

\* HIGH COURT OF DELHI : NEW DELHI

Bail Appl. No.2142/2009

% Judgment reserved on: 29<sup>th</sup> January, 2010

Judgment delivered on: 3<sup>rd</sup> February, 2010

Ashok Khatri  
S/o. Shri Dharampal  
R/o. 178, Rajpura Gurmandi  
Delhi.

....Petitioner

Through: Mr. K.K. Sud, Sr. Adv. with Mr.  
Kunal Malhotra, Adv.

Versus

State (N.C.T. of Delhi)  
Through Standing Counsel (Crl.)  
Delhi High Court

... Respondent.

Through: Mr. Arvind Kr. Gupta, APP.

Coram:  
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

**V.B.Gupta, J.**

This order shall dispose of second bail application filed on behalf of petitioner.

2. Brief facts of this case are that on 3.09.2005 at about 09.30 PM petitioner Ashok Khatri, Raj Kumar, Anil, Anar Singh, Anand@Dhammal, Shailender and

Dharampal went to the house of Ajay Rana. Petitioner asked Ajay Rana to come out of his house and questioned him as to why he was asking them to remove malba (debris) from the street. Victim Ajay Rana told them that since they were constructing their house in front of his house, the malba was lying on the road which obstructed their way for ingress and egress of their house and therefore he had asked them to remove the malba. On this, petitioner asked his associate to kill Ajay Rana and petitioner took a sword from his father (accused Dharampal) and stabbed Ajay Rana on his head. When Ajay Rana tried to run away he was caught hold of by co-accused Dharampal. Dharmal along with co-accused Raj kumar and Anil also attacked Ajay Rana with their respective swords. Complainant tried to save her husband but she was also pushed away and thrown on the floor. Accused Shailender also joined others and stabbed Ajay Rana with the sword which he was carrying in his hand. Ajay Rana fell down on the spot. Upon hearing noise, sister-in-law (jethani) of the complainant, Smt. Bimla and her son Saurabh also came there. They all tried to save Ajay Rana but Anar Singh and Shailender also stabbed Bimla Rana on her head with their sword and she also fell down. Thereafter, they all ran away from the spot. Deceased Ajay Rana and injured Bimla Rana were taken to Mann hospital, Shakti Nagar and from there they were taken to Trauma Center, where Bimla was admitted and due to non availability of ventilator either in Mann hospital or in Trauma Center, Ajay Rana was taken to Sanjivini Hospital where he succumbed to his injuries.

3. As per present application, bail has been sought on the following grounds;

- (i) That petitioner is in custody since 27<sup>th</sup> October, 2005 and the trial has been moving at snails pace. All the material witnesses of the fact who are in relation of the deceased, have been already examined and cross-examined;
- (ii) That there has been no delay in the trial due to petitioner or his counsel;
- (iii) That other co-accused have already been granted bail. Petitioner is the only one who has been refused bail though fatal blow is not attributed to the petitioner. Even as per the statement of PW 1 Meenu Rana, wife of the deceased, the petitioner was not armed with any weapon much less sword;
- (iv) That there is no allegation that petitioner assaulted the deceased Ajay after inconsequential attack with the small sword in any manner and;
- (v) Lastly, Aruna Suresh, J. in her common order dated 31<sup>st</sup> July, 2008 has observed that role of petitioner Ashok Khatri and Raj Kumar was at par. Thereafter, vide order dated 27<sup>th</sup> May, 2009, Dr. S. Murlidhar, J. has granted regular bail to accused Raj Kumar. On the principle of parity, petitioner also deserves to be released on bail in view of the principle laid down in **Babu Singh and Ors. vs. State of U.P., 1997 (1) SCC 579.**

4. On the other hand, as per status report filed by prosecution, Smt. Rana, wife of deceased has stated in the court that petitioner had called Ajay Rana from his house and on hearing his call she had come out with her husband Ajay Rana. Smt. Meenu Rana had further stated that petitioner had asked his associates to kill Ajay Rana that day. Petitioner had taken the sword from the hand of his father Dharampal and had hit on the head of Ajay Rana. It was the petitioner who got recovered a sword which was used by him in stabbing Ajay Rana. The same was sent to CFSL and it was found having blood stains. The blood stains found on the clothes of the deceased and that of petitioners were of 'O' Group.

5. In *Kalyan ChandraSarkar Vs. Rajesh Ranjan @ Pappu Yadav and Anr., (2004)7 SCC 528*, Supreme Court observed;

“The law in regard to grant or refusal of bail is very well settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are,

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;
- (b) Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(c) Prima facie satisfaction of the Court in support of the charge”

6. Again in *Masroor Vs State of U.P and Another,*

*2009 (6) SCALE 358,* Supreme Court observed;

“There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the Courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case. It is possible that in a given situation, the collective interest of the community may outweigh the right of personal liberty of the individual concerned”.

7. The main ground on which the second bail application has been filed is the ground of parity, that other co-accused persons have already been granted bail and as such petitioner be also granted bail.

8. In *Kalyan ChandraSarkar Vs. Rajesh Ranjan @ Pappu Yadav and Anr.,*

*AIR 2005 SC 921,* the Court observed;

“Even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier can move a subsequent application.”

9. There has been no change in the fact situation. Main villain of the crime in the case is the present petitioner. It was he who had initiated the fight and gave the first blow to the deceased on his head. Petitioner has played a major role in

causing the death of the deceased and as such he cannot be placed on the same footing as other co-accused are.

10. Under these circumstances, no ground is made out for grant of the bail. Hence, application for bail is dismissed.

11. Trial court record be sent back.

**V.B. GUPTA, J.**

3<sup>rd</sup> February, 2010  
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