

State V/s Kuldeep Singh: FIR No.119/2020: PS Khajuri Khas

Bail Application No.1428/2020

State V/s Kuldeep Singh

FIR No.119/2020

U/s: 147/148/149/302/153-A/505/120-B/34 IPC

PS: Khajuri Khas

11.11.2020

(PHYSICAL HEARING IN COURT)

Present: Shri Naresh Kumar Gaur, Ld. Special PP for the State alongwith
IO, Inspector Vikas Rana.

Shri Manish Bhadauria, Ld. Counsel for accused Kuldeep
Singh/applicant.

ORDER

I have heard arguments advanced at bar by both the sides, perused the report filed in the matter as well as the chargesheet.

2. This is the second bail application filed on behalf of applicant. His first bail application was dismissed by this Court vide detailed order dated 10.07.2020.

3. The learned counsel for the applicant has very vehemently argued that applicant is a young married man, aged about 28 years and is the sole bread earner of his family consisting of his wife, one minor daughter aged about 2 years, two unmarried sisters and old aged ailing parents. He has been falsely implicated in the present matter by the investigating agency. He has been in judicial custody since 30.03.2020. He has not been specifically named in the FIR. His arrest in the matter

has been effected merely on the basis of disclosure statement of co-accused. No recovery of any sort has been effected from him. The police never sought his custody remand in the matter. He is not seen in any CCTV footage/clipping. It is further argued that the statements of Constable Amit, Constable Bhupender and HC Anil, who have identified the applicant cannot be considered as authentic or reliable, as the same were recorded after a number of days of the incident and there is no 100 number call or any DD Entry got recorded by them. It is further contended that the statement of independent public witness namely Munna (recorded by IO in the matter on 18.05.2020) and that of police witnesses namely HC Anil Kumar and Constable Bhupendra (recorded in the matter on 03.05.2020) are contradictory to each other, as PW Munna in his alleged statement has stated that applicant was carrying a “*lathi/danda*” in his hand while the aforesaid police witnesses stated that the applicant was carrying “*stones*” in his hand. It is emphasized that three co-accused persons in the matter namely Mohd. Tayyab, Israr Ahmed and Mohd. Rizwan have already been enlarged on regular bail vide order dated 24.06.2020; while another co-accused namely Rahul @ Ajay (Dheeraj Sharma) has already been granted interim protection by this Court vide order dated 17.07.2020 and as such, the applicant is also entitled for grant of bail in the matter on the ground of parity [referred judgment passed by Hon’ble Supreme Court of India in case reported as, “*2005 (4) LRC 384 (SC)*”, titled as, “*Kamaljit Singh V/s State of Punjab*”]. In the end, it is argued that the investigation in the matter is complete; chargesheet has already been filed; applicant is no more required for custodial interrogation and no useful purpose would be served by keeping the applicant behind bars as the trial in the matter is likely to take long time. It is claimed that the applicant has clean past antecedents. The learned counsel has relied upon the judgment passed by Hon’ble Madhya Pradesh High Court in case reported as, “*2000 (1) RCR (Crl.) 399*”, titled as, “*Mohan Raikwar V/s State of MP*” to contend that second bail application not

be dismissed merely on the ground that earlier application was rejected on merits; changed circumstances do not mean some extra-ordinary changes and each day's confinement, detention and delay of accused should be taken as relevant consideration while considering the second application".

4. Per contra, learned Special PP for the State has very vehemently argued that present matter pertains to the brutal murder of an innocent young auto-driver namely Babbu. A video footage showing the incident of murder of deceased "**Babbu**" was captured by BBC and the IO of the case has already written to BBC to provide them video footage and the same is in process of being delivered to the IO. It is next contended that the applicant is resident of same locality where the independent eye witnesses reside and there is every possibility that if applicant is released on bail at this stage, then he shall threaten the witnesses.

5. It is further argued that this is the second application for regular bail filed on behalf of applicant. His first application seeking regular bail had already been dismissed by this Court vide detailed order dated 10.07.2020 and since then there has not been any change in circumstance(s), warranting moving of instant application. It is argued that applicant has been categorically identified by public witnesses namely Munna (vide his statement recorded U/s 161 Cr.P.C on 18.05.2020) to be part of the riotous mob that had caught hold of deceased "**Babbu**" on the date of incident and beating him black and blue with stick/laathi, which ultimately resulted in his death. It is further argued that applicant has also been categorically identified by another independent public witness namely Imran (vide his statement recorded U/s 161 Cr.P.C on 20.06.2020). His identity has also been established by police witnesses namely HC Anil Kumar (statement dated 03.05.2020); Constable Bhupendra (statement dated 03.05.2020) and Constable

Amit (statement dated 11.05.2020). The applicant has refused to take part in judicial “***Test Identification Parade***” (TIP) and as such, an adverse inference is liable to be drawn against him. He has further drawn attention of this Court to various orders vide which bail applications of several co-accused persons have already been rejected by this Court, details whereof are as under:

- (a) *Bail applications of co-accused persons namely Marauf and Zubair (applicant herein) were dismissed vide common order dated 07.07.2020;*
- (b) *Bail application of co-accused Kuldeep was dismissed vide order dated 10.07.2020;*
- (c) *Bail application of co-accused Shabuddin was dismissed vide order dated 17.07.2020;*
- (d) *Bail application of co-accused Lucky @ Bharat Bhushan was dismissed vide order dated 23.07.2020;*
- (e) *Bail application of co-accused Mohd. Iqbal was dismissed vide order dated 31.07.2020;*
- (f) *Bail application of co-accused Adil was dismissed vide order dated 10.08.2020;*
- (g) *Bail application of co-accused Dharmender Giri was dismissed vide order dated 13.08.2020;*
- (h) *Bail application of co-accused Sachin @ Moppi was dismissed vide order dated 26.08.2020;*
- (i) *Bail application of co-accused Ajay @ Rahul was dismissed vide order dated 22.09.2020 and;*
- (j) *Bail application of co-accused Jubair @ Zuber was dismissed vide order dated 29.10.2020.*

6. I have given thoughtful consideration to the arguments advanced at bar. The present case pertains to the brutal murder of an innocent person namely

“**Babbu**” by the unruly mob. Apparently, the independent eye witness in the matter namely Munna, S/o Mohd. Yusuf, who is resident of the same locality/area (vide his statement recorded under Section 161 Cr.P.C on 18.05.2020; page 327 of the chargesheet) has categorically identified the applicant to be part of the riotous mob that had caught hold of deceased “**Babbu**” on the date of incident and beating him black and blue with stick/laathi, which ultimately resulted in his death. Similarly, another independent eye witness namely Imran, S/o Shri Mohd. Iqbal (vide his statement recorded U/s 161 Cr.P.C on 20.06.2020) has also clearly identified the applicant to be part of riotous mob, who on the date of incident had caught hold of him, beaten him and also brutally assaulted deceased “**Babbu**”, which ultimately resulted in his death. The identity of the applicant has also been established by police witnesses namely HC Anil Kumar, vide his statement recorded U/s 161 Cr.P.C (page 317 of the chargesheet); Constable Bhupendra, vide his statement recorded U/s 161 Cr.P.C (page 318 of the chargesheet); and Constable Amit vide his statement recorded U/s 161 Cr.P.C (page 321 of the chargesheet). It is a matter of record that PW Constable Amit had also sustained injuries on account of pelting stones by the riotous mob on the date of incident at or around the same place as a result of which his hand got fractured and he had to be admitted in hospital (for which separate FIR No.103/2020 at PS Khajuri Khas was registered).

7. The contradictions pointed out by learned counsel in the statement of PW Munna on the one hand and HC Anil Kumar and Constable Bhpendra on the other hand will be seen at the time of trial as this Court is conscious of the fact that we are at *pre-cognizance/pre-committal stage* and this Court has limitations in making in-depth analysis of the statements of witnesses, which are yet to be tested on the anvil of trial. The Court considering the bail matter has to consider the material collected by the investigating agency at its face value and at this stage,

“*mini trial*” cannot take place.

8. As regards the argument of learned counsel that the applicant is not being depicted/seen in any CCTV clipping/footage, it is relevant to note here that presently the clip of a very short duration has been played in the Court. The learned Special PP has submitted that IO has already written to ANI for providing the full video footage/clip and that may take some time.

9. The applicant had **refused** to take part in the judicial “*Test Identification Parade*” (TIP) and as such an adverse inference against him is likely to be drawn against him. A perusal of his TIP refusal dated 04.04.2020 reveals that he had taken a specific plea that “*witnesses are known to him and resides in his neighbourhood*”. Thus, there is every apprehension that if he is enlarged on bail, he may threaten the public witnesses, who are resident(s) of the same locality/area and are known to him.

10. I am conscious of the fact that some co-accused persons have been granted bail in this case, however, it is noted that they were those accused persons who had not been identified by any independent eye witness, except the police constable. The bail applications of around eleven accused persons have already been dismissed by this Court on different dates and the role assigned to the applicant in the matter is no different to the said co-accused persons.

11. This Court is conscious of the fact that eye witnesses in the matter are residents of the same locality; they are presumably still frightened and the possibility of applicant threatening them, if released on bail cannot be ruled out. The bail application of applicant has already been dismissed by this Court vide

detailed order dated 10.07.2020 and it is observed that there has not been any change in circumstance(s) thereafter, warranting interference in the said order. Considering the facts and circumstances of the case in totality, I do not find it to be a fit case for grant of bail to the applicant. The bail application is accordingly dismissed.

12. It is hereby clarified that anything stated hereinabove shall not be construed as expressing any opinion on the final merits of the case, as the case is at *“pre-cognizance/pre-committal stage”*.

13. A copy of this order be sent to learned counsel for the applicant through electronic mode.

(VINOD YADAV)
ASJ-03(NE)/KKD COURTS/11.11.2020