

**IN THE HIGH COURT OF DELHI**

**Bail Application No.1806/2007**

# Vivek Sharma ..... Petitioner  
! through: Mr.Sandeep Sethi, Sr.Advocate with  
Mr.Amit Yadav and Mr.Mukesh Kalia,  
Advocates

VERSUS

\$ State (NCT of Delhi) ..... Respondent  
^ through: Mr.Anil Soni and Mr.M.N.Dudeja,  
Advocates

% DATE OF DECISION: 31.08.2007

**CORAM:**

\* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y
3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.** (ORAL)

FIR No.375/05 Dated : 5.7.2005

U/S 302/307/34 IPC

P.S. Model Town

1. Petitioner, Vivek Sharma is an accused in the afore-noted FIR. He seeks bail.

2. FIR has been registered on information provided by Ajit Kumar who has been examined as PW-5. As per the FIR, the complainant Ajit Kumar along with his friends Dhananjay Tiwari, Shiv Kumar Sharma and Siddharth Motwani had left

house No.B-88, Gujranwala Town, New Delhi at about 1.10 A.M. in a car (Indica Make) bearing No.DL-3C-AF-3348. When they reached gate No.1 in the colony, two persons in another Indica car bearing No.DL-8C-J-5562 were seen by them at the gate. They were having an altercation with Rohit Kumar, the guard at the gate. As per the complainant, when the complainant and his friends intervened to pacify, the said two persons snatched the lathi from the guard and attacked them. One of the two inflicted a lathi blow on Dhananjay Tiwari and the another inflicted a knife blow on Dhananjay. Thereafter, the person with the knife gave blows to Shiv Kumar Sharma and fled. Dhananjay and Shiv Kumar Sharma were taken to Pentamed Hospital. Leaving the deceased and the injured along with Siddharth Motwani at the hospital, complainant went back to the house at Gujranwala Town and saw that two men had returned to re-possess car No.DL-8CJ-5562. Both were taken into custody at the spot.

3. At the outset it may be noted that aforesaid facts leading upto the arrest of the accused persons forms part of the FIR itself.

4. The two assailants were stated to be Rajesh Chugh and Vivek Sharma, the petitioner.

5. Of the three stated friends of the deceased who

were alleged to be with the deceased in the car when the attack took place, PW-1 Shiv Kumar Sharma has not supported the case of the prosecution. He categorically stated that neither petitioner nor Rajesh Chugh were the persons who had attacked him and Dhananjay with a knife and a lathi. In his statement, Shiv Kumar Sharma examined as PW-1 stated that when he along with the deceased and Siddharth Motwani were leaving the colony they saw some people fighting at the gate. They had to stop the car. Somebody inflicted danda blow on the car. He and Dhananjay Tiwari came out of the car. Two persons attacked them and fled. He categorically stated that the accused persons were not the ones who had inflicted blows on him or the deceased.

6. The watchman at the gate Rohit was examined as PW-3. He stated that he was on duty at the gate in question at mid night. Two cars, one blue coloured Maruti Zen and the other a silver coloured Indica came racing down, each tried to over take the other. Both cars were attempting to go out of the gate before the other. The cars stopped at the gate. The passengers in the cars started quarreling. Somebody snatched his danda and inflicted blows. He denied that the accused persons were involved in the fight.

7. Ajit Kumar, the complainant was examined as PW-5.

He stated in harmony with his statement recorded in the FIR that he along with the deceased Dhananjay Tiwari, Shiv Kumar Sharma and Siddharth Motwani left in the Indica car from house No.B-88, Gujranwala Town, New Delhi at about 1.10 AM. When the car neared the gate they saw some people quarreling with the guard. Dhananjay Tiwari was driving the car. Siddharth Motwani was sitting on the front seat. They enquired from the boys as to why were they fighting with the guard. One boy snatched the lathi from the guard and hit the car. Thereafter, one boy took out a knife and stabbed Dhananjay Tiwari. When Shiv Kumar Sharma went to rescue Dhananjay Tiwari, even Shiv Kumar Sharma was attacked with the knife. Thereafter, both assailants ran away. He stated that after the deceased and Shiv Kumar Sharma were left at Pentamed Hospital, he returned to Gujranwala Town and found that the two assailants had been apprehended at site by the police. He stated that the police made enquiries from him about the incident and he narrated the incident to the police. On being questioned whether the accused persons who were present in court were the assailants, PW-5 stated that he was not sure whether the petitioner and the co-accused were the assailants.

8. It is thus urged by learned counsel for the petitioner

that the case of the prosecution has faltered inasmuch as three of the star witnesses of the prosecution have not supported the case of the prosecution.

9. Only witness of the prosecution who appears to have supported the case of the prosecution is Siddharth Motwani examined as PW-1. He has deposed in favour of the prosecution and has stated a version which is in harmony with the FIR.

10. But, learned counsel for the petitioner has drawn attention of this court to certain parts of testimony of Siddharth Motwani wherefrom a doubt is sought to be created on the presence of Siddharth Motwani as also the version of the prosecution pertaining to the involvement of the petitioner and the friends of the petitioner.

11. Before I deal with the testimony of Siddharth Motwani, it would be interesting to note that MLC of the deceased records that he was brought to the hospital by one Ravi Srivastava. No witness of the prosecution including Siddharth Motwani have referred to the presence of Ravi Srivastava. It remains unexplained as to who that Ravi was. Obviously, a person named Ravi Srivastava had taken the deceased to the hospital.

12. Surprisingly, the prosecution has not tried to

contact him much less cited him as a witness of the prosecution.

13. In his testimony, Siddharth Motwani has stated that he remained in the hospital with the deceased and Shiv Kumar Sharma and that his statement was recorded by the police at Pentamed Hospital. He stated that his statement was so recorded at the hospital some times after 3 AM. If this is true, Siddharth Motwani remained at Pentamed Hospital till 3 AM. But, it is an admitted fact, a fact also admitted by Siddharth Motwani (on being cross-examined) that he along with one Manoj were apprehended by the police at gate No.1 of Gujranwala Town after about 1 to 2 hours of the incident.

14. Learned counsel for the State concedes that the police personnel in a PCR van had apprehended Siddharth Motwani at another gate of the colony at around 2.30 AM.

15. It remains a mystery as to what Siddharth Motwani was doing at another gate of the colony at around 2.30 AM.

16. One of his friend was murdered. The other was seriously injured. It is an unusual conduct of Siddharth Motwani to be loitering in the colony.

17. Since prosecution admits that Siddharth Motwani was apprehended at another gate of the colony at around 2.30 AM and Siddharth Motwani admits said fact, it is obvious that

Siddharth Motwani could not have remained in the hospital from 1.30 AM till 3. AM.

18. Further, it would be relevant to note that in his statement recorded by the police under Section 161 Cr.P.C. exhibited as PW-2/DA, Siddharth Motwani has ostensibly disclosed the name and parentage of the petitioner. When cross-examined that he knew the petitioner before hand, Siddharth Motwani denied the same. When questioned as to how he disclosed to the police the name and parentage of the petitioner, he denied having so done. When confronted with his statement recorded by the police wherein it is so recorded in Ex.PW-2/DA, Siddharth Motwani denied that he volunteered said information.

19. It would be interesting to note that the FIR records the arrest of the petitioner and the co-accused as also records the fact that the two were apprehended when they came back to retrieve their Indica car.

20. Following circumstances emerge :-

- a) Save and except Siddharth Motwani, other eye witnesses of the prosecution did not implicate the petitioner.
- b) Siddharth Motwani has seriously contradicted himself with reference to his remaining at

Pentamed Hospital till 3 AM. He was admittedly apprehended by the PCR at another gate of the colony at around 2.30 AM.

c) Siddharth Motwani prima facie knew the accused by name and by parentage since he disclosed the same to the police in his statement under Section 161 Cr.P.C., a statement which he attempted to resile but unsatisfactorily. It cast a doubt that altercation took place between strangers.

d) The chowkidar, Rohit has referred to a fight between two groups of persons one in a blue coloured Maruti Zen and the other in a silver coloured Indica. The silver coloured Indica was admittedly the car in which the injured and the deceased along with two other friends were travelling. It is not the case of the prosecution that the petitioner and the co-accused were in a blue coloured Maruti Zen.

21. Case is accordingly made out to admit the petitioner to bail.

22. Petition stands disposed of directing the learned Trial Judge to release the petitioner on bail on his furnishing a



personal bond in the sum of Rs.25,000/- with two sureties in the like amount to the satisfaction of the learned Trial Judge in the afore-noted FIR.

23. Copy of the order be given dasti to learned counsel for the petitioner.

August 31, 2007  
pu

PRADEEP NANDRAJOG, J.