

17.05.2021

ORDER

1. The present order, being adjudicatory of the plea of the three applicants/accused for bail under section 439 Cr.PC, is as much an order cognizant of the right to liberty as it is as an exemplar of the right to life itself. Such an unseemly dichotomy presents itself to the court on account of the manner of commission and the social context of the offence in allegation. The victim having allegedly been lynched to death by the accused persons as a crowd watched, the right of the applicants to their liberty pending trial comes into interplay and may be even conflict with the right to life of the victim, extinguished though it may be but still to be agitated as a discussion on the rule of law mandated by the Constitution of our land.
2. As a necessary corollary of the above competing considerations, the discussion to follow is necessarily also a commentary on the manner in which judicial time and indeed the energies of authorities charged with protecting life and liberty are apportioned. As the courts of law gets subsumed in the national project of improving rankings qua the ease of business, the plight of the citizenry and the grave challenges to matters related to the right to life itself, brought into tragic focus by the current pandemic, beg the question whether the protection of life(and liberty), the most precious human rights, is not the real *raison d 'etre* for the courts.

3. Since the bail applications were moved at the stage of framing of charge and the arguments on both aspects viz charge and bail were centered around the question of applicability of section 302 IPC versus section 304 IPC, the court has decided both aspects. Vide a separate order on charge, it has been directed that accused Lal Babu, Munesh, Dharmender and Gajender shall face trial on a joint charge under section 302 IPC read with section 34 IPC while an independent charge shall also be separately framed under section 302 IPC against accused Lal Babu, Munesh, Dharmender.
4. The present applicants namely Dharmender, Munesh and Gajender have been in custody since 22.10.19.
5. The incident dated 22.10.2019 unfolded at an electricity pole situated in C Block, Gali no. 5, Durga Vihar, Phase-II where a 35 year old man named Vijay Kumar, suspected by the accused persons and the local residents at large to be a child lifter, became the subject of a public lynching which snuffed out his life in a span of about 40 minutes. The macabre spectacle was witnessed by at least 50 persons and captured with gruesome clarity on a CCTV camera barely a few yards away from the place of incident.
6. The arguments on the bail applications have been predicated on the complaint made by an eye witness i.e. Satish Sinha and the CCTV footage which was not disputed, for purpose of the bail applications, by the defence counsels. Infact, the respective counsels referred to various portions of the video to canvas that the accused that they respectively represent was a lesser culprit than the other accused and that the blows inflicted by neither could be construed, in a prima facie view, to be with an intention to kill or the knowledge of death resulting from their actions.
7. To elaborate, the counsel for applicant/accused Dharmender submitted that the stick used by him was a thin wooden plank whereas the kicks and fists blows inflicted by him were not deadly. Also, that he left midway through the incident.

8. The counsel for applicant/accused Munesh, who also represented applicant/accused Gajender, rather submitted that the former had not inflicted any particular vicious blow which could by itself have caused the death of the victim and that even the charge under section 302 IPC was harsh upon him. It was submitted with respect to accused Gajender that he had allegedly inflicted only a few slaps which could not be construed as mortal blows either.
9. Great reliance was placed by the defence counsels on co-accused Anil Kumar having been admitted to anticipatory bail by another Sessions Court at Dwarka vide order dated 27.01.21. The counsels pleaded for parity with accused Anil Kumar in the matter of releasing the present three applicants on regular bail under section 439 Cr. PC.
10. In response to the submissions of the defence counsels, the Ld. APP agitated that the incident was a wanton case of mob violence where the accused persons, presuming the victim to be guilty of trying to kidnap a child, proceeded to take the law in their hands and consciously thrashed him for a long duration despite the efforts of many public persons to stop them. The prosecutor contended that the cause of death was the combined effect of multiple injuries including head injuries and bleeding inside the brain of the victim. It was argued that the assault upon the victim was neither sudden nor justifiably provoked and that it was rather the common intention of all the accused persons to summarily punish the victim by taking his life.
11. It was submitted by the Ld. Prosecutor with respect to the plea of parity with co-accused Anil, who is on anticipatory bail, that when the application of the said accused Anil Kumar was considered by another Sessions Court at Dwarka, the CCTV footage of the incident was not placed before the court. Consequently, the scale of the attack and blows inflicted by accused Anil Kumar, being way beyond what was brought to knowledge of the court, remained unagitated by the State either. During the course of the present proceedings, the Ld. Prosecutor did submit that there might be a possibility of

the State filing an application before the Hon'ble High Court for cancellation of the anticipatory bail granted to accused Anil Kumar.

12. The court has considered the entirety of the record including the statement of the complainant namely Satish Sinha and also watched the CCTV footage as highlighted by both the prosecutor and the defence counsels. Since the grounds for bail are largely based on the role of the applicants/accused being grave or diminished as agitated by the prosecutor and defence counsels respectively, the footage has been examined in detail and also with reference to each accused.
13. The court would preface the following reasoning with the observation that the consideration of a plea for bail is a balancing of multiple considerations and criteria. In the present facts, the presumption of innocence, which is the foundation for permitting liberty in the form of bail pending trial, does come into severe conflict with another constitutional imperative viz the rule of law. The graphic video footage, even if seen in a prima facie view, is still explanatory to the last detail about the chain of events.
14. Thus, the present applications are liable to be decided as much with an eye on the conventional considerations for bail including gravity of the offence and the role of the accused as with deference to the absolute mandate for every court of law to ensure and instill confidence in the rule of law.
15. The initial report of the incident was made by complainant Satish Sinha who detailed the incident as under.
16. The complainant stated that at around 10.00 am on 22.10.2019, on hearing noise from the street he ventured out to find a shirtless man aged 30-35 years being beaten by turn at the hand of many persons. A neighbour namely Chote Lal informed the complainant that on believing the victim to have kidnapped the son of one Sravan Kumar, the accused were thrashing him. The complainant noted accused Lal Babu tying the hands and feet of the victim and also beating him. He also noticed and specified that accused Munesh @ Kalu was beating the victim with a stick and had also tied his feet. The complainant further

narrated that Dharmender, who was an acquaintance of Munesh, was beating the tied up victim mercilessly with kicks and punches. Dharmender was also allegedly banging the head of the victim against the electricity pole. The complainant also stated that Dharmender was wearing a yellow T shirt.

17. It was alleged with respect to Gajender Singh @ Raju, referred to as Raju, son of Rajpal in the complaint, that he too joined and caught hold of the victim by his hair and inflicted blows upon him.
18. The complainant asserted that he called out to the accused persons to stop the assault else the victim would die. Also, that Chotte Lal went to restrain the accused persons. However, accused Dharmender pushed Chotte Lal back and the accused persons continued to beat the victim.
19. The complainant further alleged that accused Anil(now on anticipatory bail) also joined the other accused in beating the victim with a stick (*danda*) and kicks.
20. Commenting first on the gravity of the offence, the factum of the incident being forwarded and now being tried as murder i.e. section 302 IPC upon the complaint of Satish Sinha does not comprehend the gravity of the incident in entirety. What has rather unfolded, as evident in a 40 minute video of the incident (between 9.58 am to 10.37 am) is the repeat of a phenomenon reported with a greater frequency in our Republic over the last few years. This crime, a hark back to the American past or fascist Europe, has found reactionary and revivalist patronage in instances too many over years quite few and is what we now commonly understand as lynching. Following the pattern of multiple similar incidents in the recent years, the present victim namely Vijay Kumar was also presumed by the accused persons and by local residents alike in the narrow lanes of Durga Vihar, Delhi to be a child lifter. The complainant namely Satish Sinha mentioned in the FIR that since the named accused persons, including the present applicants, suspected the victim to have been attempting to take away the child of one Sravan, they proceeded to tie and beat him up.

Thus, apparent both from the FIR and the video footage, the accused persons apparently and in a prima facie view acted as accuser, adjudicator and also the executioner. Their right to liberty may have to yield to the rule of law which they breached.

21. This court would not fail in its obligation to highlight that the ideological as well as resurgent phenomenon of lynching by mob was called out by the Hon'ble Supreme Court in its decision dated 17th July, 2018 reported as ***Tehseen S. Poonawalla vs Union of India and Ors, (2018) 9 SCC 501***. Detailed guidelines were issued by the Apex Court for prevention and remedial measures qua such incidents. The court would revisit the said directions in the later part of this order. For now, it serves well to highlight the following excerpts from the said decision.

18. Lynching is an affront to the rule of law and to the exalted values of the Constitution itself. We may say without any fear of contradiction that lynching by unruly mobs and barbaric violence arising out of incitement and instigation cannot be allowed to become the order of the day. Such vigilantism, be it for whatever purpose or borne out of whatever cause, has the effect of undermining the legal and formal institutions of the State and altering the constitutional order. These extrajudicial attempts under the guise of protection of the law have to be nipped in the bud; lest it would lead to rise of anarchy and lawlessness which would plague and corrode the nation like an epidemic. The tumultuous dark clouds of vigilantism have the effect of shrouding the glorious ways of democracy and justice leading to tragic breakdown of the law and transgressing all forms of civility and humanity. Unless these incidents are controlled, the day is not far when such monstrosity in the name of self-professed morality is likely to assume the shape of a huge cataclysm. It is in direct violation of the quintessential spirit of the rule of law and of the exalted faiths of tolerance and humanity.

42. We may emphatically note that it is axiomatic that it is the duty of the State to ensure that the machinery of law and order functions efficiently and effectively in maintaining peace so as to preserve our quintessentially secular ethos and pluralistic social fabric in a democratic set-up governed by rule of law. In times of 21 (2011) 6 SCC 405 chaos and anarchy, the State has to act positively and responsibly to safeguard and secure the constitutional promises to its citizens. The horrendous acts of mobocracy cannot be permitted to inundate the law of the land. Earnest action and concrete steps have to be taken to protect the citizens from the recurrent pattern of violence which cannot be allowed to become the new normal. The

State cannot turn a deaf ear to the growing rumblings of its People, since its concern, to quote Woodrow Wilson, must ring with the voices of the people. The exigencies of the situation require us to sound a clarion call for earnest action to strengthen our inclusive and all-embracing social order which would, in turn, reaffirm the constitutional faith. We expect nothing more and nothing less.

22. This court would record that what the Apex Court sounds and describes as a clarion call must necessarily become a command for compliance for every authority, civil and judicial, including this court under Article 144 of the Constitution of India.
23. Abiding completely with the letter and spirit of the said decision of the said decision and also in furtherance of what we, through over a decade of sustained training and sensitisation through the various Judicial Academies of India, now understand as social context adjudication, the court observes that the plea for bail must also factor in the social context of the crime. Much like incidents of dowry deaths and offences against women are unhesitatingly identified and commented upon in judicial orders as a reflection of social malaise, the act of lynching a human life must also be recognized as an expression of a creeping social reality. This reality indubitably is intolerance.
24. Fueled by hateful intolerance, a lynch mob proceeds on two conscious desires. One, the othering of a particular individual or group on the basis of a manufactured hate against the individual or group. Two, the vigilante mob then acts as an extra judicial authority to carry out a de facto sentence. Almost never is the incident a case of actions taken just in the heat of the moment. The actions which result in lynching are evidently conscious, premeditated and executed till the gory end. The social context of mob violence is thus an identifiable factor in determining aggravated gravity when the courts decides the plea for bail. Any reticence of judicial observation would then be anathema to justice in a social context .If dominant social tendencies are seen as encouraging of a destruction

of rule of law, the societal impulses which feed the crime must inevitably be highlighted as contributing to a greater gravity standard.

25. The CCTV footage of the present incident shows accused Dharmender (Yellow shirt), Munesh (Red shirt) and Lal Babu (White shirt) dragging the victim i.e. Vijay Kumar to the electric pole and tying him up with his knees, waist and hands facing the pole. While accused Munesh holds the hands of the victim, accused Dharmender takes a few steps back and kicks the victim repeatedly in the posterior with the full force of his stocky body. The victim, a frail man, looking to weigh not more than 55 kgs gets repeatedly smashed against the cement pole with these blows. Dharmender then proceeds to smash the victim's head against the pole. Accused Munesh participates in the vicious assault using a stick (*danda*) and continues to assault the victim on his spine, legs and other parts of the body apart from continuing to restrain him along with Lal Babu. Accused Gajender is also seen grabbing the victim by his head and giving repeated blows to the jaw of the victim. Again, accused Munesh and Gajender are decidedly more muscular and heavy set than the lean victim.
26. Seen in conjunction, the unceasing assault from accused Dharmender from about 9.58 am to about 10.10 am, aided by Lal Babu and Munesh reduces the victim to a dangling state, held to the pole only by the ropes which restrain him.
27. Since the counsels for accused Munesh and Gajender had contended that the stand alone blows ascribed to these two accused were apparently non fatal, this court is constrained to observe that against the failing and battered body of the victim, any blow and that too coming from seemingly stronger men would have jolted the victim into further shock and precipitated his demise. For reason of being tied up virtually from shoulder to toes against the electric pole, each blow remained undefended and thus carried greater and helpless pain for the victim.
28. The court is indeed mindful here that the observations in an order for bail are not reflection on the merits of the allegations. Yet, the graphic video footage must be considered for purpose of deciding the plea for bail. Hence, while

repeating the above prudent observation, the court still highlights that the video captures all accused persons in the act. Indeed, their identity or the authenticity of the CCTV footage was not disputed by the counsels either.

29. Another aspect which lends gravity beyond other cases relating to homicide is the spectacle which unfolded during the incident. Many bystanders clicked pictures of the assault. Accused Munesh, Dharmender and Anil are themselves seen filming the assault. Others continue to talk and joke as the victim continued to be thrashed. Apparently, for a society now normalised into accepting intolerance and summary street justice, the business of life could go on while the life of a fellow human was being extinguished. Small children also witnessed the incident in apparent dehumanisation not only of the victim but also their innocent psyche. To cap the unfortunate incident, accused Lal Babu is seen sadistically pouring water on the head of the victim. To the absolutely deranged senses of the victim, the splashing of water was as much a shock inducing moment as it was a mockery of his plight.
30. Thus, to accept that either accused allegedly inflicted non lethal blows without intention to kill or knowledge of the nature of their act would be a travesty of ordinary prudence.
31. The postmortem report opined qua the cause of death that the injuries were collectively sufficient to cause death in the ordinary course of nature. The head injuries were specifically opined as a cause of death.
32. This report also reveals a fracture of both shoulders, multiple hemorrhages in the brain and the presence of 100 ml of blood at the base of the brain. Besides, the victim had contusions on pretty much every part of his body from the neck to the feet. Most of the contusions were abraded and measured as much as 19 x 13 cm or 18 x 13 cm, to cite only a few. There were 31 injuries on his person.
33. While the head injuries are ascribable prima facie to accused Dharmender, the other collective injuries apparently resulted from the hands of accused Munesh, Gajender and Lal Babu.

34. The greater gravity of the offence, propelled by its brutality as well as social context and the prime facie involvement of the accused are absolutely overriding considerations in declining their release on bail. As expressed earlier, the rule of law is a potent consideration in the present facts. To release accused persons prima facie involved in lynching would project a failure of the rule of law. It would also constitute a failure of the court to begin the push back against those locked in a battle with liberal and democratic ideals. Undoubtedly, a lynching on one pretext is an invitation to the next lynching on some other pretext. The courts cannot countenance any such othering or hate and must apportion their social sensitivity and judicial time to clamp down on this crime.
35. The remaining aspect qua the prayer for bail is the question of parity with accused Anil Kumar.
36. Since accused Anil Kumar was admitted to anticipatory bail by a court of coordinate jurisdiction i.e. another Sessions court at Dwarka vide order dated 27.01.21, there is no reason for this court to comment or discuss the said order. Indeed, judicial propriety requires that the said order is not agitated critically in the present decision.
37. Yet, any ground raised by the counsels must be discussed by the court. Therefore, with due deference to the principle of judicial propriety and without commenting on the order itself, this court would only observe that the video footage cited in the present three bail applications was admittedly not placed before the Ld. Court which granted anticipatory bail to accused Anil Kumar.
38. The role of accused Anil Kumar apparent in the footage was not a subject of discussion in the said order.
39. The counsels for the present three applicants namely, Dharmender, Munesh and Gajender had agitated that since accused Anil Kumar, seen in the video to be inflicting the most number of blows is on anticipatory bail, the accused credited with lesser blows i.e. the three applicants should be granted parity. Again, the

court would limit its comments to observing that parity exists between accused placed similarly qua the allegations only when they have been determined, during judicial proceedings, to have been similarly placed. When two courts are presented with different material for determination of bail, there is no question of parity.

40. Moreover, this court's unequivocal estimation of the video footage, for purpose of deciding the present bail applications, is that the blows inflicted by neither the present three applicants nor accused Anil Kumar can be reduced to comparison in number alone. The gravity and prima facie role of the applicants has been discussed in the preceding part of this order. Hence, parity is not available to the present three applicants with accused Anil Kumar.
41. Besides, as observed in the preceding part of the order, the Ld. APP has expressed the prospect of the State moving to seek cancellation of the anticipatory bail granted to accused Anil Kumar in light of the CCTV footage now available.
42. The applications moved by accused Dharmender, Munesh and Gajender under section 439 Cr.PC are liable to be dismissed.
43. The court would lastly come back to the directions made in the decision in *Poonawalla (Supra)*. In the said decision, the Hon'ble Supreme Court mandated a slew of preventive, remedial and punitive guidelines to curb incidents of lynching. These include directions for protection of the family members of the victim as also compensation to the next of kin.
44. An observation regarding the conduct of the Investigating police officers in the present FIR highlights the apathy towards such crimes. When the police arrived after multiple calls, the victim had already been apparently left for dead by the assailants. However, a further 15 minutes lapsed before the victim was untied and laid to the ground by the police officers. No effort at checking for life or first aid was made. The video reveals the body to be stiff as it is lowered to the ground. It was still the gumption of the Investigating Officer to have stated in

the chargesheet that the unconscious victim was taken to the hospital and declared dead on arrival.

45. As observed by George Orwell in his essay 'Freedom of the Park' written in the year 1945-“ Governments make laws, but whether they are carried out, and how the police behave, depends on the general temper in the country”

46. The police apparently treated the victim as a child lifter too and accepted his summary fate. Such apathy cannot be risked with respect to witness protection and compensation.

47. Since all public authorities are to act in aid of the orders of the Hon'ble Supreme Court, this court too, acting in compliance of the said directions, deems it fit in terms of the guidelines in *Poonawala(supra)* to direct as under:

- (i) The DCP (SW) is directed to report whether steps have been taken for protection of family members of the victim/witnesses in the present chargesheet.
- (ii) Let notice be issued to Govt. of NCT of Delhi to report whether any scheme for compensation/interim compensation to victims/next of kin in cases of mob violence/lynching has been framed in terms of the decision in *Tehseen S. Poonawalla vs Union of India and Ors, (2018) 9 SCC 501*.
- (iii) The SHO PS Chawla is directed to facilitate the next of kin of the victim in moving an application before the Ld. Secretary DLSA (SW) for interim compensation under the Delhi Victims Compensation Scheme 2018.
- (iv) Let a report also be filed by Ld Secretary DLSA(SW) in pursuance of the above direction.

48. The applications for bail moved by accused Dharmender, Munesh and Gajender under section 439 Cr.PC are dismissed.

49. Let a copy of this order be given dasti/sent by email to the counsels for the applicants/accused.
50. Let a copy of this order be also sent to DCP (Dwarka), SHO PS Chhawla and Ld Secretary DLSA(SW).
51. List for compliance report on 15.06.2021.

(Vishal Gogne)
ASJ-04(SW)/Dwarka Courts
17.05.2021