

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on : August 09, 2016

+ BAIL APPLN. 1467/2016
GULSHAN KUMAR Petitioner
Through: Mr.G.L. Soni, Advocate.

versus

STATE NCT OF DELHI Respondent
Through: Mr.M.P. Singh, Additional Public
Prosecutor for the Sate with Sub-
Inspector Brij Pal Singh, Police
Station Prasad Nagar, New Delhi.

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

P.S.TEJI, J.

1. By this petition filed under Section 439 of Cr. P.C., the petitioner seeks bail in a case registered as FIR No. 120/2016 under Section 307/34 of Indian Penal Code, at Police Station Prasad Nagar, Delhi.

2. The present case has been registered at the instance of Naveen Girdhar, who is the complainant of the FIR in question. The complainant is engaged in the business of property dealer in the name and style of M/s. Hari Krishna Property Dealer. It is stated that the complainant had taken a house on security from the accused Leela Ram and after completion of agreed time period, the complainant asked Leela Ram to return his security money, but the same was not

returned. The complainant made a call to the accused Leela Ram on 10.02.2016 at about 9.15 PM asking his money back, but the accused started misbehaving and mistreated in filthy language on phone and also threatened the complainant to kill.

3. It is alleged that on the same day, the accused Leela Ram alongwith other co-accused persons Ramesh Kumar, Somu @ Nitesh Tangoria and Gulshan Kumar, Rahul entered his office. It is alleged that the accused Leela Ram and his nephew Gulshan Kumar were having sharp edged iron weapon (RAMPI) and the other accused persons were having lathis/dandas. It is further alleged that the petitioner had attacked on him with RAMPI and his brother was given beatings by other accused persons with lathis/danda and belt. As a result of the beatings, the complainant and his brother Kapil sustained grievous injuries. Upon hearing noise, the brother of both victims (Sanjay) came and entered in the office and at that time other public persons were also gathered outside the office of the complainant and therefore, all the accused persons ran away. Doctor of the hospital opined the nature of injuries being dangerous due to stab injuries. It is further alleged that the complainant remained admit in BLK Hospital from 10th to 16th February 2016 whereas his brother Kapil Girdhar remained admit from 10th to 19th February 2016. Statement of Kapil was recorded who specifically stated that the accused Leela Ram and his family members had attacked with common intention to kill him as well as his brother Naveen.

4. The accused persons including the petitioner were arrested in this case on 14.02.2016 and during investigation, weapon of offence being one danda was recovered at the instance of Ramesh and buckle was recovered at the instance of Nitesh @ Somu. After completion of the investigation, the charge sheet was filed in court on 21.04.2016. On 18.03.2016 the accused Ramesh was released on regular bail, while accused Nitesh @ Somu was released on bail on 11.07.2016. However, the petitioner is in custody since the date of his arrest. The petitioner moved an application before the court of learned Additional Sessions Judge which was dismissed vide order dated 07.06.2016 while observing that the statement of the complainant and other material witnesses are yet to be recorded.

5. Mr. G.L. Soni, learned counsel for the petitioner contended that the petitioner has been falsely implicated in the present case and even perusal of the FIR in question, would reveal that it is not supported by the version of the complainant and it was only because of sudden provoked and quarrel, the complainant sustained the injuries. It is further contended that the petitioner was put to one day police custody but the police could not recover any sharp edged weapon from him. Since the charge sheet in this case has been filed, therefore learned counsel for the petitioner contended that the petitioner is no more required for any further investigation. Not only this, learned counsel for the petitioner has urged that since the other co-accused persons namely Ramesh Chander and Nitesh Tongaria have already been released on bail by the learned Additional Sessions Judge, therefore

the petitioner seeks parity with those co-accused persons. It is categorically submitted on behalf of the petitioner that the complainant was never subjected to inflict any kinds of injury by him but it is due to their bookies and gambling business and the petitioner has been falsely implicated by the complainant.

6. It is further contended on behalf of the petitioner that the petitioner is a law abiding citizen and is of 29 years of age and he has recently been married on 03.02.2016 and is in custody since 14.02.2016. it is further contended that the role attributed to the petitioner in the FIR and the subsequent charge sheet filed by the investigation clearly indicate that the offence as alleged was not committed by the petitioner and the material placed on record also reveals that the petitioner is innocent and there is only a civil dispute of the monetary transaction which led to sudden quarrel between the complainant and father of the petitioner. Lastly, it is submitted that while considering the facts of the present case the petitioner ought to be released on bail.

7. Mr. M.P. Singh, learned Additional Public Prosecutor for the State vehemently opposed the aforesaid contentions raised by learned counsel for the petitioner. It is submitted that the petitioner is specifically named by the complainant having sharp edged weapon in his hand. It is further submitted that during the course of investigation, CCTV installed near the place of incident was checked and it clearly showed that all the accused persons were having sharp edged weapon

and lathies/dandas, while entering the complainant's shop/office and coming out from the complainant's shop/office. More so, the injuries sustained by the complainant and his brother are opined by the doctor of the BLK Hospital being grievous in nature. It is further contended that there is a fear in mind of public in the locality due to the offence committed by the accused persons and in case the petitioner is granted bail he can repeat such offence and can also destroy the evidence pertaining to this case, therefore, considering the gravity of the offence and the fact that the petitioner is charged with the offence punishable under Section 307 IPC, the petitioner ought not be granted bail in the present case.

8. I have heard the submissions made by learned counsel for the petitioner and the learned Additional Public Prosecutor for the State. I have also perused the orders passed by the learned Additional Sessions Judge thereby rejecting bail to the petitioner, wherein it has been observed that the petitioner was specifically named in the FIR, and he was armed with a sharp edged weapon, as shown in CCTV footage and the fact that the injured remained in ICU for ten days. This court has also gone through the MLC of the injured in which the treating doctor has opined the injuries being dangerous.

9. This court observes that the charge sheet has been filed and the petitioner is charged with the offence punishable under Section 307/34 of IPC; the other co-accused –Nitesh @ Somu have been granted bail by this court vide order dated 11.07.2016 on the ground that the main

accused Leela Ram has already been granted bail.

10. After going through the impugned orders as well as the status report filed on behalf of the State, what this court needs to consider is the role attributed to the petitioner in the present case. This court notes that the State has filed status report mentioning that during the course of investigation CCTV installed near the place of incident was checked and it showed all the said accused persons having sharp edged weapon and lathies/dandas while they were entering in the complainant's shop/office and coming out from the complainant shop. Simultaneously, this court notes that the co-accused Nitesh @ Somu has been granted bail by this court vide order dated 11.07.2016 on the ground of his holding lathies and dandas and the fact that the main accused Leela Ram has already been granted regular bail.

11. This court is conscious of the fact that the charge sheet has been filed and the matter is pending adjudication before the Trial Court and at this stage, this court needs not to go into the factual matrix of the case as well as the other relevant evidence in this case. This court notes that the other co-accused persons have already been released on bail especially the main accused Leela Ram, who has been attributed the same role as of the petitioner herein. Therefore, this court is inclined to grant bail to the petitioner – Gulshan Kumar on the ground of 'parity'.

12. Accordingly, the bail application filed by the petitioner – Gulshan Kumar is allowed and he is directed to be released on bail subject to furnishing of his personal bond in the sum of Rs.25,000/- with two sureties of the like amount to the satisfaction of the Trial Court.

13. 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.

14. With aforesaid direction, the present bail application, filed by the petitioner stand disposed of.

15. Dasti.

(P.S.TEJI)
JUDGE

AUGUST 09, 2016
pkb