

Session case no. 88/2018

FIR No.834/17
P.S. Narela
State Vs. Savinder @ Pagal & Anr.
U/s 302/201/34 IPC and 27 Arms Act

04/02/2020

Present: Sh. Girish Giri, Id Substitute Additional P.P for State.
Accused Savinder @ Pagal (A-1) has already been
discharged vide order dated 24/08/2018.
Accused Yudhvir @ Kalu (A-2), Rajesh @ Kala (A-3) and
Kapil @ Yogesh (A-4) are produced from J.C.
Sh. Nitin Vashisht, Id. counsel for all the accused
persons.
Sh. S.P. Dhankar, Id. counsel for the complainant.
IO Inspector Ram Manohar is present in person.
Heard. Perused.

PW-12 Yogesh Dahiya is examined and his cross-examination
on behalf of the accused persons is recorded as nil and opportunity given as
it is chosen not to cross-examine the said witness.

PW13 Ct Dara Singh is partly examined-in-chief. His further
examination-in-chief is deferred for after lunch.

Put up after lunch for recording of further examination-in-chief
of PW13.

(Ashutosh Kumar)
Addl. Sessions Judge: 04 (North)
Rohini Courts: Delhi: 04/02/2020(A)

Called again after lunch

Present: As before.

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PW13 Ct Dara Singh is called again after lunch and is further partly examined-in-chief. His remaining examination-in-chief is deferred as the remaining case property i.e. empty cartridges, leads and live cartridge has not been produced. IO submits that said part of the case property has not been received as ballistic report has not been given by FSL. However a letter dated 31/01/2020 addressed to this Court by HOD (Ballistics) , FSL, Rohini, Delhi, has been received, wherein it is mentioned that the said ballistic report shall be ready on 28/02/2020 between 2.00 to 5.00 p.m. Issue notice to SHO concerned to collect the same along with the aforesaid part of the case property and produce the same on record. A copy of the order be served upon SHO concerned for information and compliance.

Ld. counsel for the accused persons has pressed the pending bail application of accused Kapil @ Yogesh @ Sonu.

Arguments heard.

Ld. counsel for the applicant has submitted that the case of prosecution started with the phone call to PCR at phone no. 100, contents of which were recorded vide DD no. 119B dated 30/10/2017 at 8.50 p.m., wherein it was mentioned that one person was shot and taken to Raja Satyawadi Harish Chandra Hospital, but the said caller has not been made a witness.

contd.3

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He has further submitted that it is the admitted case of prosecution that the injured was not in a fit condition to give his statement and he expired on 24/11/2017. He has also submitted that the case of prosecution against the applicant is primarily based on statements of two alleged eye witnesses i.e. PW6 Vijay (brother of the deceased) and PW10 Anil (friend of complainant/brother of the deceased) and one CCTV footage qua the incident, but PW10 Anil has not identified the accused persons including the applicant as the assailant and has stated in his cross-examination that PW6 Vijay was not present at the spot and reached the hospital straightaway. He has also stated that in view of the said deposition of PW10 Anil, the presence of PW6 Vijay has been negated and even otherwise PW6 Vijay is an interested witness being brother of deceased and his testimony cannot be relied upon. He has further submitted that from the FSL report, it is clear that the DVR pertaining to the alleged CCTV footage of the incident could not be retrieved and hence the purported CCTV footage played in the Court through CD qua the same, cannot be relied upon in the absence of the said footage being duly proved from the DVR. He has further submitted that the applicant is in custody since 26/03/2018 and has accordingly requested that the applicant may be enlarged on bail.

contd.4

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Per contra, Id. substitute Addl. PP for the State assisted with Id. counsel for the complainant and IO has strongly opposed the bail application on the ground of nature and gravity of offences. He has further submitted that merely because PW10 Anil has not identified the applicant as one of the assailants, testimony of PW6 Vijay (the other eye-witness) cannot be discarded on the ground that he is an interested witness or because PW10 Anil has claimed that PW6 Vijay was not present at the spot. He has further submitted that meticulous examination of the evidence cannot be done at this stage of deciding the bail application. He has further submitted that in the CCTV footage of the incident played on record in the testimony of prosecution witnesses, the applicant is seen firing at the deceased. He has further submitted that another DVR qua CCTV footage with respect to exchange of pistols by the accused persons including the applicant just sometime before the incident, prima facie incriminates the applicant.

Ld. counsel for the complainant has submitted that conversation of accused persons while being in jail was tapped by the Special Cell in which the accused persons were planning to liquidate PW6 Vijay so that he may not depose in the Court and in that regard FIR no. 42/18 of PS Special

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Cell, u/s 115/120B IPC & u/s 25 of Arms Act, was registered as some of the assailants were caught red-handed with arms.

The detailed analysis of prosecution witnesses cannot be done in the manner Id. counsel for the applicant has argued at this stage of hearing on the bail application. The same can be done only at final stage. There is prima facie incriminating material against the applicant including testimony of PW6 Vijay. Merely on the basis of testimony of PW10 Anil, it cannot be said at this stage that PW6 Vijay was not an eye-witness to the incident or was not present at the spot or had not witnessed the incident.

I find force in the submissions of Id. substitute Addl. PP for the State and Id. counsel for the complainant.

Considering the nature and gravity of offences and the alleged role of the applicant and prima facie incriminating material against him, I am of the considered opinion that this is not a fit case for grant of bail to the applicant at this stage. Accordingly the bail application is dismissed. Dasti.

Re-notify for RPE on 14/05/2020 and 15/05/2020.

(Ashutosh Kumar)
Addl. Sessions Judge: 04 (North)
Rohini Courts: Delhi: 04/02/2020(A)