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

% **Decided on:07.08.2023**

+ **BAIL APPLN. 2596/2023**

JALEESH@ JALEESH AHMED KHAN Petitioner

Through: Mr. Varun Goswami, Mr.
Mithilesh Kumar Mishra and
Mr. Rajesh Singh, Advocates

versus

THE STATE (GOVT. OF NCT DELHI) Respondent

Through: Mr. Manoj Pant, APP for the
State with SI Dilip Kumar
Gautam, P.S. Shastri Park.

Through:

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.(ORAL)

CRL.M.A. 20768-69/2023 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

BAIL APPLN. 2596/2023

3. The instant application under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of applicant seeking grant of regular bail in FIR bearing no. 358/2022, registered at Police Station Shastri Park, Delhi for the offences



punishable under Sections 302/341/451/34 of the Indian Penal Code, 1860 ('IPC').

4. Issue notice. Mr. Manoj Pant, learned APP accepts notice on behalf of State.

5. Briefly stated, the facts of the present case are that the present accused/applicant was arrested on 24.03.2022 on the allegations that on 24.03.2022 at about 09:30 AM, an altercation had taken place between the deceased and the present applicant. The deceased was tenant of the applicant. The statement of complainant/wife of the deceased was recorded wherein she had alleged that her deceased husband was brutally beaten up by the applicant. During investigation, it transpired that the applicant along with co-accused had come to the rented accommodation of the deceased and had threatened him to vacate the premises immediately. However, when he had told them that he did not have an alternative accommodation, they had beaten him. When he had gone out of his home to save himself, the present applicant and the co-accused had chased him, had thrown him on the road and had beaten him. The complainant/wife of the deceased had tried to save the deceased, however, they had continued to beat him. To save herself and her minor children, she had locked herself after running back to her home and later when she had come to the spot with her children where the applicant and co-accused were beating the deceased, she could not find her husband and came to know that he had been taken to the hospital. Later, she was informed that her husband had passed away.

6. Learned counsel for the applicant argues that the present



accused/applicant has been falsely implicated in the present case. It is also argued that the deceased had not died due to injuries sustained with an intention to kill him. It is further argued that the deceased and his wife had used abusive and unparliamentary language against the applicant and his family members and had also manhandled him. The applicant in order to avoid further escalation of fight had left the rented premises, however, the deceased had followed him, continuing to use abusive language against him and his family members. It is argued that he had attacked the applicant and it was the applicant who had made phone calls to the Investigating Officer. It is stated that the applicant and his brother had handed over the deceased to the police officers and there were no injuries found on his body and he was fully conscious at that time. It is stated that applicant is a doctor by profession. It is also pointed out that the learned ASJ vide order dated 22.04.2022 dismissed the bail application of the applicant, however, he had without any authority at that stage, mentioned that though the police have charged accused persons under Section 304 IPC, yet facts revealed that it ought to be under Section 302 IPC.

7. Learned APP for the State, on the other hand, has argued that the allegations against the applicant are serious in nature and he has been specifically named in the FIR. It is also argued that CCTV footage of the spot of incident supports the case of prosecution, and the post-mortem report shows that injuries suffered by the deceased were anti-mortem in nature.

8. I have heard arguments addressed on behalf of both the sides and have perused material on record.



9. In the present case, the allegations against the present accused/applicant are that he along with co-accused had beaten the deceased after he had refused to vacate the rented premises and pay rent. When he had tried to save himself and had run out of rented accommodation, the applicant and co-accused had followed him outside the rented premises and had again beaten him after throwing him on the road. The post-mortem report as well as the CCTV footage also supports the prosecution case as is mentioned in the Trial Court order and record.

10. The contention of the learned counsel for the applicant that the learned ASJ had mentioned in the bail order that instead of Section 304 IPC, the police should have registered case under Section 302 of IPC cannot become a ground for ignoring the gravity of the offence, even if this Court notes that the said observation could have been avoided as only a bail application had been moved before the Court concerned and the charge-sheet was not yet filed and police was still investigating the case and it was not the concerned Court where the matter was assigned. Be that as it may, this Court, otherwise also notes that the charge-sheet in this case was not filed solely based on this observation of the learned ASJ, but it was mentioned in the chargesheet that the CCTV footage, the statement of the witnesses, the post-mortem report and other circumstances pointed out towards commission of offence under Section 302 IPC and that was the reason due to which charge-sheet was being filed under Section 302 of IPC. Even otherwise, the learned counsel will have opportunity to address arguments on charge before the learned Trial Court where this



contention can be raised and adjudicated upon.

11. In these circumstances, considering the gravity of the offence, no ground for bail is made out.

12. Accordingly, the present bail application stands dismissed.

13. It is, however, clarified that nothing expressed herein above shall tantamount to an expression of opinion on merits of the case.

14. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 7, 2023/zp



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