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

+ **BAIL APPLN. 1416/2019**

GUFRAN

..... Petitioner

Through: Mr Kanhaiya Singhal, Advocate.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr Amit Chadha, APP for State.
Mr Vipul Pankaj Sanghi, Advocate
for complainant.
Mr Akashdeep, police official.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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20.05.2020

1. The petitioner has filed the present petition seeking bail in case relating to FIR No.101/2013 under Section 302/307/323/452/427/506/147/148/149/34 of the Indian Penal Code, 1860 and Sections 25/27 of the Arms Act, 1959, registered with PS M. S. Park.
2. The FIR in question was registered on a statement made by one Yogender Kasana (the complainant). He had stated that he had come to the shop of the deceased (Ibrahim) at about 11:45 PM on 21.04.2013 for getting his motor vehicle repaired. He stated that he along with the deceased (Ibrahim), his brother Tahir and uncle Nauman sat in the shop to watch IPL match. He stated that in the meanwhile, the accused persons, Israil Pehalwan, his sons Javed, Abid, Arif and Tarif and his son-in-law Gurfan, came to the shop and they started beating the deceased. He stated that the accused Israil Pehalwan held a wooden stick while Javed and Abid were

armed with a knives. Arif was carrying pistol and Tarif and Gurfan were holding cricket wickets in their hand.

3. He stated that he witnessed Arif firing upon the uncle of the deceased (Numan) however, he escaped unhurt. The deceased Ibrahim's brother Tahir attempted to resolve the disputed but the accused beat him as well. Ibrahim (the deceased) ran towards the rear portion of the shop and was followed by the accused. He stated that Arif fired shots from the pistol towards Ibrahim several times and Javed and Abid assaulted Ibrahim with knives. He also stated that Arif and Gurfan beat the deceased with wickets. The accused Israil Pehalwan also beat the deceased with a stick.

4. The accused were arrested. The nominal roll of the petitioner (Gurfan) indicates that he has been in custody since 25.04.2013. Thus, he has been in custody for almost seven years.

5. The trial is at the fag end and it is stated that but for the examination of the Investigation Officer all other witnesses for the prosecution have been examined.

6. Mr Singhal, learned counsel appearing for the petitioner contended that the petitioner ought to be granted bail on parity with the two other accused, who were granted bail. He submitted that one of the accused, namely, Israil Pehalwan was granted bail on account of his advanced age and his son Abid was also granted bail. He submitted that according to the Complainant, Abid had attacked the deceased with a knife and the post mortem report indicates that the cause of death was an injury by a pointed instrument (injury no.19). He submitted that since there was no allegation that the petitioner had assaulted the deceased with a knife, the role ascribed of the petitioner was not as grave as that of the Abid.

7. Next, Mr Singhal submitted that the petitioner had been roped in on the basis of a false allegation that he was involved in the commission of the crime. He stated that as per the testimony of a material witnesses (PW-8) the deceased was assaulted by his neighbours but the petitioner did not live in the neighbourhood of the family of Israil Pehalwan. He was his son-in-law and had been falsely implicated by the complainant only for the purposes of extortion.

8. Next, Mr Singhal, referred to the testimony of PW-9 who was allegedly one of the eye witness. PW-9 (Mohd Yunus) had deposed that Abid had taken the daughter of Israil Pehalwan namely, Nazim; sister of Israil Pehalwan, namely, Asgari; son-in-law of Israil Pehalwan, namely Gufran; and his two children in his car. Mr Singhal submitted that according to his testimony, the petitioner was not present at the incident. He also referred to the first DD entry wherein it was reported that Israil Pehalwan and his sons Javed, Abid, Arif and Tarif had assaulted the deceased with knives. He stated that the name of the petitioner was not mentioned by the person who first reported the incident. He also referred to the testimony of the wife of the deceased (Smt. Zara Ibrahim) who deposed as PW-10. According to the prosecution, she is an eye witness and had witnessed the incident from her balcony. Her statement under Section 161 was recorded but that too did not mention the name of the petitioner. Mr Singhal, referred to a testimony where she was confronted with the same. He also referred to the testimony of PW-8. He pointed out that testimony of PW-8 also indicates that he had not mentioned the name of the petitioner in his initial statement recorded under section 161 Cr.PC. He further stated that PW-8 had deposed that he knew the assailants (accused) as they were

his neighbours. However, the petitioner was not the neighbour of the other co-accused and did not live in the same locality. He also pointed out PW-8 had deposed that Israil was armed with a lathi. Abid and Javed were armed with knives and Tarif held a cricket stump while Arif was armed with a pistol. Mr Singhal submitted that his testimony clearly indicates that he had not mentioned that the petitioner was involved in the incident.

9. Mr Chadha, learned APP had countered the submissions made on behalf of the petitioner. He submitted that the evidence could not be read in a piecemeal fashion and there were other eye-witnesses including the complainant (PW-1), who had deposed that they had witnessed the deceased being assaulted by the accused including the petitioner. He also submitted that the attack on the deceased was brutal and there were 22 injuries on the body of the deceased. He also stated that the post mortem report indicated that the injuries received from the blunt instrument were sufficient to cause death. He stated that the wicket used by the petitioner had been recovered and it was established by forensic evidence that the blood on the wicket was that of the deceased. He submitted that in this view, the involvement of the petitioner stood on a higher footing than that of other accused (Abid) with whom the petitioner seeks parity.

10. Mr Sanghi, learned counsel appearing for the Complainant also opposed the present application. He stated that on 22.01.2015 an attempt was made on the Complainant's life and an FIR in this regard – FIR No.176/2015 – was registered with PS M.S. Park. He stated that in addition that an attempt was made on the life of the parokar of the family of the deceased and an FIR (FIR No.98/2015) was registered with PS Shahdara. He submitted that the complainant has also been granted police protection in

this case. He stated that granting bail to the petitioner would place witnesses under fear.

11. At this stage, it is not necessary to examine in detail. However, it is apparent that some of the witnesses had not named petitioner in their initial statement recorded under Section 161 CrPC. This Court is also of the view that the alleged role of petitioner in the incident is not more perilous than that of the accused Abid. Abid was allegedly armed with a knife whereas the petitioner was allegedly armed with a cricket wicket. It is the prosecution's case that Abid had attacked the deceased with the knife on the left side of his chest while the petitioner had attacked the deceased with a cricket wicket. In addition, it is also stated that Abid had threatened the Complainant, however, there is no such allegation against the petitioner.

12. All material witnesses in this case have already been examined and there is little possibility of the petitioner adversely influencing the trial in any manner. Admittedly, the petitioner had been released on interim bail on five occasions and there is no allegation that he had misused the same. The petitioner has been in judicial custody for almost seven years. It also appears that there is likely to be some delay in completing the trial in view of the outbreak of COVID-19.

13. In view of the above, this Court considers it apposite to allow the present petition and direct that the petitioner be released on bail on furnishing a Personal Bond in the sum of ₹25,000/- and two sureties of an equivalent amount to the satisfaction of the trial court. This would also be subject to the following further conditions:-

- a) That the petitioner shall not leave the National Capital Region (NCR);

- b) That the petitioner shall provide a contact number and ensure that he is reachable on it at all times;
- c) That the petitioner shall not contact the Complainant or any of the family members of the deceased either directly or indirectly;
- d) That the petitioner shall ensure that he is be available at all court proceedings;

14. The petition is allowed in the aforesaid terms.

MAY 20, 2020
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VIBHU BAKHRU, J