

Bail Matters No. 2220/2021
STATE versus Nikhil Kumar @ Chohi
FIR No. 915/2020
PS Bindapur
U/s 323/326/341/302/34 IPC

01.07.2021

Hearing conducted through Video Conferencing CISCO WebEx Meetings.

Present: Mr. Yogendra Adari, Ld. APP for the State.
Mr. Avishkar Singhvi and Mr. Nipun Katyal, Ld. Counsels
for the applicant/accused Nikhil Kumar @ Chohi.
IO/Inspector Sanjay, PS Bindapur is present.

1. Submissions were previously heard on the present bail application of applicant/accused Nikhil @ Chohi under section 439 Cr. PC.

2. The offence in allegation is section 302 IPC and the applicant is sought to be incriminated with the aid of section 34 IPC.

3. The applicant/ accused is in JC since 26.02.2021.

4. The allegations recorded in the FIR and the chargesheet since filed relate to multiple assailants i.e. accused Sagar, Mohit @ Thakur, Wazir, Nazir, Harsh, Nikhil @ Chohi (applicant herein) and three CCLs namely 'A', 'S@ M' and 'M @ M'. As the deceased namely Amit and his brother Atul were accosted by the assailants on 11.09.2020 at Bhagwati Vihar (Near Gulab Masjid) on account of a previous altercation between Atul and CCL 'A', the two brothers i.e. Atul and Amit were assaulted by the opposite group. As the victims were dragged to *Atta Chakki Chowk*, Sidharth properties, accused Sagar and present applicant namely Nikhil also joined the said assailant group in beating Amit and Atul with slaps and blows. Accused Mohit @ Thakur stabbed Amit in the chest with a knife while CCL 'S @ M' hit him on the head with a brick. The assailants then escaped. The victim namely Amit expired at the hospital.

5. All assailants except Mohit @ Thakur and Harsh have been apprehended. The later two are absconded.

6. The Ld. Counsels for the applicant/accused prayed for his release on bail on multiple submissions including his young age i.e. 19 years, absence of his name in the FIR and the purportedly contrived supplementary statement of witness Ankit Kumar who named the applicant as one of the assailants four months after the incident. The Id counsel for the accused agitated that no direct role in the infliction of the fatal blows upon the deceased i.e. Amit could be ascribed to the present applicant. The counsel urged the court to consider the factum of filing of the chargesheet as denying any further utility to the prosecution from his continued detention.

7. Much emphasis was also laid by the counsel for the applicant on the law relating to juveniles to canvas that the present applicant, though 19 years in age, be also afforded equal protection from the company of older inmates and hardened criminals in jail. It was submitted that a stint in jail would deny any possibility of a reformatory approach towards him pending trial.

8. In response, the Id. APP argued that the chargesheet having been filed with the application of section 34 IPC, the respective roles of the multiple accused persons in the incident could not be truncated only to create a justification for bail. The prosecutor submitted that an eye witness i.e. Ankit had specifically named the present applicant as one of the assailants who facilitated the murder of the deceased.

9. It was further asserted by the Ld. Prosecutor that the jurisprudence or legislation related to children in conflict with law did not come to the aid of the applicant as he is 19 years in age and no longer entitled to the protection of the principles governing CCLs.

10. The court has considered the entire record.

11. It is indeed apparent from a perusal of the chargesheet that the principal witnesses for the prosecution i.e. Atul, Ankit, Ajay and Nitin did not name the present applicant in their initial statements which were recorded in the next few days after the date of incident i.e. 11.09.2020. The present applicant namely Nikhil came to be named as one of the assailants by witness Ankit in a supplementary statement dated 26.01.2021. Whether the alleged respective culpability of either or all accused persons would attract individual charge under section 302 IPC or a joint charge under section 302 read with section 34 IPC is a stage yet to be reached as charge is still to be framed. It does, however, persuade the court in favour of admitting the applicant to bail that he was not named at first blush by any of the eye witnesses.

12. Here, the court would note that the arguments of the Ld. Counsel for the accused, based on advocating a liberal approach towards young offenders in the matter of bail, are not without basis. While the juvenile justice dispensation did undergo a significant change in the post *Nirbhaya* aftermath so as to render children accused of heinous offences in the age group 16 to 18 years also liable to be tried as adults in appropriate cases, the inconstancy of the law related to juveniles in India is not matched by any inconsistency in the principles governing bail. Multiple decisions of the Hon'ble Apex Court and High Courts have favoured release of young offenders on bail pending trial in order that the apparently regressive influences of the jail environment be avoided.

13. Thus, while agreeing with the Ld. Prosecutor that the applicant is not a child, being 19 years in age, it is also manifest that mental age may not necessarily keep step with a legislated age of maturity. Infact, developmental psychologists would not deny that often the capacity to take decisions as an adult or comprehend in entirety, the consequences of actions of a violent nature, may not be

fully developed in a person only because the law says that one ceases to be a child at age 18. The applicant, 19 years in age, is not quite a child in the eye of the law but is yet only a neo adult. This court would propose that if a child (between the age 16 to 18 years) can be treated as an adult for the purpose of trial in heinous offences, a child who has just about crossed the legislated age of adulthood i.e. 18 years and remains a young adult (19-20 years) can certainly be afforded the protection of his liberty akin to a child in conflict with law.

14. Such young alleged offenders may therefore be released on bail not only honoring the principle of presumption of innocence but also in recognition of the principle of 'best interest' which may again be extrapolated to neo adults from the Juvenile Justice regime. If admitted to bail, the applicant, a student, may yet gainfully pursue his best interest till trial adjudicates upon his culpability.

15. Applicant/accused Nikhil @ Chohi is admitted to bail on furnishing of PB & SB in sum of Rs. 50,000/- each. The surety shall be a local resident of Delhi and the accused shall apprise the IO regarding any change in his residential address or mobile phone number. The applicant shall not leave the territory of Delhi without the permission of the court.

16. Let a copy of this order be given dasti/sent by email to the counsels for the applicant/accused and also sent to the Superintendent, Tihar Jail.

VISHAL
GOGNE

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by VISHAL GOGNE
Date: 2021.07.01
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(Vishal Gogne)
ASJ-04 (SW)/ Dwarka Courts
01.07.2021