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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 637/2017

Order reserved on: 2nd November, 2017

Order pronounced on: 14th November, 2017

NAVEEN @ GAURAV

....Petitioner

Through: Mr. Manoj Ohri, Senior Advocate
along with Mr. Salman Hashmi, Mr.
Abhimanyu Singh, Mr. Zeeshan
Hashmi, Mr. Nawab Singh & Mr.
Seezan hashmi, Advocate.

versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Amit Ahlawat, APP for State
with Insp. Mr. Satyavir Janaula, P.S-
Bindapur.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. By way of the present petition filed under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.'), the petitioner seeks **grant of Regular Bail** in FIR No. 231/2012 under Section 302/452/325/323/147/148/149/427/34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') registered at Police Station Bindapur, New Delhi.
2. The present case is registered on the complaint of one Neetu, who stated that at night while he was returning home after meeting his relative, at about 9:30 pm, he reached at Sanjeev's House on Bindapur Road where he saw Sanjeev, Rajni Gautam, her husband

Rajkumar and Pritam standing there and was asked by Sanjeev to go home. After an hour, he was standing outside his house, Sanjeev came with a rod with Pritam, one other person who was having danda in his hand and Rajkumar was standing on the scooter. Then, they started abusing him and Sanjeev gave him a blow on his head with the iron rod. His brother came out of the house for his rescue but he too was beaten up by them and destroyed their Santro car. They even entered the house and assaulted them. Neetu went from there and brought PCR from Peer Baba but when he reached there, no one was there at the spot, only Hariraj was lying unconscious and blood was fusing out from his head. They took him to the DDU Hospital where he was declared dead by the doctors and even his Father and Sister-in-law was injured.

3. Learned counsel for the petitioner contended that the petitioner has been falsely implicated in the present case and is in judicial custody since more than 4 years; that all the allegations leveled against the petitioner is false and fabricated and is devoid of any merit; that no prima facie evidence has been adduced against the petitioner by the prosecution; that 17 out of 36 prosecution witnesses have been examined and PW-2/Jai Narayan had not supported the case of the prosecution and turned hostile; that PW-1/ Neetu had not made any specific allegations against the petitioner; that there is no chance of the petitioners tampering with the prosecution evidence. Hence, in the said circumstances bail be granted to the petitioner.

4. On the contrary, learned APP for the State opposed the bail application of the petitioner and submitted that serious allegations have been made against the petitioner; that they have been charged for offences under Section 302/452/325/323/147/148/149/427/34 IPC for which maximum punishment is death or imprisonment for life; that the prosecution witnesses have supported the case of the prosecution to a large extent; that keeping in view the gravity of offence bail shall not be granted to the petitioner.
5. I have heard the learned counsel for the parties and perused the material available on record.
6. Upon careful scrutiny of the case, this Court, as per record, observes that the petitioner herein was one of the accused(s) who caused grievous injury to Hariraj leading to his death and also causing injury to his family members. During recording of evidence of PW-1/Neetu Singh, it was deposed by him that “...*I got up and I along with my parents came to the main gate of our house and opened the same and there I found that my brother Hari Raj and accused Sanjeev was holding a sword, accused Deepa holding a pistol, accused Naveen, Jimmy, Pritam, arvind, Ravinder, Raju, Rajkumar, his wife Rajni gautam, Bacchan (devar of accused Rajini gautam), Yogesh, @ Tunna, Chela, Shiva and some unknown persons were present outside the house...
....At this stage witness has correctly pointed out towards the accused Arvind, Sanjeev, Raj Kumar, Jimmy, Rajni, Naveen, Pritam, Bacchan and Mohit @ Shiva who are present in the court today were present at the spot..*” During his Cross- Examination

on behalf of counsel for Naveen, it was stated by him that “ *It is wrong to suggest that accused Naveen had got no concern with this case and he has been falsely implicated. It is wrong to suggest that on the date of incident accused Naveen was sleeping in his house...* ”

In ***Prasanta Kumar Sarkar v. Ashis Chatterjee*** reported in (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.”

7. Further, PW-2/ Sh. Jai Raj Narain has deposed that “...All the 25-30 persons were trying to pull my son Hariraj outside the house. Myself, my wife and my younger son Neetu had intervened to save Hariraj and in the process we all were beaten up by 25-30

persons with rod and sticks and one of the persons was also holding sword in his hand...

...At this stage, witness has correctly pointed out towards accused Sanjeev, Naveen, Raj Kumar, Rajni, Pritam, Shiva, Bacchan, Jimmy and Arvind, as the same persons, who were part of the mob of 25-30 persons and who were instrumental in causing injuries to Hairaj, Neetu, Santosh, parveen and witness himself..."

During his cross-examination by the counsel for Naveen, it was stated by him that “ *It is wrong to suggest that on 25.07.2012, at about 12:00 in the night accused naveen was sleeping in the house at RZ-167, Roshan Garden, Najafgarh, New Delhi and his bike was parked outside his house... It is wrong to suggest that accused Naveen is falsely implicated in this case or that he is not concerned in the present case. It is wrong to suggest that I have seen accused Naveen for the first time in the court. I had seen him at the time of incident.* PW-3/Smt. Santosh (Mother of the deceased), also deposed on similar lines as that of above witnesses and categorically mentioned that the petitioner was involved in the alleged crime along with the other co-accused. In the present case, 17 out of 36 witnesses have been examined by the concerned court and the matter is fixed for further recording of evidence. Moreover, the petitioner is also involved in two more FIRs registered at PS, Bindapur.

8. Keeping in view the aforementioned facts and circumstances as well as taking into consideration the gravity of the offences

alleged, this court does not deem it fit a case to grant regular bail to the petitioner.

9. Accordingly, the petition stand dismissed.
10. Before parting with the above order, it is made clear that observations made in the order shall have no impact on the merit of the case.

SANGITA DHINGRA SEHGAL, J

NOVEMBER 14, 2017 gr//

