

2023/DHC/000460

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on: 12th January, 2023
Pronounced on: 20th January, 2023

+ **BAIL APPLN. 3202/2021**

CCL S Petitioner

Through: Mr. Prashant Kumar Mittal,
Advocates.

versus

STATE Respondent

Through: Mr. N.S. Bajwa, APP for the State
with Insp. Shiv Dutt Jaimini, SI
Babu Ram, PS ODRS.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. By this petition, the petitioner seeks regular bail in FIR No.113/2018 under Sections 302/34 IPC registered at PS Old Delhi Railway Station. The petitioner was at the time of the arrest on 13th December, 2018 aged 16 years and, therefore, has been arrayed as a CCL. Till date, the period undergone by the petitioner is approximately 3 years 1 month. The charge-sheet in the FIR has been filed and the trial is underway with 4 witnesses having been examined and cross-examined while the balance 33 odd witnesses are still to be examined.

2. The learned counsel for the petitioner contends in support of the bail petition that the petitioner was only about 16 years at the time of the alleged incident and is now aged about 20 years having old age parents. His father is a handicapped person and lives a life in penury. As per the case of the prosecution, a DD Entry No.44PP dated 16th September,

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2018 was received noting that there was a body found on Vivek Vihar Railway Station. The investigation team went to the spot and found a male body cut in two pieces with blood lying and the crime team also came and collected exhibits from the spot. The body was sent to the mortuary as unknown but on the next day one Sajiya identified the body as Samad aged 19 years as her brother.

3. As per the *post mortem*, the doctor opined the cause of death as hemorrhagic shock as a result of *ante mortem* injuries produced by a sharp edged weapon. Based upon a secret informer, the accused Deepu Kumar was arrested on 11th December, 2018 aged 22 years who disclosed that about 2-3 months back he alongwith his friend Pradeep, juvenile 'S' and juvenile 'R' were consuming liquor near Vivek Vihar Railway Station. Juvenile R had a big knife (*chapat*) with him and at about 12:00 midnight Deepu came and told him that he had snatched a mobile from a boy standing at the gate of a train and when they saw towards the direction they saw the boy saying something while pointing towards them. At about 2:00 a.m. this young person came to them and started arguing saying one of you has snatched a mobile and argument resulted. Thereupon, Deepu caught hold of his left hand, Pradeep caught hold of his right hand, juvenile 'S' also caught hold of him and juvenile 'R' assaulted him with the *chapat* whereupon he failed down and died and they took away his purse, watch and bag with them and put the body on the railway track to show it as an accident. Upon these disclosures, as per the prosecution, co-accused Pradeep and CCL 'S' and 'R' were apprehended. The tiffin box of the deceased was allegedly recovered from the house of CCL 'S'.

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4. The matter regarding CCL 'S' and 'R' was filed before the Principal Magistrate, JJB-05, Vishwas Nagar, Shahadara, Delhi and vide order dated 30th May, 2019 was transferred to the Ld. District & Sessions Judge, Tis Hazari Court to try the case as an adult. Thereupon, the trial proceeded and the petitioner (CCL 'S') was in custody, however, being retained and detained in a child home at Kingsway Camp.

5. As per the counsel for the petitioner pursuant to the *post mortem* report, a further opinion was sought by the IO which was replied to by the doctor on 02nd November, 2018 stating that "*injuries caused by train accident or homicidal or otherwise and IO is advised to collect circumstantial evidence*". Further, it was contended that there was no direct evidence against the accused and the case of the prosecution has many lacunae. As per the statement of the witnesses, Sajiya, the sister of the deceased and the brother-in-law of the deceased, they had improved on their statements given on 18th September, 2018. Further, the alleged recoveries were effected by the IO after delay of about 3 months from public places which was not supported by any independent witness and neither any videography was recorded. Merely based upon the disclosure of Deepu, who was arrested on the basis of some secret informer, as also the fact that there was no direct evidence or eyewitness of any sought regarding the presence of the accused at the scene of the crime, the learned counsel for the petitioner contended that this was a case of false implication. Even if the disclosure of Deepu was to be believed the accused had not brandished any weapon and was merely stated as being alongwith the other boys by Deepu, who had been taken into custody.

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6. The Ld. APP submitted that as per the status report the bail should not be granted since the petitioner was involved in heinous case. He further stated that the tiffin box of the deceased was recovered from the house of the petitioner on his pointing out. It is also contended that the wrist watch was recovered from the petitioner himself was wearing it at the time of the arrest.

7. This Court notes the fact that the petitioner was a CCL who was 16 years at the time of the alleged offence and has been held in a child home for the last three years and that the Nominal Roll does not indicate any previous involvement. It has been noted in the Nominal Roll that CCL has completed plumbing course in the institution from 01st May, 2021 to 22nd July, 2021 (conducted by JSS, Jahangirpuri), has also completed English course classes, attended non-formal education classes, as also participated in hair-cutting classes by Javed Habib Academy and has also attended sessions conducted by Yuva Ekta Foundation. Further, the overall institutional conduct of the CCL has been observed as good during the entire stay.

8. Taking into account these facts and circumstances as also the fact that four witnesses have already been examined and the others are merely formal witnesses since there was no eyewitness to the incident, as also the fact that the name of the petitioner cropped up only in disclosure of Deepu, who in turn had been arrested on the basis of a secret informer, and also the fact that even as per the disclosure (which is not admissible) the petitioner was not the one brandishing the knife, it would not be prudent to continue to keep the juvenile in custody considering that three years have already gone by and the trial has still a long way to go before completion. Moreover, he has no previous

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involvements and his father is apparently living in penury. Also from the report in the Nominal Roll, it seems that there has been substantial progress on the rehabilitative and reformatory process as regards the petitioner. In the same spirit, it would not be prudent to continue his detention even though the trial is expected to take some time to conclude.

9. The Hon'ble Supreme Court in *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51 observed as follows:

“12. The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India...”

The Hon'ble Supreme Court also noted the observations made by Krishna Iyer, J., in *Gudikanti Narasimhulu v. Public Prosecutor*, (1978) 1 SCC 240 as under:

“1. ... the issue [of bail] is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. ... After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of “procedure established by law”. The last four words of Article 21 are the life of that human right.”

The Hon'ble Supreme Court further made note of their observations in *Sanjay Chandra v. CBI*, (2012) 1 SCC 40 as under:

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor

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preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.”

(emphasis added)

10. In light of the above and that the trial in the matter is likely to take some time and it would not be prudent to keep the petitioner behind bars for an indefinite period, this Court finds it to be a fit case for grant of bail to the petitioner. Consequently, the petitioner is directed to be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety of the like amount subject to the satisfaction of the Ld. Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
- ii. Petitioner has given his address in the memo of parties. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.

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- iii. Petitioner shall appear before the court as and when the matter is taken up for hearing.
- iv. Petitioner shall join investigation, if any, as and when called by the IO concerned.
- v. Petitioner shall provide all his mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned. The mobile location be kept on at all times.
- vi. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the victim or any member of the victim's family or tamper with the evidence of the case.

Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

11. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.
12. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.
13. Judgment/Order be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

JANUARY 20, 2023/mk