

CNR No. DLCT01-006841-2019



IA No. 01/2023
SC No. 462/2019
State Vs. Ashu @ Atta and Ors.
FIR No. 210/2018
PS Prasad Nagar
U/s. 302/34 IPC & 25/27 Arms Act

BAIL APPLICATION OF APPLICANT RAHUL GUPTA @
TYAGI

28th April, 2023

Present: Sh. Ashesh, Ld. Addl. Substitute PP for state.
Sh. Naveen Gaur and Sh. Gopal Dass Kathuria, ld.
Counsels for applicant/accused Rahul Gupta @
Tyagi.
IO SI Amit in person.

1. Reply filed. Arguments heard.
2. This is an application filed on behalf of the applicant/accused Rahul Gupta @ Tyagi (hereinafter referred to as applicant) for grant of regular bail.
3. It is argued that the applicant is in J.C. as he has surrendered on 08.04.2023 in compliance of the orders of the Hon'ble Supreme Court of India. It is argued that the applicant is in J.C. since 15.12.2018. It is further argued that the applicant has been falsely and maliciously implicated in the present case. It is further argued that the nothing incriminating has come on record against the applicant. It is further argued that no role has been assigned to the applicant by the prosecution. It is further argued that the investigation of the case has been

completed and charge-sheet has been filed and the case is at the stage of evidence. It is further submitted that out of 40 witnesses, only one witness namely HC Ram Raj has been examined till date and the trial will take its own time to conclude. It is further argued that applicant is the sole bread earner of his family. Ld. Counsel for applicant has relied upon the case titled as **Vikram Singh @ Vicky vs. State (GNCT of Delhi)**, Bail Application No. 133/2023 to support his arguments. It is prayed that the applicant be released on bail.

4. Nominal roll of the applicant was also called from the concerned Jail Superintendent, which reveals that the applicant had surrendered on 08.04.2023.
5. Application has been opposed by the ld. Addl. PP for State on the ground that the allegations against the applicant are serious in nature. It is further submitted that the applicant is a habitual offender and there are chances that the applicant may jump the bail. It is prayed that bail application of the applicant may be dismissed.
6. As far as the question of grant of bail under Section 437 Cr. P.C. and 439 Cr. P.C. is concerned, the law in this regard has been settled by the Hon'ble Supreme Court of India in various judgments and has laid down various considerations for grant or refusal of bail to an accused in non bailable offences like:
 - (i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

- (ii) Gravity and seriousness of offence and punishment which the conviction will entail;
- (iii) Nature of accusation and evidence therefor;
- (iv) Reasonable possibility of securing presence of the accused at trial and likelihood of him absconding or fleeing if released on bail;
- (v) Possibility of the offence being repeated;
- (vi) Conduct, character and behaviour of accused;
- (vii) Reasonable apprehension of the witnesses being tampered with;
- (viii) Means position and standing of the accused in the society;
- (ix) Danger, of course, of justice being thwarted by grant of bail;
- (x) Balance between the rights of the accused and the larger interest of the Society/State;
- (xi) Any other factor relevant and peculiar to the accused;
- (xii) While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, but if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused.

7. In the landmark judgment of ***Gurcharan Singh and Others Vs. State (AIR 1978 SC 170)***, it was held that there is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the Courts. It was further held that there cannot be any inexorable formula in the matter of granting bail and the facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. It was further held that such question depends upon a variety of circumstances, cumulative effect of which must enter into the judicial verdict. Such judgment mentioned the nature

and seriousness of nature, and circumstances in which offences are committed apart from character of evidence as some of the relevant factors in deciding whether to grant bail or not.

8. In the present case, the allegations against the applicant are that he and his associate Amar @ Kanha caught hold of the deceased and the third assailant Ashu @ Atta attacked the deceased with a knife and the deceased was taken to Lady Harding Hospital where he was declared dead during the treatment.
9. The offence is of heinous nature. The applicant is found involved in previous criminal cases as well. The main public witnesses are yet to be examined. This is not a fit case for grant of bail at this stage. Application is accordingly dismissed.
10. Copy of this order be given dasti to Id. Counsel for applicant/accused.
11. Soft as well as hard copy of this order be also sent to the concerned Jail Superintendent for information and necessary action.

(SUSHIL ANUJ TYAGI)
ASJ-04/Central/Delhi
28.04.2023_(VR)