

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

+ Bail Application No.878/2016

Date of Decision: August 03, 2016

ROHIT

..... Petitioner

Through: Mr. M.K.Duggal, Adv.

versus

STATE (GOVT OF NCT)

..... Respondents

Through Mr.Amit Chadha, APP.

**CORAM:
HON'BLE MR. JUSTICE P.S.TEJI**

P.S.TEJI, J.

1. The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.552/2014 under Section 302/34 IPC registered at Police Station: Mahindra Park, Delhi.
2. The case in the nutshell is that on 16.09.2014 a DD entry was received at Police Post N.S.Mandi, Police Station: Mahendra Park regarding quarrel and one person being seriously injured near Adarsh Nagar Metro Station. The IO reached the spot and on enquiry informed that the injured had been taken to BJRM Hospital. On reaching the Hospital, one person was found admitted vide MLC

No.85125/14 who was declared unfit by the doctor to give a statement. Based on the MLC, DD entry and circumstances FIR in question under Section 308 IPC was registered. The injured was later referred to LNJP Hospital and later identified as Lalit S/o Duli Chand on 19.09.2014.

3. During the course of investigation, statement of one Tarun was recorded who was running a Dhaba. Tarun stated that on 16.09.2014 at about 9.30 P.M., petitioner, Tatu and Feroz had come to him with another boy. They were all drunk. The petitioner ordered for food and told him to bring on the roof. As no service boy was available, Tarun himself went to the roof to serve the food. Later, petitioner ordered for 10 chappatis, one water bottle and vegetables which the petitioner himself carried to the roof. At about 11 P.M., he heard some noises from the roof of the flat. On reaching the roof, he saw that Rohit and Feroz had caught hold of their fourth friend while Tatu was hitting that man with bricks and was saying that he had stolen his mobile. Tarun came down and called at 100 from the phone of one Mithlesh.

4. On 22.09.2014, the victim was discharged from the hospital and later expired on 24.09.2014. Thus, the Section in the FIR was

amended to 304 IPC. The post mortem of the deceased was conducted and the doctor opined the cause of death in this case as shock due to head injury produced by blunt force impact. All the injuries were stated to be ante mortem in nature and were sufficient in the ordinary course of nature to cause death. On the basis of post mortem report, Section 302 in place of Section 304 IPC was added to the case.

5. During the course of investigation, the call detail records of the mobile phones of the accused were obtained. Their locations were found at the place of occurrence and at the time of commission of offence. The present petitioner had made a call to Tarun who informed the police regarding the crime. The petitioner was arrested on 25.09.2014 and charge sheet was filed in the court. During trial, 12 prosecution witnesses out of 35 have been examined and 23 public witnesses were still to be examined. One of the co-accused namely Arif Hussain @ Tatu, who is evading arrest, has been declared a proclaimed offender by the Trial Court. The learned counsel for the petitioner in support of his case has submitted that the petitioner has been falsely implicated in the present case; that the injured had been discharged from the hospital on 22.09.2014 in conscious, oriented and

stable condition and later expired on 24.09.2014; that the PW-10 who conducted the post mortem of the deceased opined that the condition of the patient was stable at the time of discharge from BJRM Hospital which makes it clear that he was normal at the time of discharge from hospital; that PW-11, mother of the deceased, has stated in her testimony that she had talked to her son on 22.09.2014 who had not given the name of the assailants to her and if the petitioner was involved in the commission of alleged offence, then certainly the deceased would have disclosed the name of the petitioner to her mother; that PW-9/Tarun, the alleged eye-witness, has not supported the case of the prosecution and his testimony has completely demolished the prosecution case; that PW-9/Tarun has denied having witnessed the alleged incident, declared hostile and on cross-examination, denied having made any statement to the police; that PW-8 Mithlesh has also turned hostile and on cross-examination denied having made any statement to the police with respect to the alleged offence; that there is no other material witness to the alleged offence which can connect the petitioner to the alleged offence; that as per DD No.43 PP, dated 16.09.2014, the place of incident is at the

Gate of Tamatar Mandi, Near Adarsh Nagar Metro Station and as per the prosecution case, the place of incident is the roof of Flat No.1, Mandola Village, Delhi which casts a doubt upon the prosecution story; that nothing incriminating has been recovered from the petitioner; that the alleged phone call details do not establish that the alleged phone number belongs to the petitioner; that all the material witnesses have been examined and they do not support the prosecution case and the remaining witnesses are formal in nature; that the investigation has been completed and the petitioner is no more required for further investigation.

6. Per contra, the learned APP for the State has opposed the present bail application on the ground that the petitioner has actively participated in the commission of a heinous offence of murder; that 23 witnesses including public witnesses are yet to be examined; the call detail records of the mobile phones of the applicant and other co-accused show their presence at the place of occurrence at the time of commission of offence; that the co-accused Arif Hussain @ Tatu has been declared a proclaimed offender and if released on bail, the petitioner may tamper with evidence and influence the public

witnesses who are residing in the same locality and there are chances of the applicant/accused fleeing away.

7. From the aforesaid facts and circumstances of the case, this Court observes that the charge sheet has been filed, trial has commenced and main eye-witness Tarun who had eye-witnessed the incident and told the police that on eventful day and time, he had seen the petitioner and Feroz catching hold of the hands of the deceased and the main accused, who has been declared PO, hitting the deceased with bricks, has completely turned hostile. Even the narration of the story by main eye witness Tarun with respect to the quarrel having taken place between the accused persons while having meals at the roof of his dhaba shows no previous enmity or meeting of mind between the petitioner and the complainant. It is also observed that the petitioner is in judicial custody since 25.09.2015 and in the considered opinion of this Court even if further evidence is led, there are bleak chances of any incriminating evidence cropping up against the petitioner, therefore, this Court is inclined to grant bail to the petitioner in the present case.

8. Considering the aforesaid facts and circumstances, this Court is

inclined to grant bail to the petitioner – Rohit in the present case subject to his furnishing personal bond in the sum of Rs.25,000/- with two sureties of the like amount, to the satisfaction of the Trial Court.

9. Before parting with the order, this court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

10. The present application accordingly stands disposed of.

(P.S.TEJI)
JUDGE

AUGUST 03, 2016
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