

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 16th November, 2021

IN THE MATTER OF:

+ BAIL APPLN. 2991/2021

BHUPENDER SINGH @ BHUTTAN

..... Petitioner

Through: Mr. Mohit Mathur, Sr. Advocate with
Mr. Rajiv Tehlan, Mr. Deepal Goel
and Mr. Tarun Gaur, Advocates.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Amit Chadha, APP for the State
with Insp. Jitender Rana, P.S. GTB
Enclave.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition under Section 439 CrPC is for grant of regular bail to the Petitioner in FIR No. 85/2021 registered at Police Station GTB Enclave for offences under Sections 186, 353, 332, 307, 224, 225, 482, 392, 397 and 120B IPC read with Sections 25 and 27 Arms Act. The Petitioner was arrested on 28.03.2021.

2. Briefly stated, the facts, as given in the FIR are that on the statement of ASI Braham Pal posted at Mandoli jail, the instant FIR was registered. It is stated that under-trial high risk prisoner Kuldeep @ Fajja, belonging to Gogi Gang, was taken to the OPD at GTB Hospital from Mandoli Jail. It is stated that after the check-up, Kuldeep @ Fajja was being taken back, and outside the building a group of 10-12 boys attacked the group of policemen. Two of the accused persons, who were minors, threw chilly powder in the

eyes of the police. Two persons were injured badly in the cross-firing at the hospital and one of the injured passed away. The scene of crime was seized and the bullet shells, cartridges, samples of blood stains, earth from the site and a Scorpio car bearing number plate DL-4C-NB- 5751, were taken into police custody and were sent for forensic examination. The assailants succeeded in helping Kuldeep @ Fajja escape from the jail custody. It is stated that Kuldeep @ Fajja reached Jaipur Golden Hospital where the petitioner herein met him and he took him to the residence of one Yogender Dahiya on his scooty at Rohini.

3. The petitioner was arrested on 28.03.2021. It is stated that the scooty on which the petitioner and Kuldeep @ Fajja escaped was seized by the Police.

4. Chargesheet in the present FIR has been filed. The chargesheet sums up the entire incident where it states that a deep conspiracy was hatched between 15-20 persons to get Kuldeep @ Fajja escape from prison. The police team was dislodged by two persons throwing chili powder at them and creating confusion whereafter gun firing started from both sides. During the firing that took place at the hospital, two people got seriously injured and one of them died. It states that after escaping from the Police at the Hospital, Kuldeep @ Fajja was taken from GTB Hospital. It is stated that Kuldeep @ Fajja was taken to a safe house at Sector 14 Rohini by the Petitioner herein for hiding. Kuldeep @ Fajja was encountered by the Police after a high-voltage gunfight that happened.

5. It states that the role of the Petitioner in the escape of Kuldeep @ Fajja was instrumental as he took the ill-famed gangster on his scooty/bike bearing registration number DL-11-SS-5507 from Jaipur Golden Hospital

towards Sector 3 Rohini. It states that the incident has been captured by different CCTV cameras, where the scooty/bike can be seen with two persons riding it wearing helmets. It states that the Petitioner took Kuldeep Fajja to a hiding house belonging to another accused Yogender Dahiya, No. D-9 Tulsi Apartments Sector 14 Rohini for sheltering him. It states that the clothes worn by the Petitioner which had been seen on the CCTV footage were seized by the Police with the scooty.

6. The Chargesheet also states that a disclosure statement was taken from the Petitioner. In his disclosure statement, the petitioner herein stated that he received an international call on 24.03.2021 from Kuldeep @ Fajja stating that he will escape from Police custody and he asked the petitioner to make arrangements for his stay. The statement stipulates that the plot for this escape was hatched in January/February 2021 and he was communicating the plan of executing the escape with the other co-accused through frequent WhatsApp calls. It states that the Petitioner picked Kuldeep @ Fajja from Jaipur Golden Hospital, took him on his scooty and headed towards Village Naharpur, Sector 3 Rohini. This information revealed by the petitioner led the police to check CCTV footages which shows the Petitioner and deceased gangster Kuldeep @ Fajja, escaping on a scooty. However, their faces are covered with a helmet and are not visible.

7. The Petitioner's bail application was rejected vide order dated 29.6.2021 where the Ld. Sessions Court observed that in the chain of events that occurred, the petitioner played an instrumental role in the conspiracy to aid undertrial Kuldeep @ Fajja escape from lawful custody. Further, the Ld. Court noted that criminal conspiracy is a matter of inference and is to be decoded after an analysis of the sequence of events by joining the dots.

8. Heard arguments advanced by learned counsels appearing for the counsels and perused all material on record. Mr. Mohit Mathur, Ld. Senior Advocate appeared for the Petitioner, and the Mr. Amit Chadha, Ld. APP appeared for the State.

9. Mr. Mohit Mathur, Ld. Senior Advocate, at the outset, submitted that by an order of 26.06.2021, the Ld. Sessions Court has granted bail to co-accused Yogender Dahiya who had allegedly provided safe harbor at his house in Sector 9 Rohini, to deceased gangster Kuldeep Fajja, and therefore, submitted that on the principle of parity, the Petitioner deserves to be enlarged on bail. Mr. Mathur submitted that the Petitioner is an employee of the State Government of Delhi and has a clean track record, he has roots in the society and the presence of the petitioner can be enforced.

10. He submitted that as the Chargesheet stands filed and the supplementary chargesheet has also been filed, further custody of the Petitioner would not required as charges are about to be framed. He states that 84 witnesses have to be examined during the Trial and, therefore, he cannot be kept in custody indefinitely. The evidences to be presented in Court are already with the Police and there cannot be any tampering as the materials are already with the forensic department for examination. Additionally, he submitted that three other co-accused, namely Abhimanyu, Amit Mathur and Dhruv Rana were granted bail on 06.10.2021, 06.10.2021 and 09.10.2021 respectively in the same matter and there is no reason for discriminating against the petitioner.

11. He assailed the CCTV footage produced by the State and submitted that the faces of the Petitioner and the deceased gangster or the Scooty's number plate cannot be seen in the footage and, therefore, the benefit of

doubt should be extended to the Petitioner that he was not riding the scooty at that time. He submitted that in bail jurisprudence, the criminal accusation has substantial value. Hence, the punishment prescribed in case of conviction for offences charged with should be the first and a major determining factor in either granting or rejecting bail petitions. He stated that in the charge-sheet, the Petitioner is accused of committing an offence under Sections 216 and 225 IPC for which he can be sentenced to imprisonment for a maximum period of seven years and he has already spent seven months in custody. He, therefore, submitted that bail should be granted to the Petitioner.

12. Per Contra, Mr. Amit Chadha, Ld. APP vehemently opposed the plea for bail. He firstly submitted that the Petitioner cannot claim parity with co-accused Yogendra Dahiya who was granted bail by the Ld. Sessions Court on 26.06.2021 as the roles of the Petitioner and Yogender Dahiya are different and distinguishable. He submitted that Yogender was given bail as he was arrayed under the charge of harboring an offender who escaped lawful custody and punishment prescribed for the offence Yogender was charged under was three years whereas the Petitioner had been charged with a more serious offence as Petitioner was in complete sync with the main conspiracy hatched between the 15-20 persons and actively co-opted with the main object of moving Kuldeep @ Fajja on a scooter, from Jaipur Golden Hospital to Sector 3 Rohini, thereby executing the job asked of him in pursuance of an ultimate objective.

13. Mr. Chadha, secondly, submitted that the Petitioner played an active role in the conspiracy to escape which was hatched 2-3 months before the act of aiding Kuldeep @ Fajja took place. He submitted that on perusing the

CDR of the Petitioner, it was noticed that the Petitioner received an international call which gives rise to the suspicion that foreign elements were involved in the conspiracy to ensure Kuldeep @ Fajja escaped lawful custody. He further argued that the Petitioner confessed to the Police, that was recorded under Section 161 CrPC, and that statement, has led to finding concrete leads and the Police had checked the house of the Petitioner where they found the clothes that the Petitioner wore on that day on which the crime occurred. He submitted that this statement helped the Police know the route taken by the Petitioner on the day of crime from Jaipur Golden to Rohini and subsequently all CCTV footages on that stated route were analyzed. He submitted that in the footage, the Petitioner can be seen on the bike with Kuldeep @ Fajja as the pillion rider, wearing the same clothes that were seized from Petitioner's house. Therefore, the Petitioner ought not to be granted bail for his active and clear involvement as well as the corroboration of his statement with discovery of material articles and facts with respect to other co-accused who have also been apprehended on the basis of the disclosure statement.

14. Mr. Chadha submitted that the charges have not yet been framed and there is threat that the Petitioner, who is well connected with the gang that the deceased Kuldeep@ Fajja belonged to, will tamper the evidence and influence witnesses if released on bail. During the course of the arguments, Mr. Chadha fairly conceded that three other co-accused namely, Abhimanyu, Amit Mathur and Dhruv Rana had been released on bail.

15. This is a case wherein a lot of players were involved in the successful escape of gangster Kuldeep @ Fajja. It is also to be noted that two minors were made accomplices and abettors to the act of escaping of Kuldeep @

Fajja insofar as they were made to create chaos by throwing chilly powder in the eyes of the Police Officers who were accompanying Kuldeep @ Fajja. It is necessary to deconstruct the role of the Petitioner. He was the person who took the deceased under-trial on his scooty from Jaipur Golden Hospital to Rohini to a safe house for providing refuge to the deceased. The Petitioner, according to the chargesheet, is charged with Sections 216, 225 and 120B IPC.

16. In Gurcharan Singh v. Delhi Administration, (1978) 1 SCC 118, the Supreme Court has held as under :

*“24. Section 439(1) CrPC of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike under Section 437(1) there is no ban imposed under Section 439(1), CrPC against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1) CrPC of the new Code. **The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) CrPC of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of***

jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out.” (emphasis supplied)

17. In Ram Govind Upadhayay v. Sudarshan Singh, (2001) 3 SCC 598, the Supreme Court explained the factors to be considered for granting bail, it held as follows –

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.” (emphasis supplied)

18. It is to be noted that the allegation against the Petitioner is that he has played a key role in conspiring and abetting the unlawful and illegal escape of under-trial Kuldeep@ Fajja. The contention of Mr. Mohit Mathur, learned Senior Advocate, that the maximum punishment is 7 years for offences under Section 216 and 225 IPC is of no consequence as the gravity of the conspiracy to enable a dreaded gangster escape from lawful custody has a greater bearing on this Court while deciding the present petition.

19. The evidentiary value of the disclosure statement and whether the petitioner can be identified in the CCTV footage will be decided during the course of trial. This Court needs to bear in mind that the act was

meticulously planned and swiftly implemented. The conspiracy of helping Kuldeep @ Fajja escape from the lawful judicial custody is of huge magnitude which could have serious effects on public safety and graver consequences on society as a whole. To execute this conspiracy, it required skill, tact and a high level of intricate planning and plotting.

20. Furthermore, it is pertinent to note that an operation of this complexity, i.e. to aid an undertrial of notorious credentials escape lawful custody, has wide ramifications that may shake the confidence of the public in the police administration as well as the criminal justice system. Additionally, granting bail at this juncture to the accused has the potential to encourage copycat criminal behaviour. The conspiracy being so deep-rooted requires to be examined at trial and cannot be summarily adjudged upon by this Court. Further, tampering of evidence or influencing witnesses also cannot be ruled out. In light of the above, this Court is, thus, of the opinion that no case for bail is made out at this stage.

21. With the above observations, this petition is dismissed along with the pending application(s), if any.

NOVEMBER 16, 2021

Rahul

SUBRAMONIUM PRASAD, J