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

% Judgment delivered on: 19.09.2023

+ **BAIL APPLN. 779/2023**

MANWAR @ HUSSAIN

..... Petitioner

Through: Mr. Suraj Prakash Sharma, Adv.

versus

THE STATE OF NCT OF DELHI

..... Respondent

Through: Ms. Richa Dhawan, APP for the State
with Insp. Ranbir, SI Sunil, PS Adarsh
Nagar.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed under Section 439 Cr.PC seeking regular bail in connection with FIR No.668/2020 under Sections 302/34 IPC registered at PS Adarsh Nagar.
2. The case of the prosecution is that the deceased Rahul was admitted in BJRM Hospital, Jahangirpuri, Delhi in an unconscious condition. The MLC of the deceased mentions history of physical assault (few people slapped him) as told by the patient's father. During treatment the injured patient succumbed to his injuries. No witness to the incident was found in the hospital. On examining the body, no apparent injury was found. The post mortem of the deceased was conducted on 08.10.2020. In the meantime, Sh. Dharampal son

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of Sh. Jai Bhagwan, an eye witness to the incident, reached and stated that the deceased was his nephew. He further stated that about two month's back it came to the notice of the family that deceased Rahul was having a love affair with one girl namely Sagufa and her family members were annoyed with Rahul and were restricting them from meeting.

3. On 07.10.2020 at about 7.00 PM, friend of the complainant/Dharampal, namely, Raju informed him telephonically that 4/5 boys were beating Rahul at Nanda Road. On reaching the spot, he found that 5/6 boys from Sagufa's family were beating Rahul with kicks and fists and Rahul was lying on the road. He separated them and got Rahul released from their clutches. When he asked from Sagufa's relatives namely Raj, Afroz, Shahnawab, Kaif, Tajudeen Hussain and others as to why they are beating Rahul, they replied that Rahul was talking to their sister Sagufa and they have tried to make him understand but he is not mending himself, hence they would finish him. Dharampal saved Rahul by requesting them and the accused persons left the spot threatening Rahul, who was having pain in his ribs at that time. He shifted Rahul to his residence where his condition deteriorated after which he was taken to Dr. Ajay's clinic where the deceased was provided first aid. Later on, when his condition did not improve, he was shifted to BJRM Hospital, Jahangirpuri, Delhi where he succumbed to his injuries during treatment.

4. During the course of investigation on 08.10.2020, accused Mohd. Raj, who is the younger brother of Sagufa, accused Manwar @ Hussain (petitioner) friend of Mohd. Raj and CCL Shahnawab, CCL Mohd. Intkaf Aalam, CCL Tajudeen Hussain were apprehended on their identification by eye-witness Dharampal.

5. During further course of investigation on 09.10.2020, statement of Ms. Sagufa was recorded under Section 164 Cr.PC wherein she admitted to beating of Rahul by her relatives.

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6. On 11.10.2020, Post Mortem Report of deceased Rahul was received wherein cause of death was opined to be “hemorrhagic shock due to abdominal injury caused by blunt force impact”.
7. Learned counsel for the petitioner submits that all public witnesses except the uncle of the deceased, namely, Dharampal have turned hostile and have not deposed in favor of the prosecution.
8. It is also submitted that co-accused Shubham Bhardwaj has already been granted regular bail.
9. He submits that the petitioner is in custody since 09.10.2020; investigation in the matter is complete and the chargesheet has been filed. Therefore, the custody of petitioner is no more required. He further submits that since material witnesses have already been examined, there is no possibility of the petitioner influencing them or extending any threats. He therefore urges that the petitioner may be enlarged on regular bail.
10. Lastly, it is submitted that the petitioner has clean antecedents and has no case pending against him except the present one.
11. *Per contra*, the learned APP has argued on the lines of the Status Report. She submits that offence is of the serious nature. She submits that Dharampal, who is the uncle of the deceased has identified the petitioner as a person who had given beatings to the deceased along with other co-accused. She submits that CCTV footage from the spot was obtained wherein the accused persons are seen overpowering the deceased Rahul and walking with him.
12. She, however, fairly concedes that co-accused Shubham Bhardwaj has already been released on bail by the Learned Trial Court as Dharampal (examined as PW-2 during the trial) was unable to identify him. She further submits that the complainant and other witnesses are the residents of the same



colony where accused persons reside and in case bail is granted to the petitioner, he can influence and threaten the witnesses.

13. I have heard the learned counsel for the petitioner as well as the learned APP and perused the material on record.

14. It is also not in dispute that co-accused Mohd Raj, who is the younger brother of Sagufa has been granted regular bail by this Court vide judgment dated 13.09.2023 passed in *Mohd Raj v. State of NCT of Delhi, BAIL APPLN 1795/2023*. The operative portion of the said judgment reads as under:-

14. Undoubtedly, the allegations against the petitioner are serious, but the seriousness of an offence is not a sole consideration for deciding the bail.

15. This Court is conscious of the fact that at this stage, evidence cannot be appreciated in detail. However, for the limited purpose of deciding the bail application, the Court can consider the testimonies of various witnesses which have come on record.

16. From a perusal of the testimony of PW1 Sagufa, it is evident that she has not supported the case of the prosecution. She has not testified to the effect that the beating was given by the petitioner to deceased Rahul. Similarly, PW3 Yuvraj, who is the cousin of deceased Rahul and has been cited as an eyewitness to the incident by the prosecution, has stated that quarrel had already stopped when he reached the spot. Likewise PW4 Akash, who is also a cousin of deceased Rahul and has been projected as an eye witness, has stated that he was informed by his uncle Dharampal that some persons had beaten deceased Rahul. He also denied the suggestion that the accused persons gave beating to his cousin Rahul with legs and fists which resulted into the death of Rahul.

17. In so far as the testimony of PW2 Dharampal is concerned, evidently there are contradictions in his statement. He also admits that when he had taken deceased Rahul to the clinic of Dr. Ajay, he had informed the doctor that Rahul has received injury by falling on the road.

18. At this stage, suffice it to say that the above factors have the potential of corroding the credibility of the prosecution's case to an extent. However, it is for the learned Trial Court to sift the evidence in detail and form an opinion at an appropriate stage and it would not be appropriate for this Court to comment on the probative value



of the evidence at this juncture as it may prejudice the case of the prosecution as well as that of the accused persons.

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21. The petitioner is in judicial custody since 09.10.2020. There are 36 witnesses, out of which only 4 have been examined. The conclusion of trial is likely to take long time. It is also not the case of the prosecution that the petitioner has a criminal record. So far as the apprehension expressed by learned APP that the petitioner in the event of being enlarged on bail may influence and threaten the witnesses, is concerned, notably the eye-witnesses have already been examined, therefore, there is no question of the petitioner threatening them. In any case, the apprehension of learned APP can be dispelled by putting strict conditions on the petitioner.

22. Having regard to the circumstances in entirety, I am of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is admitted to regular bail subject to his furnishing personal bond in the sum of Rs. 20,000/- and a surety bond of the like amount from a family member, subject to the satisfaction of the learned Trial Court/CMM/Duty Magistrate, further subject to the following conditions..."

15. From a perusal of the above order, I find that the role of the present petitioner is similar to that of Mohd Raj, who has already been enlarged on bail by this Court. Further, the antecedents of the petitioner are clean and the petitioner, who is presently aged about 23 years, is already in custody since 09.10.2020. Keeping the petitioner in jail will not serve any useful purpose, rather subjecting young boy in the company of hardened criminals would do more harm than good to him.

16. Having regard to the circumstances in entirety, I am of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is admitted to regular bail subject to his furnishing personal bond in the sum of Rs. 20,000/- and a surety bond of the like amount from a family member, subject to the satisfaction of the learned Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-



- a) Petitioner/applicant will not leave the city without prior permission of the Court.
- b) Petitioner/applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- c) Petitioner/applicant shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the Investigating Officer concerned. The mobile location be kept on at all times.
- d) Petitioner/applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with the, witnesses or any family members of the witnesses.

17. It is made clear that the observations made herein above are only for the purpose of considering the bail application and the same shall not be deemed to be an expression of opinion on the merits of the case.

18. The petition stands disposed of.

19. Order *dasti* under signatures of the Court Master.

VIKAS MAHAJAN, J

SEPTEMBER 19, 2023/N.S. ASWAL