

\$~3

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

+ BAIL APPLN. 631/2016

NITIN

..... Petitioner

Through: Mr.Arun Kumar Tiwari, Advocate

versus

STATE

..... Respondent

Through: Mr.Amit Ahlawat, APP for the State
with SI Ram Singh PS Ambedkar
Nagar

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

%

02.05.2016

1. The petitioner is seeking bail in case FIR No.539/2014 registered at PS Ambedkar Nagar under Sections 302/34 IPC.
2. Notice of the application has been given to the State and status report has been filed.
3. On behalf of the petitioner it has been submitted that the petitioner has been arrested in this case on the basis of disclosure statement of the co-accused. He was a young boy aged about 19 years at the time of occurrence and is in custody in this case since 15th August, 2014. Two other co-accused have already been enlarged on bail. The petitioner is not involved in any other criminal case and most of the prosecution witnesses examined so far have turned hostile hence petitioner may be admitted to bail during trial of the case.

4. In para no. 13 of the present application the petitioner has relied upon judgments dated 20th April, 2012 passed by this Court in ***Afsar & Anwar Vs. State, Crl.A.473/1997***, judgment dated 28th February, 2014 passed by Hon'ble Supreme Court in ***Malkhan Singh & Anr. Vs. State of U.P., Crl.A.214/1970*** and judgment dated 7th July, 2009 passed in ***State of U.P. Vs. Shahrinisha & Anr., Crl.A.431/2003*** but not referred during the course of hearing of this bail application.

5. On behalf of the State prayer of the petitioner for release on bail has been strongly opposed. It has been contended that so far as petitioner is concerned, his role is distinguishable from the co-accused who has been released on bail. Learned APP for the State has submitted that one of the accused released on bail was a juvenile and the other accused Mahesh admitted to bail was allegedly standing with a motorcycle with its engine on hence his role is clearly distinguishable from that of the petitioner. Learned APP for the State has also submitted that as per the prosecution Gaurav had stabbed and killed the deceased whereas the petitioner Nitin and co-accused Jatin were holding hands and legs of the deceased.

6. The contention raised on behalf of the petitioner that prosecution case against him is based on confessional statement and prosecution witnesses have turned hostile cannot be made a ground to release him on bail. Reliance can be placed on the decision reported as ***Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav and Anr. (2004) 7 SCC 528*** wherein it has been held:

“The next argument of learned counsel for the respondent is that prima facie the prosecution has failed to produce any material to implicate the respondent in the crime of conspiracy. In this regard he submitted that most of the witnesses have already turned hostile. The only other evidence available to the

prosecution to connect the respondent with the crime is an alleged confession of the co-accused which according to the learned counsel was inadmissible in evidence. Therefore, he contends that the High Court was justified in granting bail since the prosecution has failed to establish even a prima facie case against the respondent. From the High Court order we do not find this as a ground for granting bail. Be that as it may, we think that this argument is too premature for us to accept. The admissibility or otherwise of the confessional statement and the effect of the evidence already adduced by the prosecution and the merit of the evidence that may be adduced herein after including that of the witnesses sought to be recalled are all matters to be considered at the stage of the trial.”

7. The role attributed to the present petitioner is that he alongwith his co-accused Jatin was holding legs and hands of the deceased when the deceased who was sleeping, was stabbed by Gaurav. Merely because some of the prosecution witnesses have turned hostile is no ground to release the petitioner on bail as it is for the learned Trial Court to appreciate the evidence at appropriate stage. Young age of the petitioner or non involvement in any other case also cannot be accepted as a ground to consider his release on bail in view of the role attributed to him in this murder case.

8. The application is dismissed.

9. Any observations made hereinabove for the purpose of dealing with the contentions raised during hearing of the bail application shall not be deemed to be an expression on merits of the case.

PRATIBHA RANI, J.

MAY 02, 2016

‘pg’