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

Order reserved on :31/05/2022
Order pronounced on :27/07/2022

+ **BAIL APPLN. 1008/2022**

AMIT

..... Petitioner

Through: Mr. Atul Bandhu and Mr. Saurabh
Agarwal, Advs.

versus

STATE

..... Respondent

Through: Mr. Amit Ahlawat, Addl.PP for State
IO Insp. Vijay Kumar, PS S.B. Dairy

CORAM:

HON'BLE MS. JUSTICE POONAM A. BAMBA

POONAM A. BAMBA, J.:

1.0 Vide this application under Section 439 Cr.P.C, the applicant has sought bail in case FIR No. 400/2020 under Sections 302/34 IP, 24/27 Arms Act, PS Sahabad Dairy, Delhi.

2.0 The present FIR came to be registered on the complaint/statement of Ravi S/o Satish R/o Jhuggi No. B-232, Shahbad Dairy, Delhi. It is alleged that about one and half months prior to the date of incident, quarrel had taken place between the complainant, cousin of the deceased Abhishek with the accused persons/sons of Raj Singh, in which they threatened the complainant and his cousin with dire consequences. On 08.08.2020, the complainant's cousin Abhishek (deceased) was cornered by the applicant/accused Amit @ Mita, Gulab and Ajay, all sons of Raj Singh R/o



Jhuggi No. B-916, Gali No. 1, Shahbad Dairy, Delhi; accused Gulab was having Deshi Katta in his hand; the present applicant/accused Amit @ Mita was having Gupti (Long knife) in his hand. When the complainant Ravi intervened to pacify the matter, the accused Ajay told “Maro Salo Ko”. On which, the accused Gulab fired on the deceased

Abhishek’s shoulder and the applicant/accused Amit @ Mita stabbed him several times. Thereafter, the accused persons including the present applicant fled from the spot. The deceased Abhishek was admitted to hospital vide MLC No. 3725/20 in unconscious condition and was declared dead during treatment.

3.0 It is submitted by the applicant that he has been falsely implicated by the complainant to settle score on account of past disputes with the applicant and his family members. Applicant is in judicial custody since 24.08.2020. No recovery has been effected from the applicant/accused. He has no criminal antecedents.

3.1 The application further mentions that the alleged incident took place at 23:50 on 08.08.2021 whereas, the FIR was registered at 10:15 on 09.08.2021. Even otherwise, the charge sheet in the matter has already been filed and therefore, the applicant/accused is not required for any interrogation or investigation. There is no possibility of the applicant/accused tampering with evidence.

3.2 The application also mentions that the applicant is a sole bread earner of his family and his family is suffering in his absence.



3.3 Learned counsel for the applicant also submitted that the co-accused Ajay has already been granted bail. Therefore, the applicant/accused is also entitled to bail on the ground of parity.

3.4 Learned counsel for the applicant further submitted that the Learned ASJ without considering any of the above submissions dismissed the applicant's bail application vide order dated 11.03.2022 simply on the ground that the complainant is yet to be examined.

4.0 Per contra, Learned Prosecutor has sought dismissal of this application submitting that the applicant's involvement is clearly made out from the statement of the victim Ravi. It has come in his statement that it was the applicant who stabbed deceased Abhishek several times. Further, in the deceased's postmortem examination vide PM No.

641/20, doctor has opined that the death was due to hemorrhagic shock consequent to injuries to the abdomen and head; and the injury no. 8 caused by a sharp edged weapon and other injuries were sufficient to cause death in the ordinary cause of nature.

4.1 It was further submitted by the Learned Prosecutor that the applicant Amit @ Mita after his arrest got recovered Gupti (long knife) used in the commission of crime, which had blood stains. Further, the applicant/accused's blood stained t-shirt was also seized. Thus, the applicant's involvement in the commission of crime is clearly made out and he does not deserve to be released on bail.



4.2 Learned Prosecutor also submitted that no prosecution witness has been examined so far. In case the applicant is admitted to bail, there is every likelihood of the applicant influencing witnesses/tampering with evidence.

5.0 I have duly considered the submissions made by both the sides.

6.0 It has come in the statement of the complainant Ravi u/S 161 Cr.P.C that the applicant assaulted repeatedly/stabbed the deceased Abhishek with Gupti (long knife). Further, the applicant/accused Amit @ Mita got recovered Gupti (long knife)/weapon of offence from cremation ground, Shahbad Dairy. Vide post-mortem report of deceased Abhishek of Baba Saheb Ambedkar Hospital (BSA), Rohini, the doctor has opined that 'the death was due to hemorrhagic shock consequent to injuries to the abdomen and head; and that injury no. 8 caused by sharp edged weapon. Further, the charge sheet mentions that subsequent opinion from Department of Forensic Medicine, BSA Hospital, Rohini was obtained, whereby it has been opined that "incise stab injury as mentioned in PM report can be caused by the weapon (knife/gupti) examined".

7.0 In view of the above facts and circumstances and considering the gravity of offence and nature of allegations against the applicant, recovery of weapon of offence/gupti (long knife) at the applicant/accused's instance and that the trial in the matter is yet to commence, complainant/material witnesses are yet to be examined, the applicant/accused does not deserve to be admitted to bail, at this stage.



8.0 The applicant has also sought bail on the ground of parity with the accused Ajay, who has been granted bail by Coordinate Bench of this court vide order dated 02.03.2022 in Bail Application No. 24/2022.

8.1 Suffice it to state that the role assigned to the accused Ajay is that he exhorted his brothers/accused persons “Maro Salo Ko”. Neither is there any allegation of use of any weapon by him nor was any recovery made at his instance. Whereas, as mentioned above, the role of the present applicant/accused Amit @ Mita is very different. He allegedly stabbed the deceased multiple times; and later got recovered the weapon/gupti (long knife). The applicant/accused Amit @ Mita cannot therefore, claim any parity with accused Ajay.

9.0 For the above reasons, the applicant does not deserve to be released on bail.

10.0 The bail application is accordingly dismissed.

(POONAM A. BAMBA)
JUDGE

JULY 27, 2022/g.joshi

Click here to check corrigendum, if any