

FIR No. : 332/16
PS : Pahar Ganj
State v. Amit Nayak etc.

06.12.2017

Present: Sh. Sunil Tiwari, Counsel for accused Tarush in
bail application no. 295/17.

Sh. Rohan Kanhai, Counsel for accused
Montu in bail application no. 300/17.

Sh. Naushad Ali, Counsel for accused Danish in
bail application no.297/17.

Sh.Wasi-Ur-Rehman, Addl. PP for the State with
Sh. R.N.Singh, Counsel for the complainant.

Arguments advanced on three bail applications.

Wait for orders.

(Narinder Kumar)
Special Judge NDPS – 02 (Central)
Tis Hazari Courts, Delhi.06.12.2017

ORDER

Learned Counsel for accused-applicants namely
Tarush, Danish and Montu have submitted that these three
applicants are entitled to bail on the ground of parity as
Himanshu co-accused (non-applicant) has already been
allowed and their role is not different from Himanshu-co-

accused.

2. Ld. Counsel for the applicants have also submitted that in the disclosure statement attributed to the co-accused, no specific role can be said to have been assigned to any of these three applicants. Further, it has been submitted that once the accused-applicants had refused to participate in Test Identification Proceedings on 6.9.2016, their identification by PW Sunil Dass on 29.10.16 (as per his supplementary statement recorded on that day), does not improve the fate of the case of the prosecution.

In support of his contention, Learned Counsel for accused Tarush has relied on decision in **Pradeep Kumar v. State (Govt. of NCT, Delhi)** 2007 {1} JCC 430; and **Rajender Singh Sachdeva v. State (NCT of Delhi)** 2008 (2) JCC 979.

Sh. Rohan Kanhai, Counsel for accused Montu has referred to following decisions:-

1. **Pawan Kumar Gupta v. State (NCT of Delhi)** 2007 (1) JCC 164;
2. **Rahul @ Monu v. State (NCT of Delhi)** 2009 (2) JCC 972;
3. **Dharampal v. State of Haryana** 2012 (1) LRC 411 (P & H),

4. **Rahul Tongaria v. NCT of Delhi** 2016 (3) JCC 1992;
5. **Shamsher v. State of Haryana** 2009 (2) RCR (Criminal)
6. **Aman Gaur v. State** 2012(1) JCC 415.

3. Learned Addl. Public Prosecutor has opposed the three bail applications on the ground that in the disclosure statement made by Prince and Amit Sharma-accused, names of the accused-applicants with the role played by each one of them stands recorded; that the accused-applicants were arrested on 5.9.2016 on the basis of disclosure statements and one knife was recovered from Amit Nayak and Prince-accused; that accused-applicants refused to participate in Test Identification Proceedings on 06.09.2016 but thereafter, in his supplementary statement recorded on 29.10.16, Sunil Dass identified the accused-applicants as assailants.

Reference has also been made to the statements made by PW Chotey Lal, another eye witness recorded on 3.9.17, 7.9.17 and 17.11.17. It has also been submitted that case is coming up for recording of prosecution evidence and there is possibility of threat being extended by the accused-applicants to the material witnesses Sunil Dass and Chotey Lal.

As regards grant of bail to Himanshu, co-

accused, Learned Addl. Public Prosecutor submits that the Addl. Public Prosecutor who argued the bail application while he was on leave on that day, did not point out that in his supplementary statement recorded on 29.10.2016, PW Sunil Dass had identified all the accused persons as the assailants and that State is going to move an application for cancellation of bail allowed to Himanshu accused as correct facts were not put up before this court by Substitute Addl. Public Prosecutor while arguing the bail application of Himanshu-accused.

Occurrence took place on 02.09.2016 in which murder of Arvind @ Surender @ Babloo was committed and attempt was made to commit murder of Ajay PW. Grievous injuries were also inflicted on the person of Rahul and Vinod.

Charge has been framed against the accused persons, prima facie case having been made out for an offence under Section 302 IPC against **Amit Sharma accused** and as against the remaining seven accused, prima facie case having been made out for the same offence with the aid of Section 149; for an offence under Section 307 IPC against **Prakash accused** and as against the remaining seven accused, prima facie case having been made out for the same offence with the aid of Section 149;

for an offence under Section 326 IPC against **Amit Nayak accused** and as against the remaining seven accused, prima facie case having been made out for the same offence with the aid of Section 149; for an offence under Section 326 IPC against **Prince accused** and as against the remaining seven accused, prima facie case having been made out for the same offence with the aid of Section 149; for an offence under Section 323 IPC against accused **Himanshu, Montu** (applicant), **Tarush** (applicant) and **Danish** (applicant) and as against the remaining four accused, prima facie case having been made out for the same offence with the aid of Section 149.

Case was registered on the statement of Sunil Dass. He specifically deposed about both the incidents and also about use of knives in inflicting injuries by the offenders on the persons of Vinod, Azad and Arvind @ Surender @ Bablu. In the opinion of the doctor, stab injury was observed on the dead body of Arvind Kumar @ Surender @ Bablu and the same was fatal in ordinary course of nature.

At the outset, it may be mentioned that bail application no. 103/17 filed on behalf of accused Tarush was dismissed on merits, and vide detailed order dated 19.4.2017. The only fresh ground put forth on his behalf is

the ground of parity as his co-accused Himanshu has been allowed bail vide order dated 16.11.2017.

In Pradeep Kumar's case (Supra), no specific role was ascribed to the petitioner wherein prior to the death of the deceased which could be said to have resulted in his death and there was only general allegation of exaltation by the group in common. Herein, names of the accused-applicants have appeared in the disclosure statement of the co-accused and the witnesses have specified their participation in the crime committed by an unlawful assembly, each member of which becomes liable for the act done by the other u/s 149 IPC.

In Rajender Singh's case (Supra), the occurrence had taken place about 16 years prior to the complaint and the petitioner was not named in the FIR. Incident was also absent in the first reported documents. Therein, the allegations against the petitioner surfaced only u/s 161 Cr.P.C. Herein, firstly, the accused-applicants were named by co-accused in their disclosure statements; secondly, they refused to participate in Test Identification Proceedings and

thirdly, two weapon of offence i.e. knives were got recovered by two of the co-accused in pursuance of their disclosure statements and report of FSL in respect of knives is awaited from FSL.

So far as grant of bail to Himanshu accused is concerned, on 16.11.2017 Ld. Addl. Public Prosecutor attached to this court was on leave. In his place, Sh. Parvesh Kumar Ranga, Substitute Addl. Public Prosecutor argued the application. Learned Substitute Addl. Public Prosecutor could not point out that after refusal of the accused persons to participate in Test Identification Proceedings, PW Sunil made statement before the police u/s 161 Cr.P.C that the accused-applicant and others named therein were the assailants and therein, the witness also specified the role played by them.

On 3.9.2016, police arrested/apprehended juvenile Arjun and accused Prince and Amit Sharma. During interrogation, Prince made disclosure statement on 5.9.2016 specifically naming the three accused-applicants and also Himanshu, Amit Nayak, Akshay, Manish and Pawan (non-applicants). He also specified the role played by each one of them at the time of occurrence. He also disclosed about use of knife by him, Amit Nayak, Amit

Sharma and Prakash and dandas by other companions.

The three accused-applicants, non-applicants Amit Nayak, Prince and Himanshu were arrested on 5.9.2016. They also made disclosure statements. Prince and Amit Nayak accused are said to have got recovered a knife each.

In his first supplementary statement u/s 161 Cr.P.C recorded on 7.9.2016 PW Sunil stated having identified Prince and Amit Nayak. He also stated therein that these two accused had returned to the spot after some time accompanied by 10-12 others on bikes and scooty. Sunil Dass also specified the role played by Prince and Amit Nayak.

Suraj and Chotey Lal, PWs also made supplementary statements to the same effect.

In his third supplementary statement recorded on 29.10.16, Sunil Dass pointed out towards Amit Nayak as the offender who had inflicted injuries on the person of Rahul and also identified Montu, Akshay, Danish, Tarush and Himanshu as the persons who were armed with dandas at the time of occurrence and who had inflicted injuries whosoever was seen by them.

Prior thereto, on 6.9.2016, the accused-applicants refused to participate in Test Identification

Proceedings. It is true that Sunil Dass happened to identify the three accused-applicants and their companions named above, on 29.10.2016 when they were brought to court for the purpose of extension of their judicial remand, at the stage, no adverse inference can be drawn against the prosecution at this stage, the reason being that PW Sunil Dass may explain in his statement as to how he happened to visit on 29.10.2016 and verified identity of these accused persons. Accused-applicants are also to explain non-participation in the Test Identification Proceedings when called upon to do so.

Record reveals that scooty recovered on 5.9.16 at the instance of Tarush accused-applicant was also identified by Sunil Dass PW as the one used at the time of occurrence, as is available from the supplementary statement recorded on 12.9.16.

Decision in Pawan Kumar Gupta's case and Dharampal's case (Supra) pertain to grant of anticipatory bail and are not applicable to the present case.

In Rahul @ Monu's case (Supra), it was observed that even if it be assumed that petitioners were there present on scene of incident, they shared

intention of causing disturbance in the marriage pandal, they did not have the knowledge that co-accused was possessing a knife and he would inflict the fatal injury. Herein, the accused-applicants reached the spot together after the first limb of the occurrence and indulged in commission of crime while the weapons were in the hands of some of the co-accused.

In Shamsheer's case (Supra) FIR was u/s 307 IPC and that was not a case of commission of offence u/s 302 or by any unlawful assembly.

In Aman Gaur's case (Supra) prosecution case was based on CCTV footage alone. Herein, the accused-applicants came together in the form of unlawful assembly and indulged in commission of the crime.

In Rahul Tongari's case (Supra) accused was allowed bail on the ground of parity, but herein when Ld. Addl. Public Prosecutor has submitted that application is going to be filed for cancellation of bail granted to accused Himanshu because Substitute Addl. Public Prosecutor could not put forth true facts, accused-applicants are not entitled to bail on the

ground of parity.

Pawan Kumar Gupta's case (Supra) is also of no help to the accused-applicants as therein it appeared that petitioner could not have taken active part in occurrence because of his particular medical condition.

Having regard to all the facts and circumstance, decision in Aman Gaur's case (Supra) also does not come to the aid of the accused-applicants.

4. In view of all this, when case is coming up for prosecution evidence and complainant Sunil Dass has been called for his statement, court does not find any ground to enlarge the three accused-applicants on bail. Accordingly, all the three bail applications are hereby dismissed.

(Narinder Kumar)
Special Judge NDPS – 02 (Central)
Tis Hazari Courts, Delhi.06.12.2017