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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3071/2019**
MOHIT PAL Petitioner
Through: Mr. Rajiv Khosla, Adv.

versus

STATE Respondent
Through: Mr. Kewal Singh Ahuja, APP for
State with SI Somvir Singh, PS
Alipur.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **04.02.2020**

Submissions have been made on behalf of either side qua the application filed by the applicant seeking grant of bail in terms of Section 439 of the Cr.PC, 1973 qua the charges framed against the applicant vide order dated 11.09.2015 of the learned ASJ-04, North in relation to the FIR No.129/2015, PS Alipur qua the alleged commission of offence punishable under Section 302 r/w Section 34 of the Indian Penal Code, 1860 submitting to the effect that the averments that have been made in the FIR are also not corroborated through the testimony of the complainant examined as PW7 during trial. It has been submitted on behalf of the applicant that the testimony of PW7 would indicate that he is not an eye witness in as much as he is not named in the MLC by the doctor being the person who came with the injured and rather the injured is shown to be accompanied by the PCR personnel.

It has been submitted on behalf of the applicant that there were no blood stains on the person of the witness PW 7, the complainant and that would falsify the prosecution version in relation to the alleged eye witness, the complainant having assisted the deceased at the time of the occurrence. It has been further submitted on behalf of the applicant that as per the testimony of PW7 he was left handed and had stated that he had a fracture in his right hand and as a consequence thereof, he had assisted at that time only with his right hand, which it is stated is practically not possible. It has also been submitted on behalf of the applicant that three buttons of the shirt of the co-accused had been found broken and recovered at his instance which would be an indicator of a scuffle between the deceased and other persons at the spot, which would falsify the prosecution version in relation to the stated assault as alleged in the FIR whereby the deceased was caught hold of by the accused person in the instant case i.e. allegedly inclusive of the petitioner holding of the deceased at the time of assault. On behalf of the applicant a further submission is made that the witness PW7, the complainant in a reply had also stated that the deceased before the demise had also told him that he had been stabbed by the accused Bhanu Raghav and it is thus submitted on behalf of the applicant that the same would indicate that the witness PW7, the complainant of the FIR was not present at the spot.

A further submission is made on behalf of the applicant that the applicant having been incarcerated since 05.02.2015 has been in custody for five years now and that the trial would take time and that the applicant be thus released on bail.

On behalf of the State, the application is vehemently opposed submitting *inter alia* to the effect that the averments made in the FIR are corroborated through the testimony of PW7 and that at this stage, the Court cannot conduct a mini trial to pre-judge the issue. Reliance is also placed on the testimony of PW7 in relation with the reply of the PW7 to a specific Court query put by the learned trial Court on the date 06.09.2016 to which query response of the PW7 read to the effect:

“Court Question: Can you tell as to what were accused Mohit and Monu (JCL) were doing at the time when accused Bhanu Raghav had given blow to Raj Kumar as stated by you above?

Ans. At that time, accused Mohit was holding hands of Raj Kumar and Monu (JCL) had caught hold of the neck of Raj Kumar while standing on the back side of Raj Kumar, embracing his both the hands around the neck of Raj Kumar.

I rushed towards Raj Kumar who had already fallen down onto the floor. I tried to lift Raj Kumar, with my hands and at that time, Raj Kumar had told me that he was stabbed by accused Bhanu Raghav. Raj Kumar was bleeding profusely from his chest at that time. Thereafter, Raj Kumar had lost his consciousness. I had made call at 100 number. Upon my said call, PCR Van reached at the spot and PCR officials took Raj Kumar in PCR Van to Raja Harish Ghand Hospital, Narela. I had also accompanied Raj Kumar in the said PCR Van. In the said hospital, the concerned doctor had checked Raj Kumar and declared him brought dead.”

to submit that the witness had categorically stated that the applicant herein was holding the hands of the deceased whilst the co-accused Monu (JCL) had caught hold of the neck of the deceased while standing on the back side of the deceased embracing his both hands around the neck of the deceased at the time of assault by the co-accused named Bhanu Raghav who had given

the knife blow to the deceased.

Without any observations on the merits or demerits of the trial that is in progress, presently, it cannot be concluded that PW 7 was not an eye witness to the occurrence merely because he had stated to the effect:

*“I tried to lift Raj Kumar, with my hands and at that time, Raj Kumar had **told me** that he was stabbed by accused Bhanu Raghav.”*

having stated that while he tried to lift the deceased at that time, the deceased told him that he was stabbed by the accused Bhanu Raghav, for that would set at naught the admissibility and relevance of dying declarations.

The response to the Court query adverted to hereinabove spells out prima facie categorically the role of the applicant as put forth through the averments made in the FIR.

In the circumstances, there is no ground for grant of bail whatsoever.

Bail Application 3071/2019 is disposed of.

Nothing stated hereinabove shall amount to any expression on the merits or demerits of the trial.

ANU MALHOTRA, J

FEBRUARY 04, 2020

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