

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
**Judgment delivered on : May 04, 2017**

+ BAIL APPLN. 616/2017  
NEERAJ

..... Petitioner

Through: Mr. S.P. Sharma, Advocate

versus

STATE (GNCTD)

..... Respondent

Through: Mr. M.S. Oberoi, Additional Public  
Prosecutor for the State

**CORAM:**

**HON'BLE MR. JUSTICE P.S. TEJI**  
**JUDGMENT**

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**P.S. TEJI, J.**

1. By this petition filed under Section 439 of Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr. P.C.) the petitioner seeks bail in FIR No.1130/2015 under Section 302/34 of IPC, at Police Station Nihal Vihar, Delhi.

2. The present case was registered at the instance of Mrs. Malti. The facts as enumerated in the FIR are that on the occasion of Bhaiya Dooj, after attending her elder brother at Nihal Vihar and younger brother - Manoj at Vijay Laxmi Park, at about 8.00 PM when she reached at the house of Dharampal, she saw that the light of the room was off and TV was on. She opened the door and found the smell of liquor. She told her sister in law – Mamta about the darkness in the room, who called her husband Manoj. Her cousins Sanjay and Sanjeet came and entered the room and saw that her brother Dharampal was lying on the floor. They took Dharampal to private hospital Mansaram

where the doctors told he is no more. Thereafter, they took Dharampal to Sanjay Gandhi Hospital, where the doctors declared HIM dead. When she returned to the plot, her statement was recorded in which she stated that someone had killed her brother and requested for legal action.

3. During the investigation, post mortem was conducted and MLC 21802/15 of the deceased Dharam Pal was obtained wherein the case history written by the doctor was that the deceased was brought to casualty in unconscious state, ECG showed straight line declaring brought dead and shifted to mortuary for PME. No eye witness was found in the hospital. From the statement of the complainant, inspection of the spot, body of deceased and MLC, the offence was found to be under Section 302 of IPC. Site plan was prepared, blood gauge and blood stained earth were taken from the spot. On 16.11.2015, the petitioner – Neeraj and Sonu were apprehended, who were identified by Sanjay and stated that on 13.11.2015 in the evening at about 6 PM they alongwith one other associate were sitting near the press spot. In the disclosure statement, petitioner told that he is habitual of taking smack and ganja and also admitted that when he entered the room for consuming drugs, Dharampal awoke who was sleeping over there. Since Dharampal knew him, therefore they had no other option but to kill him. Likewise, the other co-accused Sonu also admitted the version of the petitioner herein in commission of the crime. Both the accused persons were arrested. Recovery of iron rod was effected from accused Sonu from open plot in the street of

incident, who hit it on the head of Dharampal. Third accused Hoshiar Singh @ Vikki (JCL) was also apprehended and admitted to the crime. After completion of investigation, the charge sheet was filed.

4. Petitioner is stated to be in custody since 16.11.2015. learned counsel for the petitioner contended that he was not present at the spot on the date of incident. It is further contended that the material witnesses have already been examined before the Trial Court except Mamta. After examination of material witness, the petitioner had also granted interim bail vide order dated 07.11.2016 and surrendered before the jail superintendent. Vide order dated 30.11.2016 the petitioner was also granted interim bail and after passing the period of bail, the petitioner again surrendered before jail superintendent. It shows that the petitioner had not misused the liberty of interim bail granted by the learned Trial Court. However, when the petitioner moved an application for regular bail twice, the same were dismissed vide order dated 07.03.2017 and 21.03.2017. It is further contended that the petitioner is a young boy of 30 years and has clean antecedents and is not a previous convict and undertakes to abide by the conditions so imposed by this court.

5. Learned Additional Public Prosecutor appearing on behalf of the State opposed the aforesaid contentions made on behalf of the petitioner. It is contended on behalf of the State that the charge sheet has been filed and only 6 out of 21 witnesses have been examined by the Trial Court. It is further stated that mere presence of the accused in the area has the potential to intimidate the witnesses, therefore, the

present application of the petitioner is liable to be rejected.

6. I have heard the submissions of learned counsel appearing on behalf of the petitioner as well as the submissions of learned Additional Public Prosecutor for the State and also gone through the material placed on record.

7. From a careful scrutiny of the case, the contents of the petition as well as charge sheet, this Court observes that the petitioner has been charged with the offence punishable under Section 302/34 of IPC. The bail application filed by the petitioner before the Trial Court has already dismissed vide order dated 07.03.2017 and 21.03.2017 while considering the nature and seriousness of the offence, nature and character of evidence, peculiar circumstances to the accused.

8. So far as the contents, grounds, circumstances, explanations and reasoning given by the petitioner in the present petition are concerned, this Court observes that all the above issues shall be tried by the concerned Court and be decided based on leading cogent evidence. For the purpose of deciding the bail application, this Court need not go into the merits of the case, but consider whether the petitioner has been able to make out any prima facie case for grant of bail or not.

9. The admitted case of both the sides is that the petitioner was arrested in this case on 16.11.2015 and since then he is in judicial custody. It is also an admitted fact that the petitioner is charged with the offence punishable under Section 302/34 of IPC; 6 out of 21 witnesses have been examined.

10. In *Prasanta Kumar Sarkar v. Ashis Chatterjee* (2010) 14 SCC 496, the Hon'ble Supreme Court dealt with the basic principles laid down in catena of judgments on the point of granting bail. The Court proceeded to enumerate the factors:

*9. ... among other circumstances, the factors [which are] to be borne in mind while considering an application for bail are:*

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail.*

11. In view of the aforesaid discussions, in the facts of the present case, this court observes that for the purpose of deciding the present bail application, what this Court needs to consider is as to whether or not the petitioner has been able to make out any prima facie case for grant of bail to the petitioner.

12. This court observes that though 6 out of 21 prosecution witnesses have been examined and the order dated 07.03.2017 records that the prosecution witness Mamta is yet to be examined, who is one of the material witnesses; the case is based on circumstantial evidence and the prosecution evidence is not yet concluded.

13. In light of the aforesaid facts and circumstances and the aforesaid legal principles, this Court is not inclined to grant bail to the petitioner. Resultantly, in the considered opinion of this court, the facts emerging from the record culminate into dismissal of the present bail application. Accordingly, the present bail application filed by the petitioner is dismissed at this stage. However, the trial court is directed to expedite the recording of evidence and conclusion of trial.

14. 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.

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

**P.S.TEJI, J**

**MAY 04, 2017**

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