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

Date of decision: 19.07.2022

+ **BAIL APPLN. 282/2022**

ROSHAN LAL

..... Petitioner

Through: Mr M.K. Singh and Mr Surjeet Singh,
Advs.

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr Sanjiv Sabharwal, APP for State
SI M Gangte, PS-Delhi Cantt.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is an application seeking setting aside of the impugned order dated 07.03.2020 passed by the trial Court ASJ-03, Patiala House Courts, New Delhi in FIR No. 223/2019, under Sections 302/201/34 IPC, registered at Police Station-Delhi Cantt and to admit the applicant on regular bail under Section 439 Cr.P.C.

2. It is submitted by Mr Singh, learned counsel appearing for the petitioner that all the witnesses have been examined and discharged. Mr Singh draws my attention to the cross-examination of PW-2 namely Naik Boota Ram which reads as under:

*“I had returned to my barrack at around 09.05 p.m/09.10 p.m.
At that time, the accused and the deceased were abusing each
other. There were 08 persons in the barrack at that time. Those*



persons were busy in their mobile phones. At around 09.20 p.m., accused and deceased started fighting. During the period when I arrived and till they started fighting, I was changing my clothes. It is wrong to suggest that from my arrival and till the fight erupted and till Ramesh was stabbed, I had not seen everything with my own eyes. It is correct that there was not previous enmity between the deceased and the accused. (Vol. But they used to quibble). It is correct that deceased had a better built and physique than the accused. The knife was lying on the locker and accused had picked up the knife. It is wrong to suggest that some of the occupants of the barrack were sleeping. After I saw the accused pick up the knife, I asked them to desist and then I realized that the deceased had been stabbed and there was panic all around. I was at a distance of around 10-12 feet or less from the place where the accused and the deceased had quarrelled. I had seen everything that had happened between the picking up of the knife by the accused and the stabbings of the deceased. It is correct that both the deceased and the accused were assaulting each other. I do not know if prior to my arrival in the barrack, the superiors had been informed about the quarrel between the deceased and the accused.”

3. Mr Singh further draws my attention to cross examination of PW-3 Lt. Col. Chetan Manhas which reads as under:

“Prior to the incident, very minor complaints had been received against Roshan Lal. No major complaints were



received which would reflect any criminal behaviour. They were only related to consumption of alcohol etc. Vol. In fact, Roshan lal was suffering from some mental illness. The record of the unit was that he had been diagnosed with granuloma of the brain cells which put him in lower medical category on psychological issued and because of his medical condition, the doctor had directed that he should not be provided or allowed to handle a weapon.”

4. It is submitted by Mr Singh that the applicant had no *mens rea* and it was a scuffle wherein both the applicant and the victim were under the influence of alcohol. He further submits that it was only a kitchen knife which was lying on the locker which was picked up by the accused and in the heat of the moment, he stabbed the victim.

5. It has been held by the Supreme Court in **Vijay Kumar v. Narendra & Ors** (2002) 9 SCC 364, that in cases under section 302 IPC bail must only be granted in the rarest circumstances. The court while granting bail must look into the nature of the crime, the allegations and the manner in which the crime was committed amongst others. The relevant portion of the same reads as follows :

“10. On perusal of the record and on consideration of the submissions made by the learned counsel appearing for the parties, we are of the view that in the context of the facts and circumstances of the case, the High Court was in error in passing the order releasing the respondents on bail. The High Court has neither given any reason nor has indicated any exceptional circumstance for granting bail to the respondents.



In the above circumstances, it is difficult for us to even surmise the circumstance which prompted the learned single judge to consider the accused persons to be entitled to the discretionary relief of bail pending the appeal. The principle is well-settled that in considering the prayer for bail in a case involving serious offence like murder, punishable under Section 302 IPC, the court should consider the relevant factors like the nature of the accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder. Our attention has not been drawn to any material, which would show that the learned single judge took into consideration the relevant factors while passing the bail order. We refrain ourselves from making any observation touching on merits of the case lest it may prejudice any of the parties.”

6. A coordinate bench of this court has also held in ‘*Vinod Kumar Sharma v. State NCT of Delhi*’ in Bail Appl. No.1500/2012 dated 21.08.2013 that:

“9. Needless to say, petitioner is facing trial for offence under Section 302 Indian Penal Code, besides other charges which, if proved, may entail punishment up to death sentence. That being so, the very first parameter which is important for grant of bail, namely, the severity of accusation and quantum of sentence which it carries, does not entitle the petitioner to the



grant of the discretion of bail.

12. The question as to whether the claimant was not aggressor or that single blow would not attract the provisions of Section 302 IPC are not required to be gone into at this stage as that will tantamount to pre-judging the entire case at this juncture which is not warranted. At the stage of considering bail application, a detailed examination of evidence and elaborate documentation of the merits of the case is not required to be undertaken.

17. Keeping in view the facts and circumstances of the case, seriousness and gravity of the offence, antecedents of accused, coupled with the fact that as per the prosecution case, he was the person responsible for inflicting injury on the head of Pandit R.K. Naseem which proved fatal and he succumbed to injuries, petitioner is not entitled to be released on bail. The learned counsel for the petitioner rightly did not seek parity from the order passed by this Court releasing co-accused Aman Gaur on bail, inasmuch as, it was observed that he was not the main person who inflicted injury on the person of Pandit R.K. Naseem, which is not so in the case of petitioner. As per prosecution case he is the main perpetrator of the crime.

18. For the reasons mentioned above, I dismiss the bail application of the petitioner.”



7. I am of the view that the charges against the applicant are serious in nature. PW-2 has seen the applicant stabbing the victim. The fact whether the accused and the victim were under the influence of alcohol, there was a scuffle, the applicant stabbed the victim in the heat of the moment, are all questions which will be decided by the Sessions Court after appreciating the evidence which is being and has been recorded. The applicant has been in custody since 15.08.2019.

8. For the above reasons, I am not inclined to allow the bail application and the same is dismissed.

9. Nothing stated hereinabove shall tantamount to an expression of opinion on the merits of the case.

10. Application is disposed of in the aforesaid terms.

JULY 19, 2022

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JASMEET SINGH, J

[Click here to check corrigendum, if any](#)