

05/10/2021

As per office order no. 700/RG/DHC/2021 dated 30/09/2021 & subsequent order no. 29459-29518/PD&SJ Sectt./COVID/North/RC/2021 dated 30/09/2021 of Id. Principal District & Sessions Judge, North, Rohini Courts, around 3/4 th of the total strength of judicial officers shall hold the court physically, while the others shall hold through virtual mode w.e.f. 05/10/2021 to 30/10/2021. It is further directed that all the judicial officers shall deal with the cases of their own court listed for that particular day & shall permit hybrid hearing/video-conferencing hearing, where-ever possible, if a request to such effect is made by any of the parties and/or their counsel on the date of physical hearing of Court. It is further directed that directions issued vide office order no. 256/RG/DHC/2021 dated 08/04/2021 that no adverse orders shall be passed by the District Courts of Delhi in case of non-appearance of parties and/or their counsel stands withdrawn w.e.f. 24/08/2021.

This application for grant of regular bail u/s 439 CrPC moved on behalf of applicant/accused Sushil Kumar is placed before me since the regular matter is pending before this Court.

(AS PER ROSTER, PHYSICAL HEARING IS DONE TODAY)

Present in the Court :Sh. Sanjay Jindal & Sh. Atul Kumar Srivastava, Id. Addl.
:PPs for the State.
:Sh. Pradeep Rana, Sh. Rahul Saraswat, Sh. Abhishek
:Rana, Sh. Himanshu Rana, Sh. Satwik Misra and Sh.
:Gagan Bhatnagar, Id. counsels for the applicant/accused.
:Sh. Sameer Kumar, Sh. Shah Rukh Ahmad and Sh.
:Mandeep Baisla, Id. counsels for the complainant, who
:have filed vakalatnama on behalf of the complainant.
:Taken on record.
: Sh. Ajay Kumar Pipaniya, Pallavi Pipaniya, Akash Sethi,
Paras Puniyani, Nikiga Garg, Deepak Mathur, Sandeep
Kumar, Lakshay Tomar and Madhurima Soni have also
filed vakalatnama on behalf of one of the complainant
Amit. Taken on record.
: Sh. Nitin Vashist, Id. counsel for one of the victims.
:IO Inspector Mangesh Tyagi, STARS-II/Crime Branch,
:Shakarpur, Delhi.

Present through Webex :None for the parties.

Reply to the bail application has been received.

It is submitted by Id. counsel for the applicant/accused that the present applicant/accused is a person with clean antecedents and has never been found violating the law of the land. He has further submitted that applicant/accused is a married person, aged about 38 years and has the responsibility of maintaining his entire family. He has further submitted that applicant/accused is a wrestler of International repute having impeccable credentials and he has received various

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laurels representing India and has made the nation proud by winning medals at numerous International Tournaments and championships. He has further submitted that applicant/accused is a silver medalist at the London Olympics-2012 and a bronze medal winner at Beijing Olympics-2008 & the first Indian to have won two Olympic medals in an individual sport. Ld. counsel has further submitted that applicant/accused is also a recipient of Arjuna Award, Rajiv Gandhi Khel Ratna Award and Padma Shri & was given the responsibility to train the young wrestlers in order to enhance the level of sports in the country. He has further submitted that the bare perusal of the facts reveal that the unfortunate demise of a budding wrestler has been sensationalized and the same is being exploited against the present applicant/accused by parties with vested interest. He has further submitted that the present case is wrongly used to create a perception in the minds of the masses which does not necessarily derive its inspiration from the true facts of this case. He has further submitted that the present matter is highlighted in the media and therefore the present applicant/accused has wrongly received scrutiny despite the cardinal rule of presumption of innocence unless proven guilty. Ld. counsel has further submitted that investigating agency has left no stone unturned to present a false and guilty image of the present applicant/accused. He has further submitted that leaks to the media were facilitated on an unprecedented level and false information was fed to the media in order to wrongfully establish a connection between the present applicant/accused and renowned gangsters and also gone to the point of painting a grotesque image of the present applicant/accused where he was said to be a gangster himself and even questions were raised against his antecedents, however, after filing of charge-sheet such claims made by the investigating agency have been found to be untrue and without any footing in the reality. Ld. counsel has further submitted that the applicant/accused was arrested by the investigating agency on 23/05/2021 and thereafter in absence of any concrete

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evidence against him, the investigating agency sought repeated police remands with the aim to build a false case and narrative against the present applicant/accused, but the investigating overreach of the IO was duly mitigated by the Id. MM who was pleased to dismiss the PC remand application vide order dated 02/06/2021. He has further submitted that the applicant/accused has been falsely implicated and incarcerated in judicial custody since 02/06/2021 and now the charge-sheet in the present case has been filed, which shows that investigation qua the applicant/accused has already been completed and he is no more required for any kind of further custodial interrogation, much less recovery or discovery of anything incriminating in nature concerning the facts in issue or otherwise as nothing is to be recovered from the possession of the applicant/accused or at his instance. Ld. counsel has further submitted that there is an apparent delay in registration of FIR as first information at the PS was received at 01:21:02 hours and FIR was registered after much delay. He has further submitted that the FIR was not registered on the basis of first information qua the incident recorded vide DD no. 5A at 01:21:02 hours, but on the basis of subsequent DD entry no. 9A with much ado. He has further submitted that the investigating agency has concealed the factum of the earlier DD entry in the FIR as the initial investigation reflected no involvement of the applicant/accused, which shows that the FIR is an afterthought to implicate the present applicant/accused. Ld. counsel has further submitted that investigating agency has alleged that there were four people who were injured and reportedly 15 eye-witnesses of the alleged incident, however, despite the said fact, the present FIR was registered on DD entry, that too after a delay of more than six hours. He has further submitted that aforesaid fact further gets corroborated from the fact that the first eye witness account was recorded in the present case after an inordinate delay of 16 hours despite the fact that the aforesaid witnesses were conscious and available. He has further submitted that police was present on the spot, took the

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injured to hospital, BJRM hospital and also higher centre and also came back to the spot but no eye-witnesses was not met. He has further submitted that in the MLC, the injured has given the history of physical assault, was conscious & oriented, but he has not given any statement, which shows that false story has been cooked. He has further submitted that all the statements were of police officials which were given after much delay and they have created their own story to implicate the well known wrestler and their versions are doubtful. Ld. counsel has further submitted that MLC of Sagar was prepared at 2.52 a.m. and he gave history of assault, was conscious and oriented. He has further submitted that it is mentioned in the MLC that Sagar was brought by Girish, but said Girish denied that he had gone to hospital. He has further submitted that as such, the basic theory is not made out and consequently they implicated the other facts. He has further submitted that investigating agency brought ASI Sunder Lal into the picture after 40 days, who stated in his statement that he has inadvertently taken the name of Girish. Ld. counsel has further submitted that various statements of Sunder Lal were recorded, wherein there is development. He has further submitted that the investigating agency withheld the statement of the witnesses/victims namely Amit, Bhagat Singh @ Bhagtu and Ravinder which were recorded after much delay and for the first time on 06/05/2021, 08/05/2021 & 08/05/2021 respectively. He has further submitted that supplementary statements were given by the witnesses after 40 days. He has further submitted that there are improvements and contradictions in the statements of the purported witnesses/injured persons. He has further submitted that in his statement recorded u/s 161 CrPC, Bajrang firstly stated that Sagar made dying declaration that he was beaten severely and that he will not survive. He has further submitted that said version is an afterthought and prior to that there was no dying declaration. He has further submitted that as there was no case made out against the present applicant/accused, his statement was willfully inserted to create a dying declaration.

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He has further submitted statements of purported witnesses/injured were recorded on different dates, which are not only contradictory to each other but are also the improved versions of the previous statements which demonstrate that the investigating agency kept on improving their case merely to implicate the applicant/accused in the present case. He has further submitted that statement of Sagar was recorded at 4.30 next day and he has stated that Vikas Nepali was also abducted but surprisingly he is nowhere in the picture. He has further submitted that had there been any Vikas Nepali, he would have been injured by the applicant/accused. Ld. counsel has further submitted that there is no mention of Vikas Nepali in the charge-sheet. He has further submitted that the investigating agency had shown a total of 5 purported injured persons (including one deceased) in the alleged incident but they failed to get the MLC done of the two purported injured persons namely Ravinder and Bhagat Singh @ Bhagtu and the investigating agency concocted a story that they were present at the spot and MLC was got conducted after a delay of two days. He has further submitted that the purported injured persons did not make any PCR call. Ld. counsel has further submitted that the investigating agency has further relied upon a purported video recording of the alleged incident, however, despite completion of the investigation, the investigating agency has failed to demonstrate the manner in which said footage was prepared and claimed that it was prepared by co-accused Prince. He has further submitted that the purported mobile phone and the IMEI qua the same demonstrate that the same was not connected with any of the accused persons in any manner and the ownership of the said mobile phone has become a big mystery. He has further submitted that investigating agency sent the purported video recording to Gujarat for forensic authentication, though all the facilities for the forensic authentication are readily available in Delhi, which cast shadow on the case of the prosecution. He has further submitted that there is no certificate u/s 65B of Indian Evidence Act in this

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regard. He has further submitted that investigating agency at the fag end of the investigation cropped up a new version that the deceased purportedly had given a dying declaration to the police officials with an aim to add bite to otherwise toothless case of the prosecution. He has further submitted that the aforesaid version qua dying declaration was cropped up after a much delay and investigating agency has failed to establish as to why the police officials, to whom the said alleged dying declaration was made, had remained silent qua the such fact for such a period and their supplementary statements qua the same were recorded after unexplained delay of one month i.e. on 05/06/2021 & 12/06/2021. He has further submitted that nothing incriminating has been recovered from or at the instance of the applicant/accused which further corroborates his innocence in the alleged incident. He has further submitted that investigating agency in order to build a case against the applicant/accused has attributed certain vehicles and weapon upon the applicant/accused, however, their involvement in the alleged offence and usage by the applicant/accused has not been proven despite filing the charge-sheet. Ld. counsel has further submitted that the accusations have been levelled upon the applicant/accused with the aim and object of injuring his reputation and humiliating him. He has further submitted that the applicant/accused has deep roots in the society and there is no apprehension of his fleeing from justice & he undertakes to follow due process of bail. He has further submitted that no purpose would be served by keeping the applicant/accused in judicial custody anymore, even otherwise, as many as 147 witnesses have been cited by the prosecution, hence the trial is not going to be concluded in near future and any further custody will be pre-conviction incarceration which is against the basic mandate of Article 21 of the Constitution of India. He has further submitted that applicant/accused is ready to abide by all the terms and conditions, which may be imposed upon him, if bail is granted to him. He has further submitted that passport of the applicant/accused is

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already in possession of the investigating agency and there is no possibility of his fleeing from justice and he is ready to submit himself to the condition that he will not leave India without the prior permission of the Court & is further ready to give sound surety to the satisfaction of the Court. Ld. counsel has lastly prayed for grant of regular bail to the applicant/accused. In support of his arguments, Id. counsel for the applicant/accused has relied upon the following judgments:-

i)Seema Singh Vs CBI & Anr, MANU/SC/403/2018.

**ii)Jeet Ram & Ors. Vs State of Himachal Pradesh,
MANU/HP/0089/2002.**

iii)State of Rajasthan, Jaipur Vs Balchand, MANU/SC/0152/1977

iv) Zahur Haider Zaidi Vs CBI, Criminal Appeal no. 605 of 2019.

v)Parveen Malhotra Vs State, MANU/DE/0119/1990

**vi) Saloni Arora Vs State, CRL.M.A. 10685/2008 in CRL. Rev. P.
497/2008 & CRL.M.A. 10683/2008.**

Ld. counsel for one of the injured/victim Amit has submitted that there is high possibility of threatening and high Court has also taken notice of it in W.P. (CRL) 1067/2021 & CRL. M.A. 8653/2021, titled as Amit Kumar VS State, pursuant to which, a committee has been constituted to provide security to the victim/witness. he has further submitted that there is previous involvement of the applicant/accused in another case bearing FIR no. 364/17, PS IP Estate, in which, similar types of threats were given to the complainant as to why he dared to compete with the applicant/accused, to which, Id. counsel for the applicant/accused has submitted that charge-sheet has not been filed till date in the said case.

On the other hand, Id. Addl. PPs for the State have strongly opposed the bail application. They have submitted that there is delay in registration of FIR because the witnesses were not in a position to give the statements, though they

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were conscious and oriented, but that does not mean that they were fit to give statements. They have further submitted that some of injured persons were initially admitted in BJRM hospital and subsequently they were taken to higher centre. so, it was not immediately possible to take the statements of the injured persons due to their physical condition as well as due to their transfer to higher centre. They have further submitted that there is no delay and same has been duly explained. They have further submitted that submission of Id. counsel for the applicant/accused that name of the applicant/accused was taken later on is not tenable as name of applicant/accused Sushil Kumar is very much in the FIR. Ld. Addl. PPs have further stated that police was not having any enmity with the accused persons including the present applicant/accused to falsely implicate them in the present case. They have submitted that there is video clipping of the incident, in which, the applicant/accused is seen beating the deceased Sagar and injured Jai Bhagwan @ Sonu with a danda and the same has been duly verified from a government recognized laboratory of Gujarat, which has been duly notified in the gazette of India. They have further submitted that there are various laboratories for different purposes, so, the report of FSL cannot be questioned on this ground and the aforesaid video footage is stated to be not tampered one. They have further submitted that submission of Id. counsel that the same can be altered/tampered, cannot be accepted in view of the report of the FSL. They have further submitted that FIR is not an encyclopaedia. They have further submitted that Sonu was having fracture and even if he was conscious and oriented, but doctor did not give certificate of fitness, which was given subsequently and his statement was recorded. They have further submitted that there is no bar in giving additional statements and there is bar with regard to giving of subsequent examination-in-chief, which is used only for giving explanation to the previous examination. They have further submitted that in the present case, Sunder Lal is suffering from blood cancer and this was reason for delay in taking his statement.

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They have further submitted that the said factum can be verified and relevant documents can be placed on record that he is undergoing treatment and whatever information he gave, was recorded. They have further submitted that in the whole media, the applicant/accused was named that he was absconding subsequent to the incident, so, the plea taken by the applicant/accused that police officials have named him that he was involved and was absconding is very much in the media. They have further submitted that there are still photographs attached with the charge-sheet so as to specifically show that he is using a heavy stick to give injuries to the injured persons which resulted into death of one of the victims and serious injuries to others. Ld. Addl. PPs have further submitted that this is not a simple case case and all the victims were abducted at gun point from their respective homes. They have further submitted that even while passing order on the interim bail application of co-accused Anirudh Dahiya, the Court also considered that the applicant/accused and victims are from same fraternity and locality and there are some indication that they are related to some gang. They have further submitted that even life of the applicant/accused may be at peril if bail is granted to him. He has further submitted that postmortem report of the deceased Sagar Dhankad and MLCs of the injured Jai Bhagwan @ Sonu Mahal also indicate that they were beaten mercilessly with the intention to kill and the present applicant/accused also exhorted his associates to kill them. He has further submitted that injured Jai Bhagwan @ Sonu, Ravindra @ Bhinda, Bhagat @ Bhagtu and Amit @ Khagad and other eye-witnesses categorically named the present applicant/accused and explained his role in the commission of offences in their statements recorded u/s 161 CrPC. He has further submitted that location of the mobile phone of the applicant/accused was found to be at various spots at the relevant time and date in the present case. He has further submitted that the vehicles of the applicant/accused, which were used in the commission of the offence, were recovered from the spot. He has further

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submitted that the present applicant/accused is the king pin of the present case, he conspired along with other co-accused persons, arranged men and weapons including dreaded criminals of Haryana and Delhi, abducted the victims and committed the offence, which fact is corroborated by the presence of about 20 culprits at the spot with weapons and recovery of seven vehicles from the spot belonging to various culprits arrested in the present case. He has further submitted that the present applicant/accused fled from the spot along with his associates and caused disappearance of the evidence i.e. clothes, mobile phones, weapon of offence, DVR of his house etc. to screen themselves and even during police custody, he did not co-operate. He has further submitted that investigation is still in progress to arrest the remaining accused persons identified in this case. He has further submitted that applicant/accused is a renowned and influential person and there is all likelihood of his influencing the witnesses as they belong to same locality and community & he may get visa very easily and flee abroad, if granted bail. He has further submitted that applicant/accused is also having criminal antecedents as named in case FIR no. 364/17, PS IP Estate, u/s 323/341/34 IPC in which he has committed offence in similar manner with associates to create his fear amongst the persons who do not obey his commands. He has further submitted that applicant/accused is the main accused who committed this gruesome act along with his close associates and some of the accused are still at large. He has further submitted that interim bail application of co-accused Anirudh Dahiya has already been dismissed on 28/09/2021. In support of their arguments, Id. Addl. PPs for the State have relied upon the following judgments:-

i)Criminal Appeal no. 1089 of 2021, titled as Shri Mahadev Meena Vs Raven Rathore & Anr., date of decision 27/09/2021.

ii)Criminal Appeal No. 448 of 2021 titled as Sudha Singh Vs The State of Uttar Pradesh & Anr., date of decision:-23/04/2021.

CNR no. DLNT01-006875-2021

Session Case no.436/2021

IA/2/2021

FIR no. 218/2021

PS-Model Town

State Vs-Sushil Kumar

U/s-

302/307/308/364/365/452/323/342/188/269/147/148/149/506(II)/392/394/397/411/201/109/120B/34/174A IPC
& u/s 25(1) (B) & 27 (1) Arms Act

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**iii)Criminal Appeal no. 1843 of 2019, titled as Mahipal Vs Rajesh
Kumar @ Polia & Anr.**

Heard. To understand the gravity of the case, briefs facts as per the case of the prosecution are summarized here. As per the charge-sheet filed by the IO, on 05/05/2021, a PCR call vide DD no. 9A was received at PS Model Town regarding firing inside the Chattarsal Stadium, which was marked to ASI Jitender Singh, who along with staff reached the spot and found that a quarrel had taken place in the parking area of the stadium and the injured persons were shifted to BJRM hospital. ASI Jitender Singh reached at BJRM hospital and collected MLCs of injured persons namely Sonu, Sagar & Amit, who were referred to higher centre for further treatment. District crime team was called at the spot and during inspection, five vehicles were found at the spot & one double barrel loaded gun with live cartridges and three mobile phones were recovered from a vehicle bearing no. HR-29AJ-0110 (Mahindra Scorpio). Two blood stained wooden sticks were also recovered from the green park area near SOC. On local inquiry, it was learnt that accused Sushil Pehalwan (present applicant/accused) and his associates have beaten the injured persons brutally. The present case was registered u/s 308/323/325/341/506/188/269/34 IPC. On 05/05/2021, injured Sagar who was admitted in Trauma Centre after getting injured in quarrel at Chhatarsaal Stadium succumbed to injuries during treatment. Postmortem of the deceased was got conducted and doctor has opined that the death was due to cerebral damage as a result of blunt force/object impact and all the injuries were ante-mortem in nature. Thereafter, Section 302 IPC was also added in the case. On 05/05/2021, accused Prince was arrested from the spot with one loaded double barrel gun and one mobile phone was recovered from his possession. One video recording of the incident of the present case was found in the mobile phone of accused Prince, wherein the

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present applicant/accused is seen clearly having a danda in his hand along with other co-accused persons, who are seen present at the spot having firearms, dandas, hockey sticks etc. with them and applicant/accused Sushil Kumar was seen clearly beating the victims. The aforesaid mobile phone recovered from accused Prince was sent to FSL, Gandhi Nagar for examination. The expert of FSL, Gandhi Nagar, Gujarat has opined that "no sign of edit/alteration/tampering was observed within this video file". It was further opined that "Meta data of the video file 20210505_004426.mp4 suggests that it was captured using the camera of the cell phone Exh-MP1 (the mobile phone recovered from co-accused Prince). As per charge-sheet filed by the investigating agency, during investigation, statements of victims/injured as well as other public witnesses were recorded, who have categorically stated that applicant/accused conspired to commit this offence along with the other accused persons and in fact was leading the culprits and was the kingpin. As per the investigating agency, on the night intervening 04-05/05/2021, applicant/accused along with his associates abducted victims Amit @ Khagad and Rvindra @ Bhinda from Shalimar Bagh, Delhi and deceased Sagar Dhankad, Jai Bhagwan @ Sonu and Bhagat @ Bhagtu from their flat situated at Model Town and they all were brought to Chhatarsal Stadium and were beaten brutally with lathi, dandas, hockey sticks etc. and at that time, the present applicant/accused and his associates were also carrying the firearms with them and on listening the police siren, they tried to hide injured Sagar (deceased) and Jai Bhagwan @ Sonu in the basement of the said stadium and ran away from the spot. It is further mentioned in the charge-sheet that deceased Sagar Dhankad was murdered in a very gruesome manner and serious injuries were caused to other injured persons, the victims and accused persons are of same faternity and locality and there is every possibility that the applicant/accused may influence the victims/witnesses. Further as per investigating agency, prior to this incident, the applicant/accused who was carrying

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& u/s 25(1) (B) & 27 (1) Arms Act**

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one pistol in his hand and his associates had beaten some of the trainee wrestlers at Chhatrasal stadium and robbed their mobile phone.

Admittedly, there are total 17 accused persons and charge-sheet has been filed against 13 accused persons and investigation qua the remaining accused persons is still going on and charge-sheet is yet to be filed against them. Even the injured persons are stated to be five in number. So, lot of information had to be gathered and in such circumstances minor discrepancies in making out the statements cannot be ruled out. Some discrepancies in the statements may occur but they do not seem to be detrimental to the whole case of the prosecution. This is not an appropriate stage to consider the whole facts in detail only prima facie case is to be seen and the minor discrepancies in statements are not sufficient to warrant bail. The victims were lifted from different places at gun point. As per the charge-sheet, it was a daring and awful act of the accused persons that they openly caused such brutal injuries to the victims without having any fear and as per the charge-sheet, they are having firearms as well as other weapons like sticks, dandas etc. Prima facie, the applicant/accused is visible in the video as reflected in the photographs taken out of the same video footage. He is clearly visible and seemed to be causing severe injuries. There is previous involvement of the applicant/accused which is indicative qua the conduct of the present applicant/accused. In the order of Hon'ble High Court passed in W.P. (CRL) 1067/2021 & CRL. M.A. 8653/2021, titled as Amit Kumar VS State, threat perception is also there. The charge-sheet against the co-accused is yet to be filed. While deciding the interim bail application of co-accused, this Court had observed that the applicant/accused and victims are from same fraternity and locality and there is apprehension of life of the applicant also due to enmity. The same factor implies to the present applicant/accused. The submission of Id. Addl. PP are also acceptable that applicant/accused is a well renowned wrestler & have won laurels for himself

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& u/s 25(1) (B) & 27 (1) Arms Act**

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and when renowned people commit such heinous offence, then its detrimental effects on the society are enormous. Considering all these facts and circumstances, no ground for grant of regular bail is made out. Hence, the present bail application is dismissed and is disposed of accordingly.

Let copy of this order be sent on the email/whatsapp of Id. Counsels for the parties.

(Shivaji Anand)

Addl. Sessions Judge: 04 (North)

Rohini Courts: Delhi:05/10/2021(A)