

**HIGH COURT OF DELHI**

**CORAM:HON'BLE MR. JUSTICE VIKAS MAHAJAN**

**Date of Decision: 15.02.2024**

BAIL APPLN. 511/2023

**VIKAS BALGUER @ SHAMMI ..... Petitioner**

**versus**

**GOVERNMENT OF NCT OF DELHI THROUGH SHO HAUZ KHAS POLICE STATION ..... Respondent**

BAIL APPLN. 3184/2023

**ASHISH BALGUER ..... Petitioner**

**versus**

**STATE GNCT OF DELHI ..... Respondent**

**Legislation:**

Sections 302, 308, 201, 212, 34 of the Indian Penal Code (IPC)

**Subject:** Bail applications in a case involving a fight at Shanghai-30 Bar and Restaurant, leading to the death of Rupesh due to beating with cement bricks, rods, and baseball bats.

**Headnotes:**

Bail Applications and Witness Testimony – Petitioners Vikas Balguer @ Shammi and Ashish Balguer sought bail in connection with FIR involving charges of murder and assault. Key prosecution witnesses, including PW-2, PW-3, PW-4, and PW-5, either turned hostile or did not fully support the prosecution's case, with inconsistencies in identifying the accused and detailing the incident. [Paras 3-8, 26-28]

Long Incarceration and Bail Consideration – Petitioners in custody for over 7 years and 8 months. Citing Supreme Court precedents, counsel argued for bail, noting the lengthy trial duration and lack of criminal record for petitioner Ashish Balguer. [Paras 9-14, 31-32]

Opposition to Bail and CCTV Footage – Prosecution and complainant's counsel opposed bail, highlighting different roles of co-accused, seriousness of the offense, and petitioner Vikas @ Shammi's prior criminal record. CCTV footage was presented to establish the presence of the accused at the incident scene. [Paras 15-21, 22]

Judicial Analysis for Bail – The court examined the evidence and the role of eyewitnesses, acknowledging their partial or complete non-support to the prosecution's case. It was observed that detailed evidence appraisal is not typical at the bail stage, but prima facie case assessment is necessary. [Paras 23-30, 33-35]

Decision – Bail granted to both petitioners under strict conditions, including personal bond and sureties, mandatory court appearances, providing permanent address and contact details, and prohibition from criminal activity or contacting witnesses. [Paras 35-37]

#### **Referred Cases:**

- Praveen Rathore vs. State of Rajasthan & Anr.: 2023 SCC OnLine SC 1268
- Mukesh Kumar vs. State of Delhi: (2015) 17 SCC 69
- Union of India vs. K. A. Najeeb: (2021) 3 SCC 713
- Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr.: (2005) 2 SCC 42
- Lt. Col. Prasad Shrikant Purohit v. State of Maharashtra, (2018) 11 SCC 458

#### **Representing Advocates:**

**Petitioners: Mr Varun Singh, Ms Smriti Wadhwa, Mr Sugam Puri, Mr Raman Kumar Singh, Mr Jairaj Singh**

**Respondent: Mr Ritesh Kumar Bahri, APP with SI Prince Kumar**

**Advocates for Deceased: Mr Harsh Khanna, Mr Rohan Pratap, Mr Pradeep Bhati**

#### **JUDGMENT**

##### **VIKAS MAHAJAN, J.**

1. The present petitions have been filed seeking regular bail in connection with FIR No.1187/2015 under Sections 302/308/201/212/34 IPC registered at PS Hauz Khas.

2. As per the prosecution version, the criminal law was set into motion on the basis of a complaint made by one Rohit Bansal, who alleged that in the intervening night of 21/22.10.2015, he along with his friends, namely, Vineet, Sonu, Rupesh and Monu came to Shanghai-30 Bar and Restaurant and a quarrel took place between the complainant party and the accused party on the issue of dancing on the floor in the Bar. The dispute was sorted out by the bouncers. Thereafter, the complainant along with his friends left the Bar. However, later on the complainant realised that he had forgot his mobile in the Bar. When the complainant and the deceased returned back they saw that the persons who had clashed with them were standing near the Bar blocking the way. The accused persons, thereafter, quarrelled and beat

up the complainant, as well as, his friend deceased Rupesh by cement bricks, rod and baseball bat, which led to the death of deceased Rupesh.

**SUBMISSIONS IN BAIL APPLN. 511/2023 (Petitioner: VIKAS BALGUER @ SHAMMI)**

3. Learned counsel for the petitioner submits that the eye witnesses examined by the prosecution have not supported the case of the prosecution. 4. Inviting the attention of the Court to the testimony of the complainant Rohit Bansal, who was examined as PW-2, he submits that Rohit Bansal turned hostile inasmuch as he did not support the case of the prosecution. Elaborating further he submits that in the examination-in-chief the PW-2 has though attributed a specific role to the present petitioner to an extent that he had beaten the complainant party with cement bricks and legs and fists. However, in his cross-examination, he feigned ignorance with regard to specific role played by each of the accused. He submits that the said witness has also testified that since he got injured, therefore, he could not see the accused persons and after getting injured he left the spot of occurrence.

5. Further referring to the cross-examination of PW-2, he submits that PW-2 has clarified *apropos* the threat perception. PW-2 had earlier deposed before the court on 01.12.2018 to the effect that since the window panes and wind shield of his car were found broken, therefore, he had suspected about the threat perception from the accused persons. Later on, in his crossexamination, PW-2 testified that though he had suspected the accused persons but later on he had came to know that some other person had broken the window panes and wind shield of his car.

6. He submits that another eye-witness, namely, Sagar Sharma, who was examined as PW-3 also turned hostile and did not support the case of the prosecution. Referring to the testimony of PW-3, he submits that the said witness has testified in his cross-examination that the statement given by him in his examination-in-chief was provided to him before his examination. 7. As regards yet another eye-witness, namely, Jitender Sharma, who was examined as PW-4, learned counsel submits that the said eye-witness has also not supported the case of the prosecution. He contends that the said witness has not identified the petitioner Vikas @ Shammi.

8. He further submits that eye-witness Maninder @ Monu, who was examined as PW-5 has also not supported the case of the prosecution inasmuch as he has stated that he was 150 mtrs. away from the spot.

9. Learned counsel further submits that the petitioner/ Vikas Balguer @ Shammi is in custody for 07 years and 08 months.

10. He also places reliance on the decisions of the Hon'ble Supreme in ***Praveen Rathore vs. State of Rajasthan & Anr.: 2023 SCC OnLine SC 1268*** and ***Mukesh Kumar vs. State of Delhi: (2015) 17 SCC 69***.

11. In the backdrop of aforesaid facts and circumstances, he urges the Court to enlarge the petitioner on bail.

**SUBMISSIONS IN BAIL APPLN. 3184/2023 (Petitioner: ASHISH BALGUER)**

12. Learned counsel appearing for the petitioner, namely, Ashish Balguer in BAIL APPLN. 3184/2023 submits that co-accused Anil Kumar Yadav has already been enlarged on bail, therefore, on the ground of parity he may also be granted bail. He submits that the present petitioner is also incarcerated for the last more than 07 years and 08 months. He contends that the prosecution has cited as many as 45 witnesses out of which only 42 witnesses have been examined till date and the conclusion of trial is likely to take long time.

13. He further submits that the only role assigned to the present petitioner, namely, Ashish Balguer is that he had beaten the deceased with legs and fists. According to the learned counsel, the petitioner, namely, Ashish Balguer, does not have criminal record.

14. He submits that all the public witnesses have been examined, therefore, there is no possibility of any public witness being influenced by the petitioner in the event he is enlarged on bail. He further contends that the trial is going on for the last 09 years and it is nowhere near conclusion, therefore, in view of the various judgments of the Hon'ble Supreme Court the petitioner is entitled to the benefit of bail. In support of his contention, he has placed reliance on the decisions of the Hon'ble Supreme Court in ***Union of India vs. K. A. Najeeb: (2021) 3 SCC 713*** and ***Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr.: (2005) 2 SCC 42***. It is, thus urged by the learned counsel for the petitioner to enlarge the petitioner on bail.

15. *Per contra*, learned APP for the State has argued on the lines of the status report. He submits that the petitioners are not entitled to bail on the ground of parity inasmuch as the role of Anil Kumar Yadav is entirely different. He submits that PW-2/Rohit Bansal has stated that the co-accused Anil Kumar Yadav had left the spot prior to the incident, which is not the situation in case of the present petitioner.

16. He submits that long incarceration cannot be the sole ground for granting bail to the accused persons, who have been charged for the serious offence under Section 302 IPC. He further submits that the manner in which offence has been committed has also to be considered. It is further the

contention of the learned APP that both the petitioners had refused the TIP. 17. He submits that the antecedents of the petitioner, namely, Vikas @ Shammi are not clean, inasmuch as, when he was enlarged on bail he abused his liberty so granted to him and another FIR No.436/2017 under Sections 376/506 IPC PS Safdarjung Enclave came to be registered against him.

18. Learned counsel for the complainant submits that the reasons put forth by the petitioner Vikas @ Shammi for refusing his TIP is that his presence has already been recorded in the CCTV footage of the camera installed at Haus Khaz village, which shows that the said petitioner has admitted his presence at the place of incident.

19. Learned counsel for the complainant has also played the CCTV footage in the Court, to contend that PW-3 and PW-4 on the basis of the said CCTV footage have identified the presence of the present petitioners at the place of incident.

20. He further submits that 05 accused persons, namely, Vikas Balguer, Vishal Balguer, Ashish Balguer, Vikas @ Shammi and Tarun @ Maddy are related to each other. According to the learned counsel, the manner in which the offence has been committed shows that there was a pre-meditation on the part of the accused persons to inflict fatal injuries on the deceased. He also contends that the role assigned to Anil Kumar Yadav is altogether different from that of the present petitioners, therefore, the ground of parity will not enure to the benefit of the present petitioners.

21. He further adds that the bail of co-accused Vishal Balguer has already been rejected by a coordinate bench of this Court *vide* judgment dated 02.06.2022 passed in BAIL APPLN. 1319/2021 after considering similar contentions for grant of parity with Anil Kumar Yadav, as well as, the long period of incarceration.

22. In rejoinder, the learned counsel or the petitioner in BAIL APPLN. 511/2023 submits that PW-4 after looking at the CCTV footage (page 149), in his testimony had specifically denied seeing Vikas @ Shammi at the place of incident. He further submits that insofar as another case against the present petitioner is concerned, he has already been acquitted of the said offence and the said FIR was an outcome of landlord tenant dispute. In support of his contention he has handed over the judgment of acquittal of the petitioner Vikas Balguer @ Shammi's dated 30.08.2022 passed in SC No. 06/2018 arising out of FIR No. 436/2017 u/s 376-D/354/509/34 IPC, the same is taken on record.

23. I have heard the learned counsel for the petitioners, the learned APP for the State, as well as, the learned counsel for the complainant and have perused the material on record.
24. It is trite that detailed and elaborate appreciation of evidence cannot be undertaken at the stage of considering a bail application. However, for the limited purpose of seeing whether there exists a *prima facie* case in favour of the accused warranting grant of bail, the evidence can be looked into for indicating reasons therefore. Reference may be had to the observations of the Supreme Court in ***Lt. Col. Prasad Shrikant Purohit v. State of Maharashtra, (2018) 11 SCC 458***, which read as under:- “29. *The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non application of mind. It is also necessary for the court granting bail to consider, among other circumstances, the following factors also before granting bail; they are:*  
*a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence. (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.*  
*(c) Prima facie satisfaction of the court in support of the charge.”*
25. The eye witness Rohit Bansal, who was examined by the prosecution as PW2, in his examination-in-chief had attributed an overt act to both the petitioners but in latter part of his examination-in-chief he resiled from his statement recorded under Section 161 CrPC. Even in his cross-examination, the petitioner took a diametrically opposite stand and testified that at the place where fight took place it was dark and after he suffered injury, he left the place and stated that he cannot tell who caused what injury to whom in that fight. In his cross-examination, the petitioner also wrongly identified accused Ashish.
26. Similarly, another eye-witness namely Sagar Sharma, who was examined as PW3, partially resiled from his previous statement recorded under section 161 CrPC and during his cross-examination stated that he had seen the incident but he could not see who had beaten whom and that while the fight was still going on, he left the spot as he got scared. He also wrongly identified co-accused Tarun as Ashish Balguer.
27. Yet another eye-witness Jitender, who was examined as PW4, has ascribed an overt act to accused/petitioner Ashish on the basis of CCTV footage which has been objected to by the learned defence counsel on the ground that the face of the person is not visible in the CCTV footage,



therefore, no role can be attributed to the said witness on the basis of CCTV footage. Insofar as the petitioner Vikas @ Shammi son of Rajinder is concerned, the witness Jitender/PW4 has stated that he had seen the petitioner Vikas @ Shammi in the club but he had not seen him at the place of incident.

28. Prosecution witness Maninder, who was examined as PW5 also deposed that accused Vikas @ Shammi, Ashish Balguer, Vishal Balguer present through VC were not there during the fight.

29. The contention of the learned counsel for the complainant is that the eye-witnesses have not supported the case of the prosecution either partly, or to the fullest extent, only for the reason that they were threatened by the accused persons.

30. The reason as to why the PWs have not supported the case of the prosecution will be examined in detail by the learned trial court at the stage of trial. Likewise, the probative and evidentiary value of the testimonies of eye-witnesses including those who turned hostile and their credibility will also be considered during the trial. However, while considering the bail application of the petitioners, this Court cannot be oblivious of the fact that the eye-witnesses resiled from their statements under section 161 CrPC; when cross-examined they contradicted their statement in the examination-in-chief; PW2 and PW3 wrongly identified petitioner Ashish Balguer; PW4 stated that petitioner Vikas Balguer @ Shammi was not even present at the place where the fight had taken place, and PW5 has stated that Vikas @ Shammi, Ashish Balguer, Vishal Balguer were not there during the fight. This coupled with long incarceration of the petitioner tilts the balance in favour of the petitioners and furnishes a ground for grant of bail to them.

31. It is well settled that at the pre-conviction stage, there is a presumption of innocence. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be awarded to him. Though at this stage it cannot be commented upon as to whether the petitioners are guilty or not, but the circumstances discussed above, do not warrant keeping the petitioners in custody for an indefinite period to await the conclusion of trial, which is likely to take time as some of the formal prosecution witnesses, as well as, defence witnesses are yet to be examined. An ultimate acquittal with continued custody would rather, be a case of grave injustice.

32. Undisputedly, the antecedents of the petitioner Ashish Balguer are clean. Against Vikas Balguer @ Shammi another case FIR No.436/2017 under Sections 376/506 IPC PS Safdarjung Enclave is stated to be

registered, but the learned counsel for the said petitioner stated that he has been acquitted of the offence and in support of his submission he has placed reliance on the judgment of acquittal dated 30.08.2022 passed in SC No. 06/2018 arising out of FIR No. 436/2017 u/s 376-D/354/509/34 IPC, which has not been disputed by the State or by the complainant's counsel.

33. Further, the testimonies of all material witnesses have now been recorded, therefore, there is no possibility of petitioners threatening or influencing the material witnesses, in the event they are enlarged on bail. 34. It is also an admitted position that petitioner Vikas Balguer @ Shammi was on bail for 06 months, but he did not flee or create any obstruction in the administration of justice, therefore, the said petitioner cannot be said to be a flight risk. Petitioner Ashish Balguer is permanent resident of Delhi, therefore, there does not appear to be any likelihood of his fleeing from justice.
35. Considering the aforesaid circumstances in entirety, this Court is of the opinion that the petitioners have made out a case for grant of regular bail. Accordingly, the petitioners are admitted to regular bail subject to their furnishing a Personal Bond in the sum of Rs.50,000/- each with two sureties of like amount, subject to the satisfaction of the Trial Court/Duty Magistrate/CMM, further subject to the following conditions:
- a) Petitioners shall appear before the Court as and when the matter is taken up for hearing.
  - b) Petitioners shall provide their permanent address, as well as, their mobile numbers to the IO concerned. The mobile numbers shall be kept in working condition at all times and he shall not change the mobile numbers without prior intimation to the Investigating Officer concerned.
  - c) Petitioners shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the witnesses/complainant.
36. It is made clear that the observations made herein are only for the purpose of considering the bail application and the same shall not be deemed to be an expression of opinion on the merits of the case.
37. The petitions stand disposed of.
38. Copy of the order be forwarded to the concerned Jail Superintendent for necessary information and compliance.
39. Order *dasti* under the signatures of the Court Master.
40. Order be uploaded on the website of the Court.



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