

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : INDIAN PANEL CODE

Bail Application No. 1937/2008

Date of reserve: 18.03.2009

Date of decision: 23.03.2009

SHARIF

Through: ...PETITIONER
Mr.Abhinav Bajaj, Adv.

Versus

STATE

Through: ...RESPONDENT
Mr.Navin Sharma, APP

WITH

Bail Application No. 160/2009

KAMLESH KUMAR SINGH

Through: ...PETITIONER
Mr.Subhash C. Buttan, Adv.

Versus

STATE

Through: ...RESPONDENT
Mr.Navin Sharma, APP

MOOL CHAND GARG, J.

1. By this common order I shall dispose of the aforesaid two bail applications filed by two co-accused for grant of bail in FIR No.946/2004, under Sections 302/365/364-A/201/34 IPC, registered at Police Station Shalimar Bagh. The aforesaid FIR was originally filed under Section 365 IPC but was later on converted under Section 302 IPC after the arrest of Mukesh Vats/co-accused as well as the present petitioners who in their disclosure statements informed the Police that the deceased Shri Ramesh Gupta was murdered by all of them and at their instance not only the dead body was recovered but also the weapon of offence i.e. knife by which the throat of the

deceased was cut was recovered. The blood stains from the car belonging to Mukesh Vats were also recovered in which the deceased was taken by the petitioners from his house on the fateful day.

2. The present petitioners, namely, Sharif and Kamlesh Kumar Singh also moved the bail applications before the trial court but the same were dismissed vide order dated 25.4.2008 and 13.1.2009 respectively. Thereafter, the petitioners approached this court by way of the present bail applications.

3. It is submitted that the petitioners are in judicial custody since 4.11.2004 and as such, no useful purpose will be served by keeping the petitioners in custody further, more so when the principal accused, Mukesh Vats, has already been granted bail by this Court vide order dated 29.11.2007 passed in Bail Application No. 2191/2007 on the ground of long detention.

4. It is also submitted that the case of the petitioners is based on circumstantial evidence only and there is no direct evidence except the disclosure statement of the co-accused which is doubtful. It is stated that so far no incriminating evidence has come against the petitioners.

5. It is stated that there is no chance that petitioners will tamper with the evidence inasmuch as all the material witnesses have been examined and only police witnesses remain to be examined and thus, no useful purpose will be served by keeping them behind the bars.

6. It is also submitted that as one of their co-accused, namely, Mukesh Vats, has been granted bail, they are also entitled to be released on bail on parity as there is no likelihood of trial being over in the recent future.

7. It is also submitted that the fact of recovery of knife and spray is shrouded by suspicion inasmuch as no independent witness was joined by the prosecution at the time of alleged recovery.

It is further stated that the petitioners are sole bread earner of their family and a request for compassionate and liberal view is also made on their behalf.

8. On behalf of Sharif, it is submitted that he has deep roots in the society and there are no chances of his evading and/or absconding from the process of law and he is ready and willing to abide by any condition as imposed by this Court while admitting him to bail.

9. It is submitted on behalf of Kamlesh Kumar Singh that as per the case of the prosecution the gunny bag allegedly containing the dead body had been recovered on 4.11.2004 at the instance of the co-accused, however, no entry to that effect was made in the Roznamcha, nor the recovery of the dead body has been mentioned though as per the DD No. 25A the arrest of the petitioner was shown to be at 11 PM on 4.11.2004. However, as per the Arrest Memo the time of arrest has been shown as 1 PM which is contrary to the record and is motivated for falsely implicating the present petitioner. It is also submitted that no recovery had taken place from the petitioner. Neither the alleged knife was recovered nor any property belonging to the deceased was recovered from his possession which could connect him with the commission of the alleged offence and therefore, he is required to be released on bail.

10. It is further submitted that the health of the petitioner is deteriorating due to long detention and his further detention may further deteriorate his health. It is also submitted he is the permanent

resident of Delhi and as such there is no likelihood of his absconding or tampering with the prosecution evidence in case he is released on bail. It is also stated that Dr.V.K.Jha, SGM Hospital, Delhi, who conducted the post mortem on the body of the deceased in his cross-examination had specifically mentioned that if pepper spray had spread there would be a fragrance of the same and that there was no smell of such spray over the nose and since no such fragrance has been found over there, therefore, it could not be said that any spray had been used. This witness has also stated that he did not find any spot of blood on the clothes of the deceased or on the gunny bag. This witness has further stated that is person is wearing the clothes at the time of cut throat injury and there is a gush of blood even if the clothes are washed off or the decomposed body is recovered from the water, the stains and traces of blood will be found on the clothes and on the gunny bag.

11. On the other hand, counsel for the State has submitted that the petitioners cannot claim parity as their role is distinct and separate. In this regard, in the status report it is stated that at first the accused Mukesh Vats was arrested from H.No.-52, Shakar Pur Village at 1 PM on 4.11.04 and his disclosure statement was recorded. On the instance of Mukesh Vats, Kamlesh was arrested at 4 PM on the same day, i.e 4.11.2004 from Anand Dham Karala while he along with Sharif was vacating the rented house and preparing to flee away from there, he also confessed about the crime and their confessional statement was recorded. At the same time, the co-accused Sharif was also arrested with Kamlesh at 4.30 PM on 4.11.2004 at the same address and Sharif also confessed about the crime and his confessional statement was also recorded. The petitioners Sharif and Kamlesh Kumar cannot claim parity with Mukesh Vats because Sharif cut the neck of the deceased with knife and Kamlesh Kumar also participated actively in the murder.

12. In a status report filed by the learned APP for the petitioner, it is also stated that All the three arrested persons namely Mukesh Vats Kamlesh and Sharif confessed that they alongwith Sipahi lal and Raju @ Rajesh had abducted Ramesh Gupta for ransom and when he died in there custody, they disposed of his body after packing in a bag in a nala situated between Karala and Kanjhawala. At the instance of Mukesh Vats and other co-accused, the body of deceased Ramesh Gupta and a knife used for slitting the throat of deceased Ramesh Gupta were recovered. Blood spilled on the rear seat of Car no. DL-8CB-0341 used for disposing of the body along with some fibres of hair lying on the seat were lifted as exhibits and sent to CFSL for comparison and expert opinion. Hair strands lifted from the seat of the car matched with the hair of deceased. Viscera (Liver, splin and both kidneys) contained the contents of common poison known as Capsaicin (an active ingredient of chilli). Blood on the recovered knife and the blood on cloth of the seat matched. Remaining co-accused Sipahi Lal and Raju @ Rajesh could not be arrested. Sipahi lal and Raju @ Rajesh were declared as Proclaimed offenders by the Court.

13. From the perusal of the case diaries produced by the prosecution before me and the record, it appears that Mukesh Vats was arrested at 9 am and in his disclosure statement he has narrated all the facts. It is thereafter the present petitioners were arrested sometimes at about 4/4.30 pm. The prosecution relies upon their disclosure statements which they submit have been made independently and after the arrest of Mukesh Vats. It is possible that separate disclosure statement might have been recorded subsequently but most of the facts are similar. The statement of the doctor also requires consideration.

14. In the facts and circumstances of this case, the evidence which the prosecution wants to rely upon needs to be very carefully scrutinized by the Court while taking a final view of the matter. At this stage, this Court is not required to go into the merits of the allegation but taking into consideration the overall circumstances of this case and the fact that the principal accused Mukesh Vats has already been enlarged on bail on the ground of his prolonged detention that is for a period of more than four years which is also the case of the present petitioners and the said order has not been challenged by the prosecution before any higher authority, it would be appropriate to admit the petitioners on bail on their furnishing personal bond in the sum of Rs.25,000/- each with two sureties each in the like amount to the satisfaction of the Trial Court subject to the condition that the petitioners will not tamper with the evidence of the prosecution, they will not leave the territory of Delhi without the permission of the Trial Court and would cooperate with the Trial Court in disposing of the matter expeditiously and in case they have any passport they would surrender the same to the concerned SHO and will report to the concerned SHO once in every month.

15. With these observations, the bail applications are allowed. However, it is made clear that nothing stated herein will affect the case on merits.

Sd./-
MOOL CHAND GARG, J.

March 23, 2009