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IN THE HIGH COURT OF DELHI AT NEW DELHI

NEUTRAL CITATION NO.: 2022/DHC/003138

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

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BAIL APPLICATION NO. 2057/2022

Between:-

**Laxmi Yadav
S/o Sh. Upender Yadav
Rio Lakhni,
P.O.- Talhat, P.S.-Mehsi,
Saharsa, Bihar**

..... PETITIONER

(By Shri A. K. Thakur and Ms. Anushruti Tripathi, Advocates.)

AND

State (Government of NCT of Delhi) RESPONDENT

(By Shri Amit Ahlawat, APP for the State with Insp. Neeraj Kumar, PS: Kotwali, Delhi.)

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Pronounced on : 18.08.2022

J U D G M E N T

1. By way of the instant bail application under Section 439 of Code of Criminal Procedure, 1973, the applicant seeks regular bail in connection with FIR No.802/2021 registered at Police Station Kotwali for the offence punishable under Section 302 of IPC.

2. Learned counsel appearing on behalf of the applicant submits that the applicant is in jail since 29.08.2021. The trial court *vide* order dated 12.04.2022, did not find any material to frame the charge under Section 302 of IPC and has instead framed the charges for the offence under Section 304 Part-I IPC. He submits that the applicant is

innocent and has been falsely implicated in the case. There is

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material available to prove the charges against him. He also submits that the applicant has already suffered sufficient incarceration and there is no possibility of him fleeing from justice. He undertakes to abide by all the conditions as may be imposed by this court.

3. Learned Additional Public Prosecutor, on the other hand, has opposed the bail application and submits that one of the eye-witnesses, namely, Kapil has supported the statement of complainant Shyam Lal. Injured Chander has expired during the course of the treatment. The FSL report clearly proves that blood was found over the hair, stone, slippers and at the place of the incident. The DNA of blood found present on the spot, is found similar to the blood of the deceased. There is sufficient material available on record so as to prove that the applicant has committed the said offence. According to him, there is a possibility that the applicant may jump the bail as there is no family member, who has control over the applicant. He also submits that the applicant is not a permanent resident of Delhi, having movable or immovable properties.

4. I have considered the submissions made by the learned counsel appearing on behalf of the parties and perused the material available on record. As per the prosecution case, on 28.08.2021 at 11:00 p.m., near Vankhandi Mandir, near Old Delhi Railway Station, Delhi, the applicant assaulted the deceased-Chander with kicks and punches and hit a big stone on the head of the deceased, which allegedly resulted in sustaining head injuries to the deceased. It is seen from the chargesheet that the mobile phone of the applicant was allegedly snatched by the deceased. The deceased and the applicant both were rickshaw pullers. The deceased denied that he had stolen the mobile phone of the applicant. On account of the said incident, the applicant



assaulted the deceased with fists and punches. The deceased fell down on the ground and the applicant picked up a big stone and hit the said stone on the head of the deceased. After the incident, public persons apprehended the applicant and beaten him. The deceased was admitted to the hospital on 29.08.2021 and died on 05.09.2021. The nature of the allegation and the background of the incident clearly show that the alleged incident had taken place in the spur of the moment on account of an issue pertaining to the theft of the mobile phone of the present applicant. The applicant was not carrying any dangerous weapon. He is alleged to have picked up a stone from the roadside during the course of the incident. The deceased died after seven days during the treatment. The investigation has already been completed and various prosecution witnesses have also been examined. It is a settled principle of law that there is no hard-and-fast rule and no inflexible principle, governing the exercise of the discretion conferred by Section 439 of Cr.P.C., can be laid down. However, the only principle which is established is that the discretion should be exercised judiciously depending upon the facts and circumstances of each case in granting or cancelling of bail. One of the objects of the detention of the applicant is to secure his presence and submission to the jurisdiction and the judgment of the court.

5. On the basis of the facts and circumstances of the present case, it can be seen that a sudden fight between the applicant and the deceased had taken place on account of a mobile phone, which was allegedly snatched by the deceased. The applicant did not use any dangerous weapon. The applicant and deceased both were rickshaw pullers. There are no criminal antecedents of the applicant. There is no possibility of his adversely influencing the witnesses. The investigation is over and more than 10 witnesses have already been



examined. The applicant has two minor school-going children and

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being belonging to a poor family, is the only source to manage the needs of his family. So far as the apprehension of the prosecution that the applicant could not be available for trial is concerned, the same can always be taken care of while imposing appropriate conditions.

6. Under the facts and circumstances of the present case, without commenting anything on the merits of the case, this court finds it appropriate to enlarge the applicant on bail, subject to his furnishing a personal bond in the sum of Rs.5,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/Duty M.M./trial court and subject to further following conditions: -

- (i) In case of a change of residential address or contact details, the applicant shall promptly inform the same to concerned investigating Officer as well as to the concerned Court.
- (ii) The applicant shall regularly appear before the concerned Court during the pendency of the trial as and when required.
- (iii) The applicant shall not directly/indirectly try to get in touch with the complainant or any other prosecution witnesses or tamper with the evidence.
- (iv) The applicant would report to the concerned Police Station Kotwali every fortnight and would appear before the trial court on each date unless his presence is specifically exempted by the concerned court.

7. With the aforesaid directions, the bail application is disposed of.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

AUGUST 18, 2022

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