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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Order pronounced on 01.11.2022*

+ BAIL APPLN. 463/2022

ANIL KUMAR

..... Petitioner

Through: Mr. S.K. Sharma and Mr. Tejas
Singh, Advocates.

versus

STATE

.....Respondent

Through: Mr. N. S. Bajwa, APP for State.

CORAM:

HON'BLE MR. JUSTICE TALWANT SINGH

Talwant Singh, J.:

1. The petitioner has prayed for regular bail in FIR No.257/2020, registered at PS Aman Vihar under Section 302/308/342/325/34 IPC. The petitioner was arrested in this case on 06.06.2020 and since then, he is in custody. His three consecutive bail applications were dismissed by the learned Sessions Court. There are three more accused in this case.

2. Charge sheet stands filed and charges were framed against all the accused persons under Section 302/342/34 IPC vide order dated 04.01.2022. The petitioner is stated to be aged about 28 years and he is suffering from several medical conditions. Earlier he was granted an interim bail and he had surrendered on expiry of the said interim bail period.

2.1 The occurrence, as per the prosecution took place on 29.05.2020 at house No. B-160, Ramesh Enclave, Gali No.-7 Kirari, Delhi where the other three co-accused live but the residence of the petitioner is about 2 kilometres away from the said house. PCR call was made by the sister of co-accused Mahender *alias* Sonu. Local police arrived at the spot and found Namtulla

alias Nehmat aged about 29 years in an injured condition and he was taken to Sanjay Gandhi Memorial Hospital. Injuries were 'simple' in nature, so after first aid, the injured left the hospital on the same day.

2.2 It is further mentioned that as per MLC No.6255, injuries were opined as 'grievous'. Statement of the victim was recorded by the police at hospital on 30.05.2020 and FIR was registered. As aforesaid, the other three co-accused were arrested on 30.05.2020 itself. When the victim had visited the hospital, it was a peak of Covid first wave.

2.3 On 03.06.2020, the injured complained of shortness of breath and he had visited Dr. Baba Sahib Ambedkar Hospital, Rohini and was admitted there. All the symptoms were primarily of a patient of Covid Positive. He was shifted to the Isolation Ward.

2.4 The victim was managed with anti biotics and oxygen support but his condition deteriorated and he was not maintaining the oxygen level. His condition did not improve and he died due to sudden cardiac arrest. The victim was having an episode of Hemoptysis wherein a human being coughs blood from lungs. Even in the death certificate, it is shown that the injured was suspected to be a Covid-19 patient and cause of death was cardiac/pulmonary arrest.

2.5 Post mortem was conducted on 06.06.2020 but no opinion was given regarding cause of death but it was found that both the lungs were congested. In the forensic report dated 23.11.2020, the cause of death was observed as multiple organ failure and hemorrhagic shock consequent to multiple injuries. All these conditions suggested that the death was on account of Covid and not due to injuries, which were simple in nature.

2.6 The present petitioner was arrested only after the death of the victim.

He did not try to abscond or to escape his arrest. It is alleged that a *danda* was recovered at the instance of the petitioner. There is no public witness at the spot of the recovery, which is 4-5 kilometres away from the place of occurrence. There is no eye-witness of the occurrence; neither any one had seen the petitioner at the spot nor he was seen carrying the *danda* along with him. The petitioner has been falsely implicated in this case and no offence under Section 302 IPC is made out. There is no possibility of trial being concluded in near future, so the petitioner has prayed for bail.

3. Notice was issued. Status Report has been filed.

3.1 It has been mentioned that the FIR was registered on the statement of the victim Namtulla *alias* Nehmat who alleged that he was summoned by co-accused, namely Mahender *alias* Sonu, who was elder brother of one Jitendra *alias* Kaku, who was involved in FIR No.172/2020 under Section 307/336/34 IPC and Section 25/27/54 Arms Act, registered at PS Aman Vihar on the complaint of one Praveen. The said Praveen was a friend of the victim and pressure was being built upon the victim to convince his friend Praveen so that Jitendra *alias* Kaku may be bailed out.

3.2 It is stated that the present petitioner also reached at the spot and once the victim denied to do as he was asked by the accused persons, he was beaten with *dandas* all over the body, punched on his face and eyes and was thrashed all over. The victim was again admitted in hospital on 03.06.2020 after his condition deteriorated and during treatment, he expired.

3.3 The deceased had suffered around 17 injuries. *Danda* was recovered and it was found that the injuries sustained were sufficient to cause death in the ordinary case of nature. It has been stated that there is no previous involvement of the present accused but there are serious allegations against

him and the case is at the stage of prosecution evidence.

4. I have heard the arguments and I have gone through the record.

5. The third bail application moved by the present accused was rejected on 21.01.2022, i.e., after framing of the charge. It is mentioned that the submission of the learned counsel for the petitioner herein was that the death of Namtulla *alias* Nehmat was caused due to severe Covid infection, however, as per the covid report, the deceased Namtulla *alias* Nehmat was found to be Covid Negative.

5.1 After detailed discussion, the bail application was rejected.

6. I have seen the Covid Test Report which is Annexure P-18 to the bail application. The said report shows negative result for Covid. As far as the victim Namtulla *alias* Nehmat is concerned, the opinion regarding cause of death is as under:

“Observations:

As per the PM report multiple contusions were present over the body. Internal organs were pale. Brain was edematous. Lungs were congested. Spleen was enlarged. Viscera and tissues were preserved for further analysis.

As per the viscera analysis report metallic poisons, ethyl and methyl alcohol cyanide, phosphide, alkaloids, barbiturates, tranquilizers and pesticides could not be detected in the contents of viscera.

As per histopathology report, features of chronic inflammation along with hemorrhage, edema and congestion were found in internal organs.

Opinion has been sought regarding the cause of death.

Opinion:

Death was due to multi-organ failure and hemorrhagic shock

consequent to multiple injuries to the body as described in the PM report. The injuries as mentioned in the PM report were sufficient to cause death in the ordinary course of nature.

7. Charges have been already framed against all the accused persons including the present petitioner. It has been observed that in view of the complaint of the deceased which he gave before his death, imputing specific allegations against each of the accused persons, *prima facie*, offence under Section 302/342/34 IPC is made out against all the accused persons. It has also been observed that most of the injuries were on eyes, arms, chest, back, hips, knees and thighs of the victim, out of which, chest, eyes and face are vital parts of the body and the post mortem report, cited above, specifically states that the injuries are sufficient to cause death in the ordinary course of nature. The case is at the stage of prosecution evidence. Material witnesses are yet to be examined.

8. Keeping in view the specific role assigned to the petitioner in the statement of the deceased recorded before his death, nature of injuries suffered by the deceased, recovery of *danda*, i.e., weapon of offence at the instance of the present petitioner and the stage of the trial, where material witnesses are yet to be examined, I do not find it to be a fit case for grant of bail.

9. The bail application is hereby dismissed.

TALWANT SINGH, J

NOVEMBER 01, 2022/pa

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