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

+ **BAIL APPLN. 2135/2018**

MANISH SHAH

..... Petitioner

Through: Mr. Manoj Kumar Ohri, Senior
Advocate with Mr. Sudhir Naagar,
Mr. Mohit Singh Awana, & Mr.
Nawab Singh Jaglan, Advocate

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Ravi Nayak, APP for the State
with SI Vishvendar and SI Rahul, PS
Seemapuri.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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13.09.2018

CrI.M.A. 31949/2018 (exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

BAIL APPLN. 2135/2018

The prayer for release on regular bail pressed by the petitioner Manish Shah is in the context of FIR No.665/2013 of Police Station Seema Puri, which was originally registered for offences punishable under Sections 323/341/34 of the Indian Penal Code, 1860 (IPC).

It is admitted case of the prosecution that the petitioner was formally arrested during the investigation and was enlarged on bail by the arresting officer himself. Later, during the course of investigation offence under Section 307 IPC was added on 05.03.2015, this keeping in view the gravity

of the injuries sustained by the victim in the abdomen region, they statedly having been inflicted by the petitioner using broken glass piece. The charge sheet was laid in the case on 28.02.2016 seeking trial, amongst others, of the petitioner for the offence punishable under Sections 307/341/34 IPC, on which cognizance is stated to have been taken and process issued.

A perusal of the charge sheet itself shows that the arresting officer did not feel need to cause formal arrest yet again of the petitioner after the offence under Section 307 IPC had also been added, the reasons set out in the charge sheet clearly being that no recovery was to be effected, there being no requirement of custodial interrogation of the petitioner, he having joined investigation twice after the said more serious offence had been taken up for probe.

The petitioner had approached this court earlier for release on anticipatory bail. The said application was withdrawn, liberty having been granted to approach the concerned criminal court for bail, reference having been made to the provisions contained in Section 437 of the Code of Criminal Procedure, 1973 (Cr.P.C.). The petitioner claims to have approached the court of Magistrate, but his application was not entertained and he later moved the court of Sessions by Bail Application No.512, which was allowed by order dated 21.02.2018, the above facts and report of the investigating agency about there being no need for custodial interrogation having been taken note of. The said order, however, was cancelled at the instance of the complainant, he having moved an application under Section 439(2) Cr.P.C. by order dated 05.05.2018, the court of Sessions being not very satisfied with the explanation as to why the court of Sessions had been

approached under Section 438 Cr.P.C. against the backdrop of liberty to move for bail under Section 437 Cr.P.C. granted by this court.

It may also be noted that the petitioner had also approached this court by a petition under Section 482 Cr.P.C., it being CrI.M.C.2603/2018, which was permitted to be withdrawn and dismissed accordingly by order dated 09.08.2018, with liberty granted to the petitioner to approach the court of Sessions to secure release on regular bail, the case having since been committed to the said court by the court of cognizance. The petitioner, thus, moved fresh application for release on bail in the context of the said Sessions Case (No.154/2018) which has, however, been dismissed by the Additional Sessions Judge by her order dated 05.09.2018, taking note of the fact that the petitioner was “*never arrested*” after the offence under Section 307 IPC had been added and further dismissal of the previous application for anticipatory bail on the ground of “*concealment of facts*”.

The learned Additional Public Prosecutor, on being asked, submitted that though the offence is serious, there can be no denial of the fact that the investigating agency had not pressed for any custodial interrogation at any stage, the charge sheet which was submitted having clearly indicated that there was no need for formal fresh arrest after offence under Section 307 IPC had been added.

It has to be borne in mind that the grant of bail is the general rule and denial thereof an exception. In the present facts and circumstances, where the investigating agency never required custodial interrogation of the petitioner, there being no need for any recovery to be effected at his instance, his co-accused persons having been enlarged on bail, there being a

cross case, *albeit* subsequent to the one at hand, arising out of FIR No.666/2013, charge sheet therein also having been filed, each representing assumably two contradictory versions, a case for release on regular bail is made out.

Thus, the petition is allowed. It is directed that the petitioner shall stand released on bail pending trial, on he furnishing personal bond in the sum of Rs.20,000/- with one surety in like amount to the satisfaction of the trial court, subject to the following terms and conditions:-

- (i). Prior to his release, he shall give the telephone numbers of self and of at least one other responsible family member besides that of the surety to the trial court;
- (ii). He shall scrupulously appear at each and every stage of the proceedings before the trial court so as not to cause any obstruction or delay to its progress;
- (iii). He shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected; and
- (iv). He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer or tamper with the evidence.

Dasti.

SEPTEMBER 13, 2018/vk
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R.K.GAUBA, J.

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