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

+ BAIL APPLN. 3155/2019

SUNNY

..... Petitioner

Through Mr.Dhruv Dwivedi, Adv.

versus

STATE

..... Respondent

Through Mr.Amit Chadha, APP with Insp.
Sanjay Sinha, IO/SHO and SI Rajeev
Kumar, PS Kalindi Kunj and SI
Prateek, PS Jaitpur

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

% **27.01.2020**

The present bail application is filed by the petitioner under section 439 read with section 482 of the Code of Criminal Procedure, 1973 for grant of bail in FIR No.553/2017, under sections 302/506/34 of the Indian Penal Code, 1860 ('IPC'), registered at Police Station Jaitpur.

The aforesaid FIR was registered on 07.11.2017 and the charge-sheet has been filed and out of 27 witnesses, 22 witnesses have already been examined.

Learned counsel appearing on behalf of the petitioner submits that on the date of incident i.e. 06.11.2017, around 20:30 hours, at an egg eating stall (rehri) adjacent to Sai Mandir near Mother Diary, J.J. Colony, Part-III, the complainant, Zabaz along with his friend Shibu were eating eggs. The deceased, Asif came from other side of the gali and started talking to the complainant and Shibu as they were friends. Soon after that, accused Nos.1 and 2, Sunny and Krishan Gopal came from Sai Mandir gali and were approaching them in fast speed. The complainant saw a button knife in the

right hand side of the petitioner. As soon as petitioner and Krishan Gopal reached where deceased Asif was standing, petitioner hit Asif on his head with the knife after which Asif to save his life ran towards the nearest gali. Petitioner and Krishan Gopal chased the deceased into the gali. The complainant and Shibu also ran behind them to save life of the deceased.

Learned counsel for petitioner further submits that after reaching to gali the complainant and Shibu saw that Krishan Gopal was holding the deceased from his collar and blowing fist on him and petitioner then stabbed knife on left side of deceased stomach. Thereafter, complainant and Shibu ran to save Asif but the petitioner waved knife and threatened them that anybody who tries to come near, will also be killed and from there itself petitioner and Krishan Gopal ran away. The deceased Asif tried to walk some steps but he fell down.

Learned counsel for petitioner also submits that whole prosecution story has been fallen apart after recording of the prosecution evidence and two alleged eye witnesses as per the charge sheet i.e. complainant (PW-12) and Shibu (PW-2) have totally negated the fact that they have seen petitioner stabbing knife into stomach of deceased.

The prosecution has declared PW-2 and PW-12 hostile and cross-examined them, however, the alleged eye witnesses to the incident has not stated anything in evidence to support the story concocted by the police.

The complainant (PW-12) in its evidence has categorically stated that *"My act is only confined that I and Shibu found Asif lying in the gali in injured condition and we brought him on the said date to his house except that I know nothing as to how the Asif sustained injuries and by whom and when and where"*.

In the cross-examination, he stated that signs were obtained on several papers. The papers upon which he had signed were not having anything written and were blank. He was also told by the police that he has to sign on those papers that he brought the injured from the gali in injured condition and that he was called to sign on those papers. Thus, it is evident that, whole story of complainant and Shibu evidencing the incident is sham and concocted story to falsely implicate the petitioner.

On the other hand, learned APP submits that as per FSL report, DNA generated from blood-stained clothes of the deceased matched with DNA generated from knife recovered from possession of petitioner.

He further submits that blood-stained on the cloths of petitioner matched with blood group of petitioner. Thus, he cannot say that he is not connected with the alleged offence. Moreover, part of knife recovered from pocket of petitioner matched with knife used in crime. Thus, the present bail application may be dismissed.

The trial is at fag end and the fact that out of 27 witnesses, 22 witnesses have already been examined. Therefore, at this stage, keeping in view the seriousness of the allegations and taking into consideration the aforesaid facts, I am not inclined to grant bail to the petitioner.

Accordingly, the present bail application is dismissed.

SURESH KUMAR KAIT, J

JANUARY 27, 2020/rk