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

Judgment reserved on: 31.10.2019

Judgment delivered on 15.11.2019

+ **BAIL APPLN. 2195/2019**

AJAY & ANR.

..... Petitioner

Through: Mr. Jatan Singh, Advocate.

versus

THE STATE GOVT OF NCT OF DELHI Respondent

Through Ms. Neelam Sharma,
APP for State along with Insp
Gulshan Nagpal, PS Sultan Puri

CORAM:

HON'BLE MR. JUSTICE BRIJESH SETHI

J U D G M E N T

BRIJESH SETHI, J.

1. Vide this order I shall dispose of the bail application filed by the petitioners **Ajay** and **Sagar @ Kaku** in FIR No. 891/2018 u/s. 302/323/34 IPC, P.S. Sultanpuri.

2. Ld. Counsel for the petitioner has prayed for bail on the ground that petitioner is innocent and has been falsely implicated. It is submitted that subject matter FIR was registered on the statement of one **Jitender @ Golu**, who has alleged that on the intervening night of 7 -8 November, 2018, at around 3.30am, while he alongwith his

friend Yogesh (since deceased) was returning to his house, they had met the petitioners and the petitioners had caught hold of Yogesh. It is further alleged that few days ago Yogesh had beaten petitioner Ajay and due to this the petitioners had started beating Yogesh. Petitioner Ajay had attacked Yogesh with his knife, due to which he had started bleeding and fell on the ground. Petitioners were arrested on 08.11.2018 and after completion of investigation, Chargesheet was filed in the court. The petitioners had moved an application u/s 439 CrPC seeking regular bail before the Ld. Trial Court which was dismissed by the Ld. Trial Court vide order dated 08.08.2019.

3. It is submitted that both the petitioners are aged about 22 years and are not involved in the present case and they have been falsely implicated by the police officials of PS Sultanpuri when they failed to catch the real culprits.

4. It is further submitted according to the Prosecution, the complainant namely Jitender @ Golu was the eye witness to the alleged incident. The said witness has already been examined and cross examined before the Ld. Trial Court as PW-3 and he has not supported the case of the prosecution and during his testimony nothing

incriminating has come on record against the Petitioners. Moreover, there are no public witnesses and only Police/Official/Formal witnesses remain to be examined, thus there is no probability of the petitioners influencing or tampering with the evidence.

5. It is submitted that on two previous occasions i.e. on 15.05.2019 and 11.07.2019, the Ld. Trial Court had granted interim bail to the petitioners for two months each. The petitioners are in judicial custody since 08.11.2018 and the investigation qua them has already been completed and they are not required for further custodial investigation and it is, therefore, prayed that both the petitioners i.e. Ajay and Sagar @ Kaku be released on bail.

6. Ld. APP for the state has opposed the bail application on the ground that allegations against the petitioners are serious in nature. Petitioners are involved in a heinous offence of murder. Ld. APP has submitted that evidence of the prosecution witnesses cannot be appreciated at the stage of bail. He has, therefore prayed for dismissal of the bail application.

7. Learned Counsel for the petitioner has relied upon following case law in support of his contentions:-

- i) Sumer Singh vs. State, MANU/DE/8470/2007
- ii) Maulana Mohd. Amir Rashadi vs. State of U.P. and Ors.

8. I have gone through the above case law. There is no quarrel with the proposition of law laid down therein. However, these authorities are distinguishable on the basis of facts and circumstances stated therein. Moreover, it is a settled law that while granting bail, the court has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, the circumstances which are peculiar to the accused, his role and involvement in the offence, his involvement in other cases and reasonable apprehension of the witnesses being threatened and tampered with. Thus, the above factors must be taken into account while considering the bail application.

9. Present case has been registered on the complaint of one Jitender @ Golu. On the intervening night of 07/08.11.2018, he had met Inspector Vipin Kumar, PS Sultan Puri who was on patrolling duty along with staff and told that the petitioners Ajay and Sagar @ Kaku had murdered his friend Yogesh. On this information, Inspector Vipin Kumar along with staff and complainant had reached in front of

A-3/378, Sultanpuri, Delhi where the blood was found scattered at the spot and a white cap and a knife was also found on the spot. On search, the dead body of Yogesh S/O Ramesh Kumar R/O F-684-85, Sultan Puri Delhi was found in the drain having stab wounds. The crime team was called on the spot, scene was photographed and inspected. The exhibits were lifted from the spot (blood, blood stained earth control, Earth control, blood stained knife and white color cap) through seizure memos. The dead body got preserved to SGM Hospital and Inspector Vipin Kumar, ATO PS Sultanpuri also recorded the statement of complainant Jitendra @ Golu who specifically mentioned the name and roles of the petitioners regarding commission of the offence. The complainant was medically examined and his clothes were also seized as these were having blood stains. During the investigation, the petitioners were arrested at the instance of complainant and they pointed out the place of occurrence separately. The petitioners got recovered their bloodstained *chappals* and a knife was recovered at the instance of petitioner Ajay. The FSL Report regarding various exhibits was received. The FSL Expert opined that the DNA profile generated from the source of exhibit '5'

(Gauze cloth piece of deceased) is similar with the DNA profile generated from the source of exhibit 'I' (knife from the spot), exhibit '7' (chappal from the accused Ajay), exhibit '8' (chappal from the accused Sagar), and exhibit '10' (clothes of the complainant Jitender @ Golu) and thus, *prima facie* there is scientific evidence on record against the petitioners. According to petitioner, the blood of deceased was not only found on the knife recovered from the spot but also on the chappals of both petitioners as well as on the clothes of the complainant.

10. Out of total 26 witnesses in the case only 11 witnesses have been examined and PWs regarding recovery of blood stained chappals, knife etc. are yet to be examined. It is a settled law that evidence cannot be discussed at the stage of consideration of bail application. The Ld. Trial Court will discuss the same at the appropriate time. However, on the submission of Ld. Counsel for the petitioner that no incriminating evidence is on record against the petitioners, this Court is compelled to refer to the status report filed by the Ld. APP wherein it is stated that apart from the evidence of PW-3, other scientific evidence i.e. forensic as well as medical evidence is

available on record which prima facie links the petitioner with the crime. In the opinion of this Court, the evidentiary value of the same has to be considered by the Court at the appropriate stage. This Court has, however, observed another disturbing allegation leveled against the petitioners. It is alleged that threat was extended to PW-5, who is the mother of deceased. She has also deposed regarding the said threat in her examination in chief, which runs as under;

“After the murder of my son Yogesh, some persons had visited my house and threatened me to withdraw my case and they further said that they had won over witness Golu @ Jitender and Golu @ Jitender will tender his evidence in their favour and our case was very weak.”

11. It may be noted that PW-5, mother of the deceased had also made a complaint, **Ex.PW5/A**, to the SHO, PS Sultanpuri, on **02.01.2019** regarding threat given to her regarding winning over of the eye-witness Jitender @ Golu. Later on, the complaint of the mother of the deceased (PW5), that the witnesses are being threatened seems to have proved to be true to the extent that the PW-3 has become hostile during his examination in court. As stated above, it is not the proper stage to discuss the evidence and evaluate the same in detail as this will either prejudice the case of the petitioner or the case of the

prosecution. At this stage, it is sufficient to observe that in view of the fact that threat was extended to the mother of the deceased on behalf of petitioners and further in view of the fact that there is other evidence in the nature of medical and forensic evidence and also keeping in mind the serious nature of the offence, no grounds for grant of bail are made out. The bail application is, therefore, dismissed.

BRIJESH SETHI, J

NOVEMBER 15, 2019

Amit

