has been charged u/s 34 IPC. Counsel for the petitioner further submitted that once the petitioner has not been charged for conspiracy, therefore, the case of conspiracy, which was alleged by the prosecution automatically goes. Counsel further submitted that Shailender has not been charged u/s 302 IPC and he is also on bail. Counsel further submitted that the other co-accused person Mr. Shiv Charan Bansal against

whom the allegations were more serious has already been discharged while co-accused Sachin Bansal has been charged only u/s 25 of the Arms Act and is also on bail. At the time of apprehension of the petitioner besides the petitioner two other persons were found and both of them i.e. Rajbir Singh and Lalit Mann have also been discharged by the Sessions Court. Counsel for the petitioner further submitted that the weapon of offence was recovered from the office of the co-accused Shailender vide recovery memo dated 30th March, 2006 on the basis of joint pointing out by the petitioner and co-accused Joginder Singh Sodhi, which would show that the concealment of weapon of offence was not within the exclusive knowledge of the petitioner and therefore, such recovery cannot be used against the petitioner. Counsel for the petitioner further submitted that the entire prosecution is based on circumstantial evidence and there is no cogent or reliable evidence so as to make out a case against the petitioner to involve him in the alleged murder of the deceased S.N. Gupta. Counsel for the petitioner further submitted that the petitioner is in judicial custody for about 2 years 7 months and is not a previous convict. The counsel further submitted that the petitioner belongs to a respectable family and there is no likelihood of his fleeing from the hands of justice. Placing reliance on Section 26 of the Indian Evidence Act the counsel submitted that the confession made by the petitioner while in custody of the police officer cannot be used against him and therefore, the disclosure given by the petitioner has no evidentiary value. Even Section 27 of the Indian Evidence Act cannot be used against the petitioner as the recovery of weapon of offence was not solely at the instance of the petitioner, but at the joint pointing of the petitioner as well as the other co-accused persons. The contention of the counsel for the petitioner is that unless the recovery of the offence weapon is solely attributed to the petitioner, the said recovery of weapon at the joint pointing cannot be treated as an admissible evidence as against the petitioner. Counsel for the petitioner further submitted that even in the alleged disclosure statement of the petitioner dated 29.3.2006, the petitioner nowhere disclosed that he could get the weapon of offence recovered. In support of his arguments, counsel for the petitioner has placed reliance on para 5 of the judgment of the Apex Court in Mohd. Abdul Hafeez Vs. State of Andhra Pradesh, The same is reproduced as under:

5. The next piece of evidence against the appellant is that he along with Accused 2 and 3 gave information to the Investigating Officer that the ring MO 1 was sold to jeweller PW 3 Pandurangam Kondiah. Now, who gave this information leading to the recovery of this ring MO 1 left us guessing. In examination-in-chief PW 3 Pandurangam Kondiah stated that his jewellery shop is near Gulzar House, that in the course of his business he buys and sells ornaments and jewels. He deposed that on December 9, 1978, Accused 1 to 4 whom he identified in the Court, came to his shop and sold ring MO 1 to him for Rs 325. He further stated that on December 27, 1978, a Sub-Inspector of Police and some constables accompanied by Accused 1 to 3 came to his shop and Accused 1 to 3 asked him to produce MO 1 ring which they had sold to him. He stated that he took out MO

1 ring from the show-case and placed it on the box and the same was attached by the Sub-Inspector of Police under Ex. P-2. Does this evidence make any sense" He says that Accused 1 to 4 sold him the ring. He does not say who had the ring and to whom he paid the money. Similarly, he stated that Accused 1 to 3 asked him to produce the ring. It is impossible to believe that all spoke simultaneously. This way of recording evidence is most unsatisfactory and we record our disapproval of the same. If evidence otherwise confessional in character is admissible u/s 27 of the Indian Evidence Act, it is obligatory upon the Investigating Officer to state and record who gave the information; when he is dealing with more than one accused, what words were used by him so that a recovery pursuant to the information received may be connected to the person giving the information so as to provide incriminating evidence against that person. The evidence of Pandurangam, therefore, hardly provides any incriminating evidence against the present appellant. And this jeweller does not enquire how four persons unconnected with each other came together to sell one ring and that did not arouse any suspicion in him. The jeweller is undoubtedly a purchaser of stolen property. His evidence itself would require some corroboration (sic in) the circumstances of this case and none is forthcoming.

4. Counsel for the petitioner has also placed reliance on the judgment of the Apex Court in Makhan Singh Vs. State of Punjab, . Especially para 14 of the same is reproduced as under:

14. Then we are left with the recovery of the dead bodies. Investigating Officer SI Puran Singh (PW 8) admitted in cross-examination that after recording the statement of Amrik Singh he could not know the correct place where the bodies and other articles were kept buried and concealed. This clearly indicates that he could get some information from the statement of Amrik Singh. As seen earlier, the field is an open place surrounded by other fields and according to Nihal Singh the adjacent field is his own as he had taken it on lease and therefore it cannot be said that anyone else could not have known about the bodies being buried in the field. The Investigating Officer himself admitted that after recording the statement of Amrik Singh he knew that the bodies were buried in the field but he felt that information was not sufficient.

5. It cannot therefore, be said that the place from where the bodies were recovered was such a place about which knowledge could only be attributed to the appellant and none else. Since the exclusive knowledge to the appellant cannot be attributed, the evidence u/s 27 also cannot be said to be a circumstance against the appellant.

6. Reference is also invited to para 15 of the judgment of the Supreme Court in Dudh Nath Pandey Vs. State of Uttar Pradesh,

15. Were this a case of circumstantial evidence, different considerations would have prevailed because the balance of evidence after excluding the testimony of the two eyewitnesses is not of the standard required in cases dependent wholly

on circumstantial evidence. Evidence of recovery of the pistol at the instance of the appellant cannot by itself prove that he who pointed out the weapon wielded it in offence. The statement accompanying the discovery is woefully vague to identify the authorship of concealment, with the result that the pointing out of the weapon may at best prove the appellant's knowledge as to where the weapon was kept. The evidence of the ballistic expert carries the proof of the charge a significant step ahead, but not near enough, because at the highest, it shows that the shot which killed Pappoo was fired from the pistol which was pointed out by the appellant. The evidence surrounding the discovery of the pistol may not be discarded as wholly untrue but it leaves a few significant questions unanswered and creates a sense of uneasiness in the mind of a criminal court, the Court of conscience that it has to be:

How could the appellant have an opportunity to conceal the pistol in broad daylight on a public thorough fare" If he reloaded the pistol as a measure of self-protection, as suggested by the prosecution, why did he get rid of it so quickly by throwing it near the Hathi Park itself" And how come that the police hit upon none better than Ram Kishore (PW 4) to witness the discovery of the pistol" Ram Kishore had already deposed in seven different cases in favour of the prosecution and was evidently at the beck and call of the police.

7. Opposing the bail application and refuting the submissions made by the counsel for the petitioner Mr. Manoj Ohri, APP for the State submitted that the present case is the case of contract killing and the petitioner is the main accused who had hired the killer Joginder Singh Sodhi to murder the deceased S.N. Gupta. Counsel for the State further submitted that said Joginder Singh Sodhi had refused Test Identification Parade and he was duly identified by the deceased on 25.5.2006, after his refusal to participate in the TIP. Counsel for the State also submitted that even the handwriting of Joginder Singh Sodhi on the envelop when compared with the admitted handwriting was found to be of the same person by the handwriting expert of FSL. The contention of the counsel for the State is that as far as complicity of the petitioner as well as hired killer is concerned the same is beyond any shadow of doubt and even Section 3 of the IPC has been invoked against them. The recovery of weapon of offence at the instance of the petitioner is a very strong evidence connecting the petitioner with the commission of the crime, counsel for the State contended. Even the recovery of empty photo frame, black cap and photo of the deceased at the time of the interception of the petitioner while he was travelling in Esteem car with other persons is a strong indicator of his involvement in the said crime. The deliberate placement of licensed revolver by the petitioner at the office premises of Sachin Bansal was another ploy on behalf of the petitioner to mislead the prosecution to claim as if no firing was made from his licensed revolver, counsel for the State contended. Counsel for the State further contended that even the conduct of the petitioner after registration of the present FIR does not entitle him to the grant of bail as a separate FIR bearing No. 524/2006 was registered against him and two other accused persons for intimidating the witnesses with the threat to kill them

if they dared to pursue the said case. In support of his arguments, counsel for the State placed reliance on the following judgments:

Gobarbhai Naranbhai Singala Vs. State of Gujarat and Others,

Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another,

8. I have heard learned Counsel for the parties at considerable length and perused the record.

9. Vide order dated 17.5.2008, the learned trial court has already framed charges against the petitioner for the offences punishable u/s 302 r/w Section 34 IPC, Section 25 of the Arms Act and Section 201 IPC for causing disappearance of the evidence of weapons of offence.

10. The petitioner is thus facing serious charge of having committed a murder with the help of hired killer and even if he was not charged u/s 120-B IPC, he is not placed at any advantageous position as Section 34 IPC has already been invoked. Counsel for the petitioner laid much emphasis on inadmissibility of the evidence with regard to the recovery of weapon of offence the same being based on the joint pointing out by the petitioner and other co-accused Joginder Singh Sodhi. The said argument may not be of much help to the petitioner after the decision of the Apex Court in the case of State (N.C.T. of Delhi) Vs. Navjot Sandhu @ Afsan Guru, where the Apex Court has held that such joint disclosures are not per se inadmissible and to what extent simultaneous disclosure could be relied upon by the court is really a matter of evaluation of evidence. Para 145 of the said judgment dealing with this aspect of joint disclosure in a confessional statement recorded u/s 27 of the Evidence Act is reproduced as under:

145. Before parting with the discussion on the subject of confessions u/s 27, we may briefly refer to the legal position as regards joint disclosures. This point assumes relevance in the context of such disclosures made by the first two accused viz. Afzal and Shaikat. The admissibility of information said to have been furnished by both of them leading to the discovery of the hideouts of the deceased terrorists and the recovery of a laptop computer, a mobile phone and cash of Rs. 10 lakhs from the truck in which they were found at Srinagar is in issue. Learned Senior Counsel Mr Shanti Bhushan and Mr Sushil Kumar appearing for the accused contend, as was contended before the High Court, that the disclosure and pointing out attributed to both cannot fall within the ken of Section 27, whereas it is the contention of Mr Gopal Subramaniam that there is no taboo against the admission of such information as incriminating evidence against both the accused informants. Some of the High Courts have taken the view that the wording "a person" excludes the applicability of the section to more than one person. But, that is too narrow a view to be taken. Joint disclosures, to be more accurate, simultaneous disclosures, per se, are not inadmissible u/s 27. "A person accused" need not necessarily be a single person, but it could be plurality of the accused. It seems to us that the real reason for not acting upon the joint disclosures by taking resort to Section 27 is the

inherent difficulty in placing reliance on such information supposed to have emerged from the mouths of two or more accused at a time. In fact, joint or simultaneous disclosure is a myth, because two or more accused persons would not have uttered informatory words in a chorus. At best, one person would have made the statement orally and the other person would have stated so substantially in similar terms a few seconds or minutes later, or the second person would have given unequivocal nod to what has been said by the first person. Or, two persons in custody may be interrogated separately and simultaneously and both of them may furnish similar information leading to the discovery of fact. Or, in rare cases, both the accused may reduce the information into writing and hand over the written notes to the police officer at the same time. We do not think that such disclosures by two or more persons in police custody go out of the purview of Section 27 altogether. If information is given one after the other without any break, almost simultaneously, and if such information is followed up by pointing out the material thing by both of them, we find no good reason to eschew such evidence from the regime of Section 27. However, there may be practical difficulties in placing reliance on such evidence. It may be difficult for the witness (generally the police officer), to depose which accused spoke what words and in what sequence. In other words, the deposition in regard to the information given by the two accused may be exposed to criticism from the standpoint of credibility and its nexus with discovery. Admissibility and credibility are two distinct aspects, as pointed out by Mr Gopal Subramaniam. Whether and to what extent such a simultaneous disclosure could be relied upon by the Court is really a matter of evaluation of evidence. With these prefatory remarks, we have to refer to two decisions of this Court which are relied upon by the learned defence counsel.

11. Based on the above legal position, the said argument of the counsel for the petitioner may not hold much water at this stage. The subsequent registration of FIR against the petitioner vide FIR No. 524/2006, u/s 323/341/506/120-B/34 IPC also blocks the passage of the petitioner in admitting him to regular bail as there are serious allegations against the petitioner to intimidate the private witnesses. Taking the totality of the circumstances into consideration, I do not feel inclined to grant bail to the petitioner more particularly when the evidence of the material witnesses are yet to be recorded. However, considering the fact that the petitioner is in judicial custody for the last about 2 years and 7 months, the petitioner would be at liberty to move an application after the evidence of the material witnesses are recorded by the Sessions Court. The prosecution is accordingly directed to complete the evidence of the material witnesses without seeking any adjournment and the endeavor shall be made by the prosecution as well as by the concerned court to complete the evidence of the material witnesses within a minimum period of one year from the date of this order. It is made clear that nothing stated in this order shall be taken to be an expression of opinion on the merits of the case.

12. With these directions, the present bail application is dismissed.