

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

Order reserved on: 13.09.2019

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Order delivered on: 11.10.2019

+ **BAIL APPLN. 1006/2019**

Kamal Kishore @ Lalaji

..... Petitioner

Through: Mr. M. N. Dudeja, Mr. Neeraj
Bhardwaj and Mr. Aditya
Mishra, Advs.

versus

THE STATE OF DELHI

..... Respondent

Through:

Ms. Neelam Sharma, APP for
State with SI Ravi Kumar,
from P.S. Karawal Nagar.

CORAM:

HON'BLE MR. JUSTICE BRIJESH SETHI

ORDER

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1. This is a bail application moved on behalf of petitioner Kamal Kishore @ Lalaji filed under section 439 Cr.P.C. for grant of regular bail in FIR No. 162/2012, u/s. 302/201/34 IPC PS Karawal Nagar.

2. It is submitted by learned counsel for the petitioner that applicant/ accused is an old man aged 75 years who is in Judicial custody since 19.05.12 i.e. for a period of more than six years and is a disabled person suffering from several serious medical ailments like Asthama and 40% of his left body is paralyzed due to post burn contractions. He further submits that Trial Court failed to give due consideration to the above facts while dealing with the bail

application. It is further submitted that all material witnesses have been examined and no useful purpose will be served by keeping the petitioner in Judicial Custody.

3. Ld. Counsel further submits that the case is based on eye-witness accounts of witnesses namely Lata Saini (wife of the deceased) PW-11, Karan PW-12 and Sonu PW-17. He submits that all these PW's are planted witnesses and their statements are not at all reliable which can be demonstrated from the records itself. It is further submitted that their statements are highly belated as statement of Smt. Lata Saini, PW-11 was recorded 48 hours after the incident on 19.05.2013, statement of Sonu, PW-17, was recorded on 05.07.2012 i.e. after 50 days of the alleged incident and statement of Karan PW-12 was recorded on 28.05.2012 i.e. 10 days after the alleged incident.

4. It is next submitted by Ld. Counsel that it is alleged that the deceased was stabbed by Gagandeep on the torso and left arm, however, no weapon has been recovered by the police during investigation. Moreover, there is no public witness though the alleged incident of stabbing has taken place during evening hours on 17.05.12 at a thickly populated area of Karawal Nagar, East Delhi.

5. Ld. Counsel has further argued that allegations of stabbing the deceased are false and baseless as the deceased and his companions were the actual aggressors who had trespassed into the shop of the co-accused Surinder Kumar and caused severe damage to the property and had inflicted grievous injuries on the body of Surinder Kumar and Gangandeep. On the complaint of Surinder Kumar DD

No.66-B PS: Karawal Nagar was lodged and subsequently FIR bearing no. 163/12 u/s 308/452/34 IPC, PS Karawal Nagar was also registered. He has further submitted that deceased and PW-12 Karan were already booked u/s. 323/452/34 IPC in FIR no. 23/2011 dated 23.01.11, PS Karawal Nagar for attacking the present applicant/accused back in the year 2011 which shows the criminal conduct of the complainant party.

6. Ld. Counsel has further submitted that the co-accused Surinder Kumar was granted bail by the Ld. ASJ, Karkardooma vide order dated 19.12.2013 on the ground of delay in recording the statements of the eye witness and the old age of the accused. However, the bail application of the applicant/accused was rejected by the Ld. ASJ, Karkardooma vide order dated 06.03.2019 on the ground that offence is grave and serious in nature.

7. Ld. Counsel has further submitted that there are grave and material contradictions regarding place of incident and role assigned to the applicant in the statements of the eye-witnesses of the case namely Lata Saini PW-11, Karan PW-12 and Sonu PW-17. According to the testimony of PW-17, Sonu Chaudhary, the quarrel and incident of stabbing has taken place inside the shop of co-accused Surender Kumar whereas PW-11 has stated that the quarrel has happened on the street/road. Further, it is most improbable that the wife of the deceased PW-11 would not have informed anyone or made any police complaint for 48 hours after herself witnessing the alleged stabbing of her husband. Nor did she made any attempt to know the whereabouts of her husband for 2 days after he fled away

with his companions PW-12 and PW-17.

8. Ld. Counsel has further submitted that after the incident, the co-accused Surender Kumar (brother of applicant/ accused) had immediately called the police to inform about the trespassing and merciless beatings. This information has been recorded in DD no. 66-B at 10.08 p.m., PS Karawal Nagar. He further submits that statements of all the accused persons were recorded immediately and a FIR bearing no. 163/12 u/s 308/452/34 IPC, PS Karawal Nagar was registered which is a cross-case to the present FIR.

9. Ld. Counsel for the petitioner has lastly prayed that petitioner is suffering from various ailments and is old man and he be, therefore, released on bail. In support of his argument, learned counsel for petitioner has relied upon the following judgments;

- i. Sanjay Chandra v. CBI, (2012) 1 SCC 40,
- ii. Dataram Singh v. State of Uttar Pradesh, 2018 SCC Online SC 88
- iii. H.B. Chaturvedi v. CBI, 171(2010) DLT 223
- iv. Babu Singh & Ors v. State of UP (1978) 1 SCC 579.

10. On the other hand, the Ld. APP for the State has opposed the bail application on the ground that the allegations against the applicant/ accused are serious in nature. He submits that there are total 29 witnesses in the case and out of these, 18 witnesses have already been examined. Now only 11 witnesses remain to be examined. He further submits that petitioner has been released on interim bail from time to time on medical grounds. He lastly submitted that in view of the serious nature of allegations, the present bail application be dismissed.

11. I have considered the rival submissions and perused the authorities submitted by Ld. Counsel for the petitioner and am of the opinion that these are distinguishable on the basis of facts and circumstances stated therein. The present case is under Section 302/201/34 IPC whereas the allegations are that petitioner alongwith co-accuseds had murdered the deceased on 17.05.2012. Out of 29 witnesses 18 witnesses have already been examined and 11 witnesses remained to be examined. In my opinion no grounds for bail are made out at this stage. This court cannot scrutinize and evaluate the evidence in the present bail application. The submission of Ld. Counsel that no case is made out against the petitioner and there is inconsistency in the statement of witnesses cannot be analyzed and decided at this stage. The same will be analyzed minutely by the Ld. Trial Court at the appropriate stage. Since the Ld. Counsel for the petitioner has relied upon the statement of the witnesses to strengthen his arguments that no case as alleged is made out against the petitioner, reference can be made to the statement of PW-17. Perusal of the statement of PW-17 Sonu Chaudhary reveals that petitioner/ accused had caught hold of the deceased and other co-accused Gagandeep had stabbed the deceased with knife. In view the above discussions, no grounds for bail are made out at this stage. However, Ld. Trial Court is directed to dispose of the case as expeditiously as possible. The bail application is dismissed.

BRIJESH SETHI, J

OCTOBER 11, 2019

Amit