

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

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Reserved on : 09.05.2023

Pronounced on : 24.05.2023

+ **BAIL APPLN. 3729/2022**

ARUN KUMAR @ AALU

..... Petitioner

Through: Mr. Jitendra Sethi, Mr. Hemant Gulati, Ms. Anshika Sethi, Mr. Shobit and Mr. Bharat Kashyal, Advocates.

versus

STATE, NCT OF DELHI

.... Respondent

Through: Mr. Amit Ahlawat, APP for the State.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. The present bail application has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case FIR No. 129/2021 under Section 302/201/34 IPC registered at Police Station Bharat Nagar.

2. Briefly stated, the facts of the case are that on 29.03.2021, a PCR call vide DD No. 15 A was received in PS Bharat Nagar that "A-72 JJ Colony, Bharat Nagar lady caller ke bhai ne bahan ko chaaku maar diya hai or lady use Deep Chand Bandhu Hospital lai hai need

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police". The said DD was entrusted to ASI Ravinder and he alongwith Ct. Rakesh reached at the said hospital, where he collected the MLC of injured Neelam W/o Suraj. The patient was unfit for statement and later on injured was shifted to Safdar Jung Hospital for further treatment. The parents of injured again shifted her to Jeevan Mala Hospital, Karol Bagh.

3. According to the prosecution, Bimla is the eye witness of the incident and according to her on 29.03.2021 at about 6:00 a.m. his sons Ashwani and the present petitioner came inside the house and the petitioner, caught hold of his sister Neelam (since deceased) and her other son Ashwani inflicted knife injury on Neelam. It is further alleged by her that petitioner also attacked his sister Neelam with the same knife as a result of which Neelam received multiple stab injuries and later on succumbed to her injury.

4. On the statement of complainant Bimla, the present case was registered U/s 307/34 IPC. Further vide DD No. 31-A information was received in PS Bhadrat Nagar that injured Neelam who was under treatment has expired, therefore section 302 IPC was added in the case. During the investigation of the case, accused Ashwani @ Ashu and present petitioner Arun @ Aloo were arrested and sent to judicial custody.

5. I have heard the Ld. counsel for the petitioner, Ld. APP for the State perused the Status Report filed by the State and also perused the records of this case.

6. It is submitted by the Ld. APP for the state that the allegations against the petitioner are grave and serious in nature and he alongwith his brother (co-accused) had inflicted knife injury on Neelam (since deceased) who was his sister, as a result of which, Neelam had expired. He further submitted that PW Bimla Devi is the natural eye witness of the case as the deceased Neelam was her daughter and she was living with the deceased. It is further submitted by the Ld. APP that when statement of PW Bimla Devi was recorded in the Court, she backed out from her earlier statement as the petitioner and his brother (co-accused) are her real sons.

7. It is further submitted by the Ld. APP that PW-Bimla Devi has turned hostile during her examination in the Court but simply because she has turned hostile, the same cannot be a ground for bail in the instant case, as other witnesses of the case are also yet to be examined who can through light on the circumstances leading to the murder of deceased Neelam and corroborate the same and more so, the testimony of a hostile witness also cannot be wholly discarded and the same has to be read in consonance with the facts and circumstances of the case and the testimony of other witnesses.

8. At the outset, it is submitted by the Ld. counsel for the petitioner that PW Bimla who is the eye witness of the incident has been examined and she has not supported the case of the prosecution. It is further submitted by him that PW Bimla has subsequently written a letter to the concerned SHO that her signatures were obtained on blank papers which were later on converted into documents. It is further submitted by the Ld. counsel for the petitioner that neither the weapon of offence has been recovered nor the blood stained clothes of the petitioner or his brother (co-accused) have been recovered in the present case and the only eye witness has not supported the case of the prosecution.

9. In the instant case, the main thrust of the arguments of the Ld. counsel for the petitioner is that since the sole eye witness i.e. Bimla Devi has not supported the case of the prosecution, so in the absence of any evidence against the petitioner, he is entitled to bail.

10. Now as far as the question that the sole eye witness has turned hostile, may not in my opinion, is the sole ground for discarding the entire prosecution case as it is a settled proposition of law that the testimony of the hostile witness is not to be discarded in toto.

11. In the instant case, it is the admitted fact on record that deceased Neelam was leaving with her mother i.e. PW Bimla Devi in the same house where according to the prosecution she was stabbed to death. As

per the prosecution, injured Neelam was taken to the hospital by Bimla Devi. The perusal of the MLC shows that injured Neelam (since deceased) was brought to the hospital by Bimla Devi who gave history of physical assault by sharp object and according to PW Bimla Devi, who initially gave statement to the police that Neelam was stabbed by the petitioner and his co-accused brother but later on she did not support her version. So, as of now, detailed analysis of testimony of PW-Bimla Devi would not be in the fitness of things as the same might prejudice the case of either of the parties. But one cannot lose sight of the fact that when according to PW Bimla Devi she was not present at the time of the incident, then how could she tell the treating doctor that physical assault was given by a sharp object, unless and until, she had seen the incident but I will stop at that and will not further comment on the merits of the case. There is also no forceful entry in the house where the incident took place. The allegations against the petitioner are grave and serious in nature, therefore, in these circumstances, no ground for bail is made out, the bail application is, therefore, dismissed.

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

RAJNISH BHATNAGAR, J

MAY 24, 2023

Sumant