



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

% *Reserved on: 23.05.2023*
Pronounced on: 02.06.2023

+ **BAIL APPLN. 385/2020**

KISHAN LAL @ KARTIK Petitioner

Through: Mr. Chandan Malik, Advocate.

versus

STATE Respondent

Through: Ms. Meenakshi Dahiya, APP
 for the State with ACP
 Yashwant, P.S. Ambedkar
 Nagar.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. This petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case FIR No.524/2014, under Sections 302/307/148/120B IPC and Sections 25/27 Arms Act, registered at police station Ambedkar Nagar, Delhi.

2. In brief, the facts of the case are that vide DD No. 33A, a PCR call was received at police station Ambedkar Nagar and on reaching the spot of incident, it was informed that "*an incident of firing and knife*" took place in front of shop no. A-21, Madngir, New Delhi. After investigation, one motor cycle bearing no. DL9SY9417, Hero Honda Splender was found at the spot, there was blood in front of the shop and thereafter, injured was taken to the hospital. As per the MLC



No. 442660/2014, he was declared to be brought dead by his relatives. On the statement of eye witness, namely, Ram Singh, the aforesaid FIR was got registered.

3. I have heard the Ld. Counsel for the petitioner, Ld. APP for the State and perused the Status Report filed by the State.

4. Learned counsel for the petitioner submitted that the petitioner has been falsely implicated in this case and is in judicial custody since 06.08.2014. He submitted that the petitioner was arrested only on the basis of disclosure statement of co-accused and further submitted that the trial court failed to appreciate that the complainant had lodged the complaint dated 05.08.2014 against three persons for committing murder of his brother, however, the petitioner who was neighbor of the deceased and were also known to each other, was not named in the FIR. He submitted that most of the public witnesses have turned hostile and no incriminating evidence against the petitioner has come on record. He further submitted that two co-accused persons have already been convicted by the Juvenile Justice Board, Delhi and other accused, namely, Sharukh has been identified in FSL CCTV footage, however, the petitioner herein has neither been identified in the said CCTV footage of the place of incident nor was identified by the witnesses in court during their deposition, thus, this itself falsifies the case of the prosecution. He further submitted that the petitioner had no role to play in the commission of offence and the police has falsely implicated the petitioner by planting the weapon of offence i.e., the knife, which neither contained any blood stains nor the said knife was sent to FSL for detection of any blood. He further contended that in



the absence of FSL report of DVR of video clip/CCTV Footage, the trial would take a long time to conclude and no fruitful purpose will be served by keeping the petitioner in judicial custody. Furthermore, all public witnesses have been examined and only police officials remain to be examined, and there is no sufficient prosecution evidence for conviction of the petitioner who is in judicial custody for more than five years.

5. On the other hand, learned APP for the State has vehemently opposed the bail application and has argued on the lines of the status report. She submitted that during the course of investigation one knife was recovered from the possession of the present petitioner and one country made pistol has also been recovered from possession of the co-accused Shahrukh, and after examination of alleged weapons, Dr. had opined that the injury mentioned in the MLC and PM report could be possible by alleged weapons recovered from accused persons. She further submitted that on 07.08.2014, petitioner was produced before the court for judicial TIP but he refused to participate in TIP proceedings. She submitted that during trial of the case, PW-3/Ram Singh has fully supported his version and correctly named accused persons including the petitioner. After completion of the investigation, chargesheet under Sections 302/307/148/120B IPC and 25/27/54/59 Arms Act was filed against accused persons including the present petitioner.

6. It is trite law that there is no strait jacket formula governing the exercise of discretion by the courts as regards the grant of bail is concerned, the same depends upon the facts and circumstances of each



case, and each criminal case revolves on its own facts. It is not in dispute that at the time of consideration of an application of bail detailed examination of the facts and elaborate examination of documents relied upon by the prosecution are not to be undertaken, however, the court can make reference to the material relied upon by the prosecution as detailed and in depth analysis of the same might prejudice the case of either of the parties, and acceptability or otherwise of the material relied upon by the prosecution in the chargesheet is a matter of trial and not to be considered meticulously at the time of considering the bail application of the accused.

7. In this case, though the present petitioner is not named in the FIR, but it is also a fact that the FIR is not an encyclopedia of the case. The FIR only sets criminal law into motion, and it is only thereafter that the police comes into action and starts its investigation.

8. The main thrust of the arguments of the Ld. counsel for the petitioner is that since most of the public witnesses have not supported the case of the prosecution and they failed to identify the accused persons including the PW-3/ Ram singh, so in the absence of any evidence against the petitioner, he is entitled to bail.

9. Now as far as the question that some of the public witnesses have turned hostile, in my opinion, the same is not the sole ground for discarding the entire prosecution case as it is a settled proposition of law that the testimony of the hostile witness (es) is not to be discarded *in toto*. Furthermore, Ram Singh (PW-3) who is the eye witness in this case has fully supported his version and has correctly named accused persons including the present petitioner. However, at this stage,



detailed analysis of the testimonies of the witnesses in order to point out it's trustworthiness or contradictions in the statements cannot be undertaken as this might prejudice the case of either of the parties.

10. As far as the contention of Ld. counsel for the petitioner that the police has planted the recovery of knife from the petitioner, which neither contained any blood stains nor was sent to FSL for detection of any blood, does not cut much ice as perusal of the status report filed by the State shows that DNA profile was generated on the recovered weapon of offence.

11. The allegations against the petitioner/accused are grave and serious in nature and the role assigned to the petitioner is specific to the point that petitioner attacked the victim with knives alongwith other accused persons and one knife has also been recovered from the possession of the present petitioner. Furthermore, the petitioner had also refused to participate in TIP proceeding and the testimony of some of the witnesses is yet to be recorded. Keeping in view the entire facts and circumstances of this case, no ground for bail is made out and the bail application of the petitioner is, therefore, dismissed.

12. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

JUNE 2, 2023/ib