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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on 04.02.2020

+ **BAIL APPLN. 925/2019**

ROHIT

..... Petitioner

Through: Mr. Rajiv Kumar Ghawana and
Mr. Neelaksh Sharma,
Advocates.

versus

STATE

..... Respondent

Through Mr. Raghuwinder Verma
APP for State along with SI
Mohd. Kafeel, PS Mukherjee
Nagar.

CORAM:
HON'BLE MR. JUSTICE BRIJESH SETHI

J U D G M E N T

BRIJESH SETHI, J. (ORAL)

1. Vide this order I shall dispose of the bail application u/s. 439 CrPC filed by the petitioner Rohit in FIR No. 472/2016 u/s. 397/394/34 IPC, P.S. Mukherjee Nagar.

2. Ld. Counsel for the petitioner has prayed for bail on the ground that petitioner is innocent and has been falsely implicated.

3. As per the prosecution, on 09.5.2019 at about 2.15 am. The complainant Vishal Beniwal was sleeping in his house. He woke up

after hearing some sound and saw that two boys were committing theft in his house. Complainant tried to open the door to apprehend them but door was bolted from outside. Later on, he found that one Cylinder, micro wave oven (Samsung) and two pairs of sports shoes of Puma and three water taps of his house were stolen. He made call at 100 number and made complaint to the police. Police came and opened the house and registered his complaint but nothing happened. Thereafter on 11.05.2016 at about 2.30 am, he again heard some sound outside his house. Complainant came out and found that accused was trying to remove his water motor. The accused started running from there and complainant ran behind him and caught him. Accused, thereafter attacked the complainant with a poker. Meanwhile two associate of accused who were sitting in the street also attacked the complainant with iron rod and caused injury on the head of the complainant and on the left hand as well.

4. It is submitted that charge under section 397/394/34 was framed against the petitioner and co-accuseds by the Ld. Trial Court on 22.11.2016. Co-accused Anil was granted bail on 22.11.2016. Thereafter another co-accused Sachin was also granted bail by the Ld.

Trial Court.

5. It is submitted that prosecution evidence was started on 27.05.2017 and till now, out of 14 witnesses, 9 witnesses have been examined including the complainant Vishal Beniwal as PW-8. It would take long time to conclude the trial and petitioner is in custody for the last two years and ten months. It is, therefore, prayed that petitioner be released on bail, in the interest of justice.

6. Ld. counsel for the petitioner has further submitted that the petitioner Rohit was acquitted in FIR No. 257/2016 u/s. 392/411/34 IPC, PS Timarpur wherein the 'Sua/ Poker' was recovered. He has further argued that there are contradictions in the statements of the prosecution witnesses particularly in the statement of PW-8 recorded by the Ld. Trial Court. He further submitted that MLC of the petitioner does not support the prosecution version that the complainant has sustained injuries due to attack by the 'Poker'.

7. Ld. APP for the state has opposed the bail application on the ground that allegations against the petitioner are serious in nature. Complainant has been examined as PW-8. He has fully supported the

prosecution version. He has, therefore prayed for dismissal of the bail application.

8. Learned Counsel for the petitioner has relied upon bail orders titled '**Mohan Singh vs. State (Govt. of NCT of Delhi, Bail Appl. No. 688/2019**' & **Sahil Dahiya vs. State, Bail Appl. No. 907/2015**'. I have perused the orders on bail applications. The same are distinguishable on the basis of facts and circumstances stated therein.

9. I have considered the rival submissions. It is settled law that at the stage of bail the evidence need not be discussed, examined or analyzed in detail. However, since the Ld. counsel for the petitioner has insisted and relied upon and tried to point out the contradictions in the statement of PW-8, this Court has perused the statement of PW-8 who is complainant in the case. Prima facie the complainant has supported the prosecution version. PW-8 i.e. the complainant Vishal Beniwal has deposed that on the night of 09.05.2016 when he was sleeping in his room, at about 2.15 am, he had heard some sound and saw that two young boys were present in verandah and they were trying to steal something. He tried to open the door but it was bolted from outside. His gas cylinder, microwave oven, two pairs of shoes

and water taps were taken away by them. On the night of 11.05.2016, he again heard the sound from outside his room. He woke up and saw that one boy who had committed theft of his articles on 09.05.2016 was there and trying to remove water motor. He had chased that boy and caught hold of him. The said boy had stabbed him with 'Poker'. While he was scuffling with the petitioner, the other co-accuseds had appeared and they had started beating him. As discussed earlier, prima facie PW-8 has given a consistent version of the incident. The contradictions, if any, appearing on record will be examined by the Ld. Trial Court at the appropriate stage after scanning the evidence in detail and no mini trial can be conducted at this stage at the time of deciding the bail application.

10. So far as acquittal of the petitioner in FIR No. 257/2016 is concerned, the petitioner/ accused is acquitted in the said case because of contradictions appearing in the prosecution version. What will be the effect of acquittal on the present case will also be considered by the Ld. Trial Court at the appropriate stage. At this stage, as discussed earlier, evidence cannot be analyzed and examined in detail.

11. Perusal of the evidence reveals that petitioner as well as all the accused persons were identified by the complainant in the Court and petitioner has categorically stated that petitioner had inflicted injuries upon him with the help of 'Poker'. Evidence further reveals that complainant had identified the petitioner in Tihar Jail during TIP and he had also identified the weapon of offence.

13. In view of the above facts appearing on record and particularly the statement of PW-8 and also keeping in mind the nature of offence, no grounds for grant of bail are made out at this stage. The bail application is, therefore, dismissed. However, it is clarified that nothing stated herein will tantamount to expression of opinion on the merits of the case.

BRIJESH SETHI, J

FEBRUARY 04, 2020

(AP)