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

+ **BAIL APPLN. 328/2024**

VARUN @ TARUN @ RAO

..... Petitioner

Through: Mr Amrendra Kumar Jha, Advocate.

versus

STATE OF DELHI (NCT OF DELHI)

..... Respondent

Through: Mr Raghvinder Varma, APP for the
State with Insp. Sharad Kumar, SHO
and SI Pirthi Singh, PS Subzi Mandi
Railway Station

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

20.02.2024

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1. The present petition has been filed under Section 439 CrPC seeking the regular bail in connection with FIR No.14/2019 under Sections 394/397/34 IPC registered at Police Station Subzi Mandi Railway Station.
2. The case of the prosecution in brief is that on 17.03.2019, the complainant was sleeping outside the railway station and at about 02:50 a.m, 03 persons aged about 20 to 25 years grabbed him and one of them caught hold of his neck and second one threatened him by showing knife and the third person robbed him of his purse containing Rs.200/- cash, ATM Card, PAN card and RC and his dual SIM mobile phone. When he raised alarm, his son/victim tried to intervene, one of the said accused persons namely,



Pummi stabbed his son with knife on the right side of the abdomen and thereafter, the accused persons fled away with the robbed articles.

3. The learned counsel for the petitioner submits that post-investigation, charge sheet has been filed, trial is underway and even the testimonies of the complainant and the victim, have also been recorded, therefore, the custody of the petitioner is no more required.

4. He submits that the mobile phone has not been recovered. Further, the stab injury has been attributed to co-accused Pammi, who is absconding.

5. He further submits that the petitioner has spent approximately four years in custody and only one other case was registered against the petitioner and he has been acquitted in the same.

6. Inviting attention of the Court to the testimony of the complainant, he submits that the role ascribed to the present petitioner, as well as, to co-accused Shankar Kumar Jha @ Moment @ Vikash has been reversed by the victim in his testimony. In the statement recorded under Section 161 CrPC, the complainant, namely Shankar Prasad, has alleged that it was the present petitioner, who robbed his mobile phone and further mentioned that it was the co-accused Shankar Kumar Jha @ Moment @ Vikash who caught hold of his neck whereas in his testimony the said complainant, who was examined as PW-2, stated that Varun @ Tarun @ Rao (present petitioner) had caught hold of his neck and co-accused Shankar Kumar Jha robbed him of his mobile. He submits that similar contradiction is there in the testimony of the victim.

7. In the backdrop of aforesaid circumstances, he urges the Court to enlarge the petitioner on bail.

8. The Status Report has been handed over in the Court and the same is



taken on record.

9. *Per contra*, the learned APP has argued on the lines of the status report, which has been handed over in the Court and the same is taken on record.

10. I have given thoughtful consideration to the submissions made by the learned counsel for the petitioner, learned APP, as well as, to the material on record.

11. As borne out from the testimonies of the complainant (PW2) and the victim (PW1), the stab injury was given to the victim by co-accused Pummy, who is stated to be absconding. The role ascribed to the petitioner and other co-accused is that one of them held the neck of the complainant while the other robbed him of his mobile.

12. Though there appears to be contradiction in the testimonies of the complainant and victim vis-à-vis their statements recorded under section 161 CrPC but the probative value of the said testimonies and reliability of the witnesses will be seen by the Trial Court during the course of trial.

13. Apart from the merits, other factors also assume relevance while considering bail application. There is presumption of innocence at the stage trial, therefore, the petitioner who has already spent four years in judicial custody, in the given facts and circumstances, cannot be kept in custody for an indefinite period to await the conclusion of trial, which is nowhere in sight, as out of 18 witnesses cited by the prosecution only 03 witnesses have been examined till date.

14. On query posed by the Court, the learned APP, on instructions from the I.O. who is present in Court, fairly states that the present petitioner has been acquitted in other case that was registered against him.



15. Further, since the complainant and the victim, who are the material/public witnesses, have already been examined, therefore, there cannot be any apprehension that the petitioner might influence the witnesses, in the event he is enlarged on bail.

16. Insofar as the apprehension expressed by the State in the status report that petitioner might jump the bail in case he is enlarged on bail, the same can be allayed by imposing appropriate conditions.

17. Considering the aforesaid circumstances in entirety, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is enlarged on regular bail subject to his furnishing a Personal Bond in the sum of Rs. 20,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- a) Petitioner shall not leave the Delhi without prior permission of the Court.
- b) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- c) Petitioner shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
- d) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

18. The petition stands disposed of.

19. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.



20. Order *dasti* under signatures of the Court Master.
21. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

FEBRUARY 20, 2024
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