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

% **Decided on: 04.09.2023**

+ BAIL APPLN. 2527/2023

VAIBHAV KUMAR Petitioner

Through: Mr. Nipun Katyal, Mr. Surya
Pratap Singh Rana, Advocates

versus

STATE NCT OF DELHI & ANR. Respondents

Through: Mr. Manoj Pant, APP for State
with SI Ankur, PS Rajouri
Garden

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

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SWARANA KANTA SHARMA, J.(ORAL)

1. The instant application under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of applicant seeking grant of regular bail in case FIR bearing no. 1525/2014, registered at Police Station Rajouri Garden, Delhi for the offences punishable under Sections 326A/392/397/411/120B/34 of the Indian Penal Code, 1860 ('IPC').

FACTUAL BACKGROUND

2. Briefly stated, the facts of the present case are that on 23.12.2014, a PCR call was received *vide* DD No. 30B whereby it was informed that an acid attack had taken place in main market of Rajouri Garden, after which, the concerned police official had reached the spot and had found one scooty parked there on which some droplets of chemical were found. In the meanwhile, another information was received *vide* DD No. 33B that the victim Dr. 'A' had been admitted at ESI Hospital, Basai Darapur, Delhi, as she had sustained serious injuries on her face and eye due to acid being thrown at her. Thereafter, the victim was referred to AIIMS Hospital, Delhi for further treatment. Accordingly, the investigating officer had reached the hospital and recorded the statement of the victim/complainant Dr. 'A' who had stated that on the day of incident i.e. 23.12.2014 when she was going to Hospital 'H' where she was working as a Senior Resident Doctor, at about 09:20 AM, when she had reached Main Market, Rajouri Garden, two persons on a motorcycle had snatched her brown colour bag and



one of the persons riding the motorcycle had thrown a chemical on her face which had affected her right eye, face and right hand. It was stated that immediately thereafter, she had started feeling burning sensation and when she had started to scream loudly, both the attackers had fled from the spot alongwith her bag. Thereafter, the police had visited the spot again, and had found chemical drops lying on the handle and head lights of the scooty and also on the seat of the scooty and on the ground, which were picked up with the help of crime team. On the basis of the statement of victim, inspection of the spot and MLC of the victim, the present FIR was registered under Sections 394/326A/34 of IPC.

ARGUMENTS ADDRESSED BY THE COUNSELS

3. Learned counsel for the applicant states that no motive can be attributed to the present accused/applicant, and that he is not the alleged main conspirator. It is stated that the applicant was only working as compounder of the main accused who was allegedly the main conspirator and was a one sided lover of the victim and had planned a revenge on her. It is stated that the minimum punishment in this case is only ten years and the accused has already been in judicial custody for last nine years. It is argued that the present applicant was acting under instructions of the main accused, and had no personal motive to commit the act. It is further stated that Article 21 of the Indian Constitution has to be considered while dealing with cases of long incarceration and nothing can be more important than right to life



and personal liberty.

4. Learned APP for the State, on the other hand, argues that the allegations against the applicant are serious in nature. It is stated that the applicant was one of the main conspirators of the incident, and was actively involved in the planning and plotting of the entire act. It is further stated that the victim has suffered injuries in her right eye with 41% disability and therefore, no ground for bail is made out at this stage.

5. This Court has heard arguments addressed by both the learned counsel for applicant/accused and learned APP for the State and perused the material placed on record.

ANALYSIS AND FINDINGS

i. Principles Governing Grant of Bail

6. The applicant in the present seeks regular bail under Section 439 of Cr.P.C. The Hon'ble Apex Court in case of ***Deepak Yadav v. State of Uttar Pradesh (2022) 8 SCC 559***, after analysing several judicial precedents, had made the following observations with regard to grant of bail:

"A. Principles governing grant of bail

20. Section 439 of the Cr.P.C is the guiding principle for adjudicating a Regular Bail Application wherein Court takes into consideration several aspects. The jurisdiction to grant bail has to be exercised cautiously on the basis of well-settled principles having regard to the facts and circumstances of each case.

22. As reiterated by the two-Judge Bench of this Court in ***Prasanta Kumar Sarkar Vs. Ashish Chatterjee And Another***, it is well-settled



that the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any **prima facie or reasonable ground to believe** that the accused had committed the offence
- (ii) **nature and gravity of the accusation;**
- (iii) **severity of the punishment in the event of conviction;**
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

25. For grant or denial of bail, the “**nature of crime**” has a **huge relevancy**. The key consideration which govern the grant of bail were elucidated in the judgment of this Court in *Ram Govind Upadhyay Vs. Sudarshan Singh*, wherein it has been observed as under: -

“4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

- (a) While granting bail **the Court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.**
- (b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the Court in the matter of grant of bail.
- (c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a **prima facie satisfaction of the Court in support of the charge.**



(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

(Emphasis supplied)

ii. The Object Behind Enactment of Section 326A of IPC

7. By way of the Criminal Law (Amendment) Act, 2013, the Indian Parliament had introduced Section 326A in the Indian Penal Code with the aim of curbing acid attacks and providing justice to the survivors. The provision reads as under:

“326A. Voluntarily causing grievous hurt by use of acid, etc.—

Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.”

8. The Statement of Object and Reasons of the Criminal Law (Amendment) Bill, 2013 mentions the following with respect to acid attacks:

“...4. The Criminal Law (Amendment) Bill, 2013 seeks to amend the Indian Penal Code, 1860, the Criminal Procedure Code, 1973,



the Indian Evidence Act, 1872 and the Protection of Children from Sexual Offences Act, 2012. These amendments seek to:—

(a) make specific provisions for punishment for the offences of causing grievous hurt by acid attack and also for an attempt thereof;..”

9. Before the introduction of Section 326A, acid attacks in India were not sufficiently covered by the law. These attacks, which were frequently driven by reasons like revenge, jealousy, or rejection, caused the victims great anguish and left them maimed and traumatized for life. Considering the gravity of this issue, the government had recognized the need to have a specific provision in law to provide strict punishment in cases of acid attacks.

iii. The Prosecution Case: In a Nutshell

10. This Court notes that as per the evidence collected and the testimonies of the witnesses recorded, the prosecution in the present case after registration of FIR had examined the CCTV footage which revealed that two persons had committed the offence, whose photographs were developed from the CCTV footage. Further, CCTV footage of the route taken by the victim was also analyzed which revealed that the accused persons had been chasing the victim from her home at Hari Nagar on the day of incident. During investigation, Call Detail Records (CDR) of the mobile phone of the victim were also analysed which revealed that she used to regularly talk to one Dr. Ashok i.e. co-accused on his two mobile numbers and upon further investigation, it was found that they were close friends. As per prosecution, when the co-accused Dr. Ashok was interrogated, he had



stated on the night intervening, i.e. 22/23.12.2014, he was at his home, and on 23.12.2014 at about 09:30, he had received a call from the victim informing him that someone had snatched her bag and had thrown the chemical on the face and he had reached the spot and taken her to hospital. However, during investigation, analysis of the CDR of co-accused Dr. Ashok revealed that his location on the night of 22/23.12.2014 was at Hari Nagar near the house of the victim whereas he had informed that he was at his home situated in Mayapuri. Further analysis of the mobile phone of co-accused Dr. Ashok revealed that since 05.12.2014, he had been in touch with some person having mobile number *****020 and upon examination of CDR and ownership of mobile on 25.12.2014, it was found that the said number belonged to one Laxmi who then informed to the police that the phone number was being used by her son Vaibhav Kumar i.e. the present accused/applicant. On interrogation, the applicant Vaibhav Kumar informed the police that the offence was committed as per planning and directions of co-accused Dr. Ashok. He also disclosed that Dr. Ashok had informed him that he was in love with victim Dr. 'A', who was working as a doctor with him at Hospital 'H' and she was making a fool of him by telling him that she will marry him but now she was marrying some other person. Since he wanted to teach her a lesson and take revenge from her, he had asked the applicant that he wanted a person who can throw acid on her face so that her marriage will break and no one will marry her and she will be forced to come back to him. Dr. Ashok also asked the applicant that before throwing acid, bag and purse of the victim should be snatched and her personal diary should be



handed over to him so that he can come to know about the person with whom she is in relationship with. As per investigation, the applicant/accused Vaibhav Kumar had arranged two of his friends i.e. JCL 1, who drives motorcycle at very high speed, and JCL 2, who are involved in many cases of chain snatching, etc. Thereafter, the present applicant/accused had arranged the meeting of both the juveniles with co-accused Dr. Ashok who had informed them about the route taken by the victim from her home to reach the Hospital 'H' and that acid can be thrown easily on her in the morning. Co-accused Dr. Ashok had further told them that he will provide syringes through which acid can be poured on the victim and had also asked them to use stolen bike so that even if someone notes down the number of the bike, they do not get identified. The deal was finalized for Rs. 25,000/- and co-accused Dr. Ashok had given them Rs. 12,000/- as advance. The present applicant/accused Vaibhav Kumar had kept Rs. 2,000/- with himself, and had given Rs. 5,000/- each to the juveniles. As per prosecution, co-accused Dr. Ashok had taken both the juveniles several times for doing *reki* of the route and they used to have rehearsals and during the rehearsal, co-accused Dr. Ashok used to bring the scooty of the victim, and juveniles used to throw water from syringe on Dr. Ashok's face using Dr. Ashok's bullet motorcycle, and Dr. Ashok used to watch the rehearsal and point out the shortcomings. Co-accused Dr. Ashok had asked the juveniles to arrange acid and instructed the present applicant/accused to get the work done at the earliest. Before the day of incident, the juveniles had tried to perform the act 2-3 times but they had not been successful. A day before the date of incident, they all had



again met in the park, and JCL 1 and JCL 2a, both juveniles had informed that they had already stolen one bike on the intervening night of 20/21.12.2014 and co-accused Dr. Ashok had asked them to throw acid on the victim on 23.12.2014 at all costs and that before pouring acid, her purse should be snatched. The CDR of the present accused applicant revealed that he was in constant touch with the juveniles on their mobile phones. The recorded conversation with Dr. Ashok of the present accused applicant was also recovered. Accordingly, the present accused/applicant and co-accused Dr. Ashok were arrested. **At the instance of present accused/applicant**, one ladies bag belonging to the victim was made from the almirah of the house of present accused which had been snatched by the juveniles. The bag contained documents, money, cosmetic articles, a stethoscope, slips of Hospital 'H', a photograph of father of the victim, etc. Also at the instance of the present accused/applicant, one black colour student bag given by him to the juveniles was taken into possession. At the instance of the present accused/applicant, the juveniles were also apprehended, interrogated and then arrested. Recoveries were made from the co-accused also. Thereafter, the chargesheet was filed in the present case.

iv. Analysis of Evidence Against The Accused

11. The present case narrates the **unfortunate story of a qualified doctor** aged about 30 years, working as a senior resident in a Government hospital in Delhi, who became a victim of acid attack in broad daylight in a thickly populated area of Delhi, pursuant to an



alleged plan and conspiracy of the co-accused Dr. Ashok whose marriage proposal was rejected and his advances were repelled by the victim. The present accused/applicant as stated by learned counsel for the applicant himself, was assistant and compounder of the co-accused Dr. Ashok whose marriage proposal and relationship advances and overgrowing possessiveness and interference was repelled by the victim. The co-accused Dr. Ashok had himself confided in the present accused that the victim was contemplating getting married to some other person and he wanted her face to be disfigured for life to the extent that no one will get married to her and she would be forced to come back to him. He wanted to take revenge and the present accused/applicant, as per prosecution story and investigation, not only hired the juveniles in this case being known to him to carry out the heinous offence but also participated in the entire plan from the beginning. From the point of making the plan by co-accused Dr. Ashok, to the point of carrying out rehearsals by using water in syringes provided by the co-accused, to doing *reki* of the area and route which was taken by the victim, to identification of the victim by the juveniles, and the present accused throwing acid and procuring the same, coordinating between the juveniles and the co-accused, to disposing of the articles snatched from the victim by the co-accused(s), he has been a part of it all.

12. In this case, the articles belonging to the victim were recovered from the home of the present applicant, the co-accused were arrested at his instance, the Call Detail Records of the applicant and the co-accused(s) as well as the screenshots of conversations between the



applicant and accused Dr. Ashok, the recorded conversation of the present accused with the co-accused regarding commission of offence and prior to it, the plan to execute it seamlessly, are part of the investigation and before the Court. The accused herein was aware of the consequences of throwing acid on the face of the victim. This Court observes that the accused/applicant in the present case had meticulously devised and rehearsed a plan to commit this heinous act, with the clear intention of devastating the victim's future.

13. This Court has gone through the medical report which is on record. In this case, the victim who stands before this Court has suffered almost 41% of physical disability of her right eye. She was however, 30 years old at the time of incident and was unmarried. She has been almost punished for her entire life as she would not be able to see the world that she had seen with her both eyes. The physical disability that the victim has suffered may not be understood by a large majority.

14. Throwing acid on a girl or any other person with a view to disfigure their faces etc. with a malice so atrocious so as to disfigure and disable a person for life, as in the present case when she was on verge of getting married to another person, knowing-fully well that she will have to live with disfigured face for life, is a very serious offence.

v. Heinousness of Offence vs. Long Period Of Incarceration of Accused

15. In the present case, the learned counsel for the applicant has



argued that the applicant/accused has been in Judicial Custody for the last 9 years, and the conclusion of trial will still take some time and therefore, this Court should release him on bail, though he admits that the minimum sentence in this case is ten years and maximum up to life imprisonment.

16. Thus, this case presents before this Court a proposition to decide as to how the heinousness of the offence should be weighed in relation to the long period of incarceration of the accused at the time of considering grant of bail.

17. **A heinous crime such as acid attack on a woman, disfiguring her for life, in broad daylight in a thickly populated area due to a love proposition repelled by the victim, can evoke strong emotions in the society in addition to inflicting grave psychological trauma to the victim. It is in such situations and cases that the Court's role as a guardian of justice needs to come to the fore.** The Courts have to remain steadfast in its commitment to following due process of law, fairness of procedure and justice, and upholding individual fundamental rights, even when dealing with the most abhorrent offences.

18. This Court is, thus, presented with this challenging task of deciding the bail application of the accused who has allegedly committed this heinous crime, while remaining conscious of his fundamental right of speedy trial and personal liberty as an accused and the complainant/victim who stood before this Court with her side of story of unending trauma, within the framework of law. All this while, this Court remains conscious of the fact that both the parties seek



justice from this Court and this Court has to pass an order which will reflect the intricate process that justice follows and pass an order which will uphold the society's faith in the legal system whether as a victim or an accused.

19. The learned counsel for the applicant repeatedly argued that there can be nothing more important than the personal liberty of a person as guaranteed under Article 21 of the Indian Constitution. It was also argued that this Court has to use its discretion in a judicious manner while deciding application for bail, guided by the principles of bail that the rule is bail not jail. In this regard, the learned counsel in his pleadings has quoted that in the case of *Gudikanti Narasimhulu v. Public Prosecutor (1978) 1 SCC 240*, V.R. Krishna Iyer, J., sitting as Chamber Judge, enunciated the principles of bail thus:

"What, then, is "judicial discretion" in this bail context in the elegant words of Benjamin Cardozo:

The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to "the primordial necessity of order in the social life". Wide enough in all conscience is the field of discretion that remains.

Even so it is useful to notice the tart terms of Lord Camden that the discretion of a Judge is the law of tyrants: it is always unknown, it is different in different men; it is casual, and depends upon constitution, temper and passion. In the best, it is oftentimes caprice; in the worst, it is every vice, folly and passion to which human nature is liable..."

20. Further, learned counsel for the applicant has argued that one has



to remember that the Constitutional focus in Article 21 and 19 is on life and personal liberty, and dignity of a person. It is further argued that a judge in a Court of law is not a knight-errant who is roaming at will in pursuit of his own ideal of beauty or of goodness. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to "the primordial necessity of order in the social life".

21. In this regard, this Court cannot be in disagreement with the learned counsel for the applicant. **Therefore, following the same principle of not acting as a knight errant as argued by the learned counsel for applicant, this Court cannot close its eyes to the unseen psychological pain, and the aftermath faced by the victim which continues throughout her life and how this incident may have evoked fear and insecurity in many girls in the society.**

22. Exercising the discretion is a sensitive duty of a Court and a Court will fail in its duty in case only physical pain is assessed and it ignores the unseen, unheard, inaccessible psychological trauma and pain that an acid attack victim lives through everyday.

23. **While the accused may bemoan his long incarceration while the trial is concluding, he wants to come out of the jail to breath in fresh air and be the same person again, this Court while exercising judicial discretion cannot ignore that the victim has to wear black glasses, most of the time of her life as she did in the Court, lest questions or questioning eyes about the scar marks on her face again traumatize her every moment of life taking away the**



pleasure of leading a normal life in future.

24. This Court notes that there is no doubt about the fact that the trial has proceeded for long. **As the agony of the accused of long incarceration in jail due to a prolonged trial has to be appreciated by a Court, on the similar lines, the wait of a victim for justice cannot be lost sight of.** This Court agrees that the accused is in jail for long and his personal liberty has been curtailed, but at the same time, in the present case of acid attack, the victim who has suffered about 41% disability of the right eye and un-assessable fear, anxiety and psychological pain is also hostage of an unseen psychological trauma lived every day.

25. **This Court cannot but shudder at the thought of her emotions, whenever she looks into the mirror and is reminded not only of the incident and the pain she has gone through but also the face she has lost forever which she was born with, and the ability to see the world with two beautiful eyes given by the God one of which has been snatched due to the incident in question.**

vi. Societal Impact of Such Bail Orders

26. Bail orders passed by the Courts play a crucial role in **shaping societal perceptions and behaviours**, as they reflect the judiciary's stance on specific matters and can serve as deterrents to certain offenses. It is essential for the Courts to bear this responsibility in mind when deliberating on bail applications.

27. **This Court remains acutely conscious of the far-reaching consequences of its decisions, particularly in cases involving**



heinous crimes such as acid attacks. These acts of violence not only inflict physical and psychological trauma on victims but also sow seeds of fear and insecurity in society. Hence, it is essential that the Court establishes a formidable deterrent against such offenses.

28. This Court notes that **Acid attacks, characterized by their sheer brutality and devastating consequences, are among the most grievous crimes in contemporary society.** These attacks often result in life-altering injuries, causing not only physical pain but also emotional scars that may never heal, like in the present case, wherein the victim suffered 41% disability in her right eye. Moreover, acid attacks send shockwaves through communities, spreading fear and anxiety. **In this context, the Court's role in granting or denying bail is of vital significance.**

29. In conclusion, bail orders passed by the Court have a far reaching effect on the society which can be at times beyond an individual case at hand. Such orders have to carry the responsibilities of the Courts towards societal expectations and serve as a means of preventing and discouraging crimes like acid attacks. The Court, cognizant of its role as a guardian of justice and a protector of society, must employ its authority judiciously to ensure a safer, more just, and compassionate world for all.

CONCLUSION

30. Thus, to exercise discretion of benevolence of the Court in such cases in favour of the accused in face of evidence on record, at this



stage, will not be discretion exercised judiciously for granting bail.

31. Therefore, considering the seriousness and gravity of the offence and in view of foregoing discussion, this Court finds no reasons to grant bail to the applicant/accused at this stage.

i. Directions to the learned Trial Court

32. This Court, however, **expresses its displeasure** that the trial has been prolonged to nine years. Since this Court at this stage cannot comment as to whether it was partially on account of any delay caused on part of the accused, it will serve ends of justice if the seven witnesses which remain to be examined are examined on a **day-to-day basis** and the trial is concluded within **four months**.

33. The learned Trial Court will ensure that this case is taken up on top priority, is taken up on day-to-day basis for recording evidence of the remaining seven witnesses, not grant adjournment to any party. The concerned DCP will ensure that the witnesses appear before the Court on the day they are summoned, which is essential since it is an old case and some of the witnesses may have been transferred from one police station to another and some may have retired. The learned APP concerned will remain present in the Trial Court to examine the witnesses and in case of non-availability of learned APP for the State, the concerned Chief Prosecutor will make necessary arrangements for a substitute APP for the State for examination of the witnesses. The learned defence counsel will not take adjournment for cross-examination of the witnesses. In case the trial is not concluded within four months, the learned defence counsel will be at liberty to file a



fresh bail application before this Court.

34. A copy of this judgment be forwarded to the learned Trial Court forthwith for necessary information and compliance.

35. Accordingly, the present application stands disposed of, in above terms.

36. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

SEPTEMBER 4, 2023/ns