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

+ BAIL APPLN. 2142/2020

JAI PRAKASH ALIAS J.P.

.....Petitioner

Through: Mr J.P. Singh, Mr Manish Kumar
Singh and Mr Manoj Dahiya
Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr G.M. Farooqui, APP for State.
Mr P.K. Jain, Advocate for
complainant.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **02.09.2020**

The hearing was conducted through video conferencing.

1. This is a petition/application under Section 439 Cr.PC moved by the petitioner seeking regular bail/interim bail in case FIR No.0237/2016 registered under Sections 302/120B/34 of the Indian Penal Code ('IPC') at Police Station Chhawla, New Delhi.
2. On the previous date i.e. on 31.08.2020, this Court, *inter alia*, had recorded as under:

"1. ...

2. The petitioner is stated to be in custody since 17.06.2016. The main accused, alleged main perpetrator of the crime viz. Jaivir @ Monu, who mortally wounded the husband of the complainant with a hammer, has been granted bail by the learned Trial Court way back on 29.11.2019. The prosecution has not appealed against the said order. Similarly, the two other co-accused, namely,

Santosh and Aman, who allegedly had active roles in the crime, have also been enlarged on bail. The role attributed to them was that, Santosh caught hold of the complainant while Aman caught hold of the deceased, when the fatal assault was made on the deceased. The role of the present petitioner is that he allegedly held the deceased, just like co-accused Aman. He contends that being almost identically placed with Aman, on parity he too should be granted bail.

3. The learned counsel for the complainant submits that the case of the present petitioner is quite different inasmuch as he is a history-sheeter and there are other cases pending against him.

4. The learned counsel for the petitioner submits that there is only one case pending against the petitioner, in which he has already been granted bail about three years ago. Besides, the expression history-sheeter can be used only against a person with proven guilt and conviction, otherwise such statements can at best, be termed as irresponsible, baseless and wanton allegations against an individual.

5. It is alleged that the petitioner and co-accused Sahil held back the deceased when the deceased was struck by a hammer by co-accused Jaivir @ Monu. The bail application of co-accused is listed on 02.09.2020. List this matter also be listed on 02.09.2020.

6. The Nominal Roll of the petitioner be requisitioned from the Jail Authorities and made available before the next date.

7. The learned counsel for the complainant states that, lately the complainant has received threats to her life, limb and liberty from the petitioner through Facebook, etc. Let the matter be looked into by the Delhi Police and requisite protection be granted to the complainant forthwith....”

3. On the previous date, on 27.08.2020, this Court, *inter alia*, had recorded as under:-

“1. ...

2. The petitioner seeks bail to attend to his mother, who is a widow and is stated to be indisposed. His sister has been unable to take care of her especially during the prevalent pandemic. The role assigned to the petitioner in the Chargesheet is that he caught hold of the husband of the complainant while the other co-accused Jai Veer @ Monu assaulted the deceased husband with a hammer. The co-accused Jai Veer @ Monu has already been granted regular bail. The petitioner's role is of a lesser degree. Two other co-accused persons, namely, Santosh and Aman have also been released on bail. The role attributed to Santosh was that he held back the complainant along with co accused Reena. The learned counsel for the petitioner submits that the role of the petitioner and of the co-accused Santosh is identical. The co-accused Jai Veer @ Monu has played main role in the alleged murder, as he is alleged to have inflicted the mortal injuries with a hammer. The petitioner is in custody since 20.07.2016. it is argued that, the conclusion of the trial is likely to take a long time because only 6 out of 20 prosecution witnesses cited by the prosecution, have been examined thus far. However, it is argued that material and private witnesses have already been examined. The remaining are police officials/public witnesses, over whom the petitioner is not likely to have any sway.

3. It is submitted by learned APP that the petitioner is involved in another case. He seeks time to refer to the Status Report which is stated to have been filed but the same is not on record. Let the same be brought on record before the next date.

4. List on 02.09.2020....”

4. The learned counsel for the complainant refers to the dicta of the Supreme Court in *Pramod Kumar Saxena vs. Union of India & Ors.* (2008) 9 SCC 685 and *Ramesh Kumar Pandey v. Munni Singh @ Mata Bux Singh SLP (Crl.) No. 4059/2000*, he contends that the State

not appealing against bail having been granted to one of the co-accused persons would not be reason enough for the other co-accused to be enlarged on bail, if the circumstances otherwise do not so warrant for such release. However, the seriousness of the charge, will depend on the facts on each case.

5. In the present case, however, the two persons who have been granted bail and the present petitioner are identically placed, i.e., they allegedly held the deceased and the complainant, while the deceased was mortally assaulted. The learned APP and the complainant submit that the petitioner has history of involvement in other cases as well. However, thus far, there has been no conviction in any such case. The petitioner has been in jail for over half a decade. He did not inflict the alleged mortal injuries; he is alleged to have only held the deceased. The person who allegedly did inflict the said mortal injuries has been granted bail. Seven of the 28 witnesses have been examined and discharged, including the complainant. The remaining witnesses are mostly police officials or public witnesses, over whom the petitioner can have no sway.
6. In *Sanjay Chandra versus Central Bureau of Investigation* (2012) 1 Supreme Court Cases 49; Supreme Court held, *inter alia*, as under:-

“ The object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The Courts owe more than verbal respect to the principle that

punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. Detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In India , it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the propose of giving him a taste of imprisonment as a lesson."

(Emphasis supplied)

7. In *Dataram Singh vs State of Uttar Pradesh & Anr.*, (2018) 3 SCC 22, the Hon'ble Supreme Court held, *inter alia*, as under:

"2...Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal

jurisprudence or to our society... ”

(Emphasis supplied)

8. In view of the preceding discussion, the petitioner is granted bail subject to his furnishing a Personal Bond in the sum of Rs.50,000/- with two sureties of the like amount to the satisfaction of the learned Duty MM/Jail Superintendent/Trial Court concerned, and one of the sureties shall be a near relative and should be based in Delhi, subject to the following conditions:
 - (i) The petitioner shall keep the SHO/IO concerned informed of his whereabouts every Friday between 11:00 a.m. and 11:30 a.m. and between 5 p.m. and 6 p.m. through video call and if a video call is not possible, he may send SMS apropos his whereabouts, as well as “drop-a-pin” on location app to indicate his location. The IO’s telephone number shall be provided to the learned counsel for the petitioner.
 - (ii) The petitioner shall not leave the territory of NCT of Delhi.
 - (iii) The petitioner shall not contact the complainant(s) in any manner and shall not do anything which will prejudice the case of the prosecution.
 - (iv) The petitioner shall provide his contact number to the IO/SHO concerned and shall ensure that such number is reachable at all times.
9. The bail application stands disposed-off in terms of the above.
10. Nothing stated in this order shall be deemed to be an adjudication on the merits of the case.

11. The Registry is directed to e-mail a copy of this order to the Jail Superintendent concerned for due compliance.
12. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through e-mail.

NAJMI WAZIRI, J

SEPTEMBER 02, 2020/*rd*