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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of hearing & order: 11th April 2017.

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BAIL APPLN. 559/2017

PAWAN

..... Petitioner

Through: Mr. Saurabh Tiwari, Advocate

versus

STATE

..... Respondent

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

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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11.04.2017

P.S. TEJI, J. (ORAL)

The facts in brief, as mentioned in the final report are that ASI Krishan Lal was supplied with DD no.29A, dated 11.02.2016 and he reached 13, Block Chowk near BESE Office. Beat Staff HC Brij Pal No.614/E, Ct. Anil 2956/E and Constable Rajesh were present and two motorcycles No. UP16TC 0556 Splendor Hero and Motorcycle No. DL7S BN 8197 Hero Splendor were found. After enquiry about the accused, it was found that PCR van has taken him to LBS Hospital. ASI left HC Brij Pal and Constable Anil at the spot for the protection and reached LBS Hospital alongwith Constable Rakesh

where he received MLC of Sunil on which the concerned doctor opined the history of self infliction on head by brick. In the meantime ERB Staff alongwith vehicle reached LBS Hospital on which ASI left Constable Sunil with ERB Staff and came to know that the other injured is taken to Max Hospital. ASI and Constable Rakesh reached Max Hospital Patparganj, Delhi where he received MLC No.5190/16 of Vikram Bhati on which the concerned doctor had opined the alleged history of assault by sharp object knife in left thigh and right gluteal region sharp stab injury and the nature of injury was opined to be grievous. Statement of eye witness Constable Kavinder was recorded. As per the said statement and conditions mentioned in MLC, the offence under Section 186/333/353/307/34 of IPC were found to be committed, rukka thereof prepared and send the same to Police Station for registration of FIR. Case property was seized and the accused arrested. Weapon of offence was recovered from the petitioner herein. After completion of investigation, the charge sheet was filed against the accused under Section 186/333/353/307/34 of IPC read with section 25/27 of the Arms Act.

Learned counsel for the petitioner has contended that the petitioner is in judicial custody since 13.02.2016 and the charge sheet in this case has been filed on 07.05.2016 and the charges have already framed against the petitioner vide order dated 24.10.2016. It is further contended on behalf of the petitioner that the co-accused in the case has already been released on bail. It is further contended that since the injuries were caused to the police official, therefore the petitioner has been charged with a heinous crime like section 333 and 307 and

Constable Vikram Bhati was deliberately taken to private hospital for his medical examination so that the MLC of aggravated nature of injuries could be obtained. It is stated that the injured Vikram Bhati was discharged from the hospital on the same day and as per definition of grievous hurt as provided under Section 320 of IPC, clause eighthly, an injury is grievous which causes severe bodily pain to the recipient of the injury for a period of 20 days, which is not in the present case. More so, none of the two injuries as mentioned in the MLC of the injured, have been caused upon any vital part of the body of the injured. Therefore, no offence under Section 307 is made out against the petitioner. Learned counsel for the petitioner also urged the material contradictions between the two disclosure statements of the accused. In such a situation, as the investigation has been complete, charge sheet has been filed, no recovery is to be effected from the petitioner, there is no likelihood of tampering with the evidence, and the fact that the petitioner is in custody for the last about 15 months, the bail application of the petitioner be accepted at this stage.

On the contrary, learned additional public prosecutor for the State has vehemently opposed to the aforesaid contentions of the petitioner and submitted that the petitioner is charged with the offence punishable under Section 333, 307/34 IPC and as per MLC of the injured he had sustained grievous injuries, therefore the petitioner be not released on bail especially when they have inflicted the knife injuries to the police officials.

I have gone through the contentions raised by the petitioner in the present petition and also heard the submissions of learned Additional Public Prosecutor for the State and also gone through the contents of FIR, charge sheet and MLC.

Learned Additional Public Prosecutor for the state has drawn attention of this court to the status report wherein it is mentioned that the injured Vikram Bhati was discharged after five days from the hospital and remained on medical leaves for three months and he has also been on two months earned leaves due to consequences of injuries; the recovery of knife was also recovered at the instance of the petitioner; and he has also accused in another case fir 25/15 under Section 498-A/304-B of IPC, Police Station Kalyanpuri, Delhi.

After careful scrutiny of the facts and circumstances of the case, and the contents of the FIR in question as well as the MLC of the injured, this court observes that the injured has suffered with grievous injuries.

In light of the aforesaid facts and circumstances of the case, this Court is not inclined to grant bail to the petitioner at this stage. 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, considering the fact that the petitioner is in custody since 13.02.2016, the trial court is directed to expedite the trial and if the trial is not concluded within a period of

six months, the petitioner will be at liberty to file a fresh bail application.

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.

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

P.S.TEJI, J

APRIL 11, 2017
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