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

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Reserved on: 02.05.2024
Pronounced on: 06.05.2024+ **BAIL APPLN. 217/2024****AKASH PANDEY**

..... Petitioner

Through: Mr. R.S. Malik, Mr. Sahil Malik, Mr. Abheshek Kumar, Mr. Ajay Malik, Mr. Nakul Khatri, Mr. Sumit Shesran and Mr. Sahil Lakra, Advocates.

versus

THE STATE GOVT OF NCT OF DELHI Respondent

Through: Mr. Manoj Pant, APP for the State with Mr. Saurabh Das, Mr. Paramveer, Mr. Lalit Kumar and Mr. Ashok Kumar Shukla, Advocates along with Inspector Kuleep Sharma, P.S. Patel Nagar.

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The present bail application under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of the applicant/accused seeking regular bail in case arising out of FIR bearing No. 271/2019, registered at Police Station Patel Nagar, Delhi



for offences punishable under Sections 307/302/34 of the Indian Penal Code, 1860 ('IPC'), read with Sections 25/27/54/59 of the Arms Act, 1959.

2. Briefly stated, the facts of the case as per the prosecution are that on 13.08.2019, a PCR call bearing GD No. 112A had been received in relation to a person being stabbed at Rock Garden, Patel Nagar, Delhi. Upon arrival of the police officials at the place of incident they had found blood stains at the spot and they had been informed that two victims had been shifted to Sardar Patel Hospital while the third one was taken to B.L. Kapoor Hospital. After that, the police officials had gone to B.L. Kapoor Hospital where they had been informed that the said victim/deceased i.e., Shubham Srivastava had been referred to R.M.L Hospital. However, the eye witnesses of the incident were present in B.L. Kapoor Hospital. Thereafter, the investigating officer had prepared *rukka* on the basis of statement of the eye witness i.e., Vishal Gupta/complainant, who had informed in his statement that he was pursuing B.A. from Delhi University, and one Shubham Srivastava i.e., the victim/deceased was his childhood friend. Further, alleging that one of his friends i.e., Lokesh/victim/injured used to chat with one Amar Soni's (i.e., the co-accused herein) girlfriend and that Amar Soni had found out about the same. It is alleged that on the evening of 13.08.2019, a group of friends of the complainant including him and other namely, Shubham Srivastava i.e., the victim/deceased, Lokesh i.e., victim/injured, Shubham Gupta, Ankur, Yash Sethi, had gathered near Lokesh's residence engaging in some conversation. During their discussion,



Lokesh had received an unexpected call from Amar Soni i.e., the co-accused herein, urging him to meet at Jheelwala Park. However, Lokesh had declined to meet him, prompting Amar Soni to respond with verbal abuses over the phone. It is alleged that in response, Lokesh had suggested an alternative meeting place, i.e., near Sardar Vallabhbhai Patel Hospital. It is also alleged that subsequently, the complainant and his friends had boarded Yash Sethi's and Lokesh's scooters and had arrived at the given location at approximately 8:15 PM. It is further alleged that Amar Soni and his companions, including CCL 'R'/co-accused, Akash Pandey i.e., the present applicant/accused, and others had arrived at the said location on two scooters. It is further alleged that tension had escalated quickly, leading to a heated argument between both the groups. The confrontation had further intensified as the complainant and his group had approached the gate of Rock Garden, Patel Nagar, Delhi where Amar Soni had physically assaulted Shubham Srivastava i.e., victim/deceased by slapping him. Thereafter, as per the allegations the altercation had escalated into a physical altercation, with both groups exchanging blows. Further, in a shocking turn of events, as alleged by the complainant Amar Soni and his friends had taken out knives, and CCL 'R' had then inflicted a knife wound on Shubham Srivastava's chest, resulting in chaos as the complainant and his associates had attempted to protect their friend. It is further alleged by the complainant that Amar Soni and the present applicant/accused i.e., Akash Pandey had then targeted Lokesh and Shubham Gupta with their knives. It is further alleged that the complainant, Yash



Sethi, Ankur had fled from the scene to seek help of passersby and seeing the same the accused persons had absconded from the place of incident. Thereafter, as alleged the complainant along with his other friends had taken one Shubham Gupta i.e., the victim/injured and one Lokesh i.e., victim/injured to Sardar Patel Hospital on their scooters. Meanwhile, an elderly bystander had stepped in and had assisted and had taken Shubham Srivastava i.e., the victim/deceased to B.L. Kapoor Hospital. However, later the complainant had been informed that his childhood friend i.e., Shubham Srivastava/victim/deceased had unfortunately scumbled to his injuries. Pursuant to the said statement the present FIR had been registered.

3. Learned Counsel appearing on behalf of the applicant/accused argues that the investigation in the present case is complete as the chargesheet qua the present applicant/accused stands already filed before the learned Trial Court. In this regard, it is submitted that the present applicant/accused was arrested on 23.08.2019 and is in JC for more than 4 years now. Thus, his presence is no longer required in judicial custody. It is further submitted that the petitioner is a young boy aged about 22 years and belongs to a respectable family having roots in the society. It is also submitted that the applicant/accused has no other criminal antecedents. It is further argued by learned counsel for the applicant/accused that as per story of the prosecution it was the complainant and his associates who had gathered at the spot and were themselves the aggressors who had started the physical assault. It is argued that the complainant and injured persons were also under the influence of alcohol as per their MLCs and that even as per case



of prosecution no specific role has been assigned to the applicant/accused herein. Further, as per statements of the injured/eye witnesses Lokesh and Shubham, the role of stabbing the deceased or the injured eye witnesses has not been assigned to the present applicant/accused. It is also argued that no recovery of weapon has been affected from the present applicant/accused and that even the learned Trial Court while framing charges *vide* order dated 05.02.2024 has framed charges against the present applicant/accused under Sections 302/307 and 34 of IPC meaning thereby that the applicant/accused had not stabbed the deceased person. It is further submitted that the applicant/accused had been released on interim bail *vide* order dated 11.06.2021 and 12.01.2022 and the said liberty was never misused by him. Thus, the applicant/accused be enlarged on bail.

4. Learned APP appearing on behalf of the State, on the other hand argues that the present offence is serious and grave in nature. The present applicant/accused had along with other co-accused persons stabbed the deceased and that the present applicant/accused had also beaten other two injured/victims i.e., Shubham Gupta and Lokesh. It is further submitted that there are specific allegations against the present applicant/accused and that the case is at the stage of recording prosecution evidence and if the present applicant/accused is released on bail he can influence the material witnesses. Thus, the present bail application be dismissed.

5. This Court has heard arguments on behalf of both the parties and has perused the material placed on record.



6. As per case of the prosecution, on the evening of 13th August 2019, a group of friends, including the complainant, Shubham Srivastava i.e., the victim/deceased, Lokesh i.e., victim/injured, Shubham Gupta i.e., victim/injured, Ankur, and Yash Sethi, were having some conversation near Lokesh's house. In the meantime, Lokesh had received a call from Amar Soni i.e., the co-accused herein, who had urged Lokesh to meet him at Jheelwala Park, to which Lokesh had declined. However, Lokesh had suggested meeting at Sardar Vallabhbhai Patel Hospital instead. The complainant's group had then gone to the hospital on scooters. As per allegations, Amar Soni and his friends, including the present applicant/accused i.e., Akash Pandey had arrived on two scooters. Thereafter, both the groups had heated arguments which had resulted in physical altercation near the Rock Garden, Patel Nagar, Delhi. The altercation had then intensified, and Amar Soni and other co-accused persons had pulled out knives. The co-accused persons had allegedly stabbed Shubham Srivastava in the chest and the present applicant/accused was involved in beating the deceased and other victims. Further as per the allegations, the complainant and his friends had tried to defend themselves and their injured friends. Later, the accused persons had absconded from the spot. Thereafter, the complainant and his friends had taken the injured victims to Sardar Patel Hospital, while an elderly bystander had helped transport Shubham Srivastava to B.L. Kapoor Hospital. Unfortunately, Shubham Srivastava had succumbed to his injuries. Following the said incident, the present FIR was registered.



7. Further during investigation, chargesheet, supplementary chargesheets and the FSL reports have also been filed before the learned Trial Court. The learned Trial Court has framed charges against the present applicant/accused for offences punishable under Sections 302/307 and 34 of the IPC *vide* order dated 05.02.2024.

8. This Court notes that as it is evident that the present applicant/accused i.e., Akash Pandey was present at the spot and CCTV footage has been seized which depicts his active involvement in the alleged offence. Additionally, statements of eyewitnesses recorded under Section 161 Cr.P.C., along with disclosure statements of other co-accused individuals, establish a connection between the applicant/accused and the alleged offense. Further, the present case is at the stage of recording Prosecution Evidence before the learned Trial Court and the material witnesses including the eye witnesses are yet to be examined. Given the said circumstances, the possibility of the present applicant/accused influencing, threatening or harassing the witnesses cannot be ruled out at this stage.

9. Thus, this Court does not find it a fit case to grant regular bail to the present applicant/accused at this stage.

10. It is however, clarified that nothing expressed herein above shall tantamount to opinion expressed on the merits of the case before the learned Trial Court.

11. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 06, 2024/at