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

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RESERVED ON -24th July, 2023
PRONOUNCED ON - 16th August, 2023

+ **BAIL APPLN. 2535/2022**
IMRAN

..... Petitioner

Through: Mr.Abhir Datt, Mr. Anurag Rawal,
 Mr. Suryaketu Tomar, Mr. Amit
 Singh, Mr. Pratyaksh Raj, Advs.

versus

STATE

..... Respondent

Through: Mr. Amit Sahni, APP for the State
 with Inspector Jitender Rana, PS Civil
 Lines.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA,J :

1. Briefly stated that the case of the prosecution is that on 23.10.2019 at about 11.00 PM, a PCR call vide DD No.42A was received at Police Station Civil Lines that one lady has been assaulted with sword at K block, Majnu Ka Tila, Barat Ghar, Aruna Nagar. The injured persons were shifted to Sushruta Trauma Centre Hospital. The injured Smt. Somwati w/o Ram Chander and her sons namely Dharam Singh 27 yrs and Karan 22 yrs were found under treatment. The statement of complainant-Smt. Somawati was recorded in which she alleged that



on 23.10.2019 during day time an argument took place between her sons Karan & Dharam and her neighbor Mahesh over the issue of Choley Kulchey rehari at near GTB enclave Metro Station. It was further alleged that in evening, at about 10:30 PM the accused Mahesh alongwith Amarpal (relative of Mahesh), his mother Geeta, Imran (present applicant) and Kunal assaulted the complainant and her sons with sword and stick. It was further alleged that accused Geeta caught hold her and Amarpal assaulted on her head with sword. It was further alleged that Mahesh assaulted the complainant and her sons with stick/danda and other accused persons helped them in assaulting her and her sons. Accordingly, the FIR No.176/2019, Dated 24.10.2019 registered initially under section 307/323/34 IPC. However, Smt. Somvati, the complainant succumbed to her injuries during her treatment on 04.11.2019 at Lok Nayak Hospital, and section 302 IPC was added in the case. The cause of death as per the Post mortem report was as under:

"Cause of death in this case is due to cranio-cerebral injury, consequent upon heavy and sharp force trauma to static head and are possible in physical assault. All injuries are ante mortem in nature and are 10-12 days old in duration."

2. Injured Dharam Singh was also opined to have suffer grievous injuries, therefore under Section 308 and 325 IPC were also added.
3. The present petitioners were subsequently arrested.
4. Learned counsel for the petitioner submitted that deceased Somvati even as per her statement had suffered injuries at the hands of co accused Amar Pal. Learned counsel stated that in her statement made



to the in the intervening night of 23/24.10.2019, the deceased categorically stated that on 23.10.2019 while her son Karan was returning from work, he was stopped by the accused Mahesh and co accused Amarpal and both of them started beating her son. Learned counsel submits that the deceased reached the place of incident in an attempt to save her son and during the scuffle, allegedly Amarpal brought a sword from his house and hit the deceased on her head and thereafter, Kunal and Imran (petitioner) reached the spot and gave beatings to her sons.

5. Learned counsel submitted that therefore, the petitioner and the Kunal were not present at the spot when the fatal attack took place. Learned counsel has also referred to the cause of the death as per the Post Mortem which is cranio-cerebral injury, consequent upon heavy and sharp force trauma to static head. Learned counsel also drew the attention of the Court the testimony of PW-1, one of the sons of the deceased wherein he stated that it was Amarpal who hit the sword on head of his mother.
6. Learned counsel submitted that PW-2 has also submitted that the fatal injuries was caused by Co accused Amarpal who suddenly brought a sword from inside the house and attacked on the head of the deceased. Learned counsel submits that the petitioner is in custody of for the last around 4 years, the trial may take a long time whereas petitioner is father of three kids and sole bread earner of his family and therefore the bail may be granted.
7. Learned APP for the State has vehemently opposed the bail application.



8. Learned APP for the State submitted that victim Karan Singh has alleged and stated in the statement under Section 161 Cr. PC that Amarpal, Geeta, Mahesh, Imran (present petitioner) and Kunal obstructed his way and started beating him. Learned APP further stated that Amarpal brought a sword and assaulted the head of his mother namely Somvati with Sword whereas while committing this offence, the remaining accused persons including the petitioner had caught hold his mother, which resulted in the death of Smt. Somvati. Learned APP submitted that therefore all the five accused persons altogether with common object had assaulted the victim and her sons.
9. Learned APP further submitted that another victim/witness i.e. Dharam Singh had also made categorically statement under Section 161 Cr. PC that Imran along with other accused persons stopped and gave beating to him as well as caught hold of Smt. Somvati at the time when accused Amarpal assaulted her with the sword.
10. Learned APP submitted that accused persons were actively involved in a heinous case of murder and grievous hurt and if accused is released on bail, he may influence the witnesses and try to abscond from the trial.
11. The parameters of grant of bail in the serious cases are very well settled. The Apex court in a catena of decisions, has outlined the factors that must be taken into account when exercising discretion under Section 439 of the Criminal Procedure Code. In **Gurcharan Singh v. State (Delhi Administration)**, (1978) 1 SCC 118 Hon'ble Supreme Court has held as to the various parameters which must be considered while granting bail. The Court *inter-alia* held as



under:

“24. ...Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1) CrPC of the new Code. The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) CrPC of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out.”

12. At the stage of granting bail the Court is not required to enter into a detailed analysis of the evidence in the case. In order to grant bail, a number of factors must be taken into account, all of which ultimately depend on the peculiar facts and circumstances of the case being heard by the court. There cannot be a strict Jacket formula that can be used to determine what the important factors might be.
13. The perusal of the FIR makes it clear that it was Amarpal who hit the deceased with a sword on her head. The reading of the FIR also reveals that in the meanwhile the present petitioner and Kunal were good friend of Amarpal also reach there and started beatings.
14. The Apex Court in ***Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and Anr.*** (2004 (7) SCC 528), has reiterated the criteria for grant of bail. The court *inter-alia* held as under:

"11. The law in regard to grant or refusal of bail is very well settled.



The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- (a) The nature of accusation and the severity of punishment in case of and the nature of supporting evidence.*
- (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.*
- (c) Prima facie satisfaction of the court in support of the charge.”*

15. It is a settled proposition that the Court at the stage of bail cannot enter into the appreciation of the evidence and cannot hold mini trial. The learned Trial Court is yet to appreciate the evidence and this stage, the Court has only to see the prima facie case.

16. Prima facie, the fatal blow was done by Amarpal. The charge as to common objective can only be taken after the trial is over and appreciation of evidence. The detention during the trial cannot be impeditive measure. The accused is already in the custody for the last four years.

17. I consider in the totality of the facts and circumstances, the present



applicant is entitled to be admitted to bail on furnishing a personal bond of Rs. 20,000/- with one surety of like amount subject to the satisfaction of the learned Trial Court and subject to the following conditions:

- a) the applicant shall under no circumstances leave India without prior permission of the concerned Court;
- b) the applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
- c) the applicant shall provide his mobile number(s) to the Investigating Officer and keep it operational at all times;
- d) In case of change of residential address and/or mobile number, the applicant shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.

18. It is made clear that this is only the prima facie view of this court and no expression made herein shall tantamount to be expression on the merits of the case.

19. Copy of this order be communicated to the concerned Jail Superintendent.

20. Hence, the present applications stands disposed of.

DINESH KUMAR SHARMA, J

AUGUST 16, 2023

Pallavi