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

+ **BAIL APPLN. 493/2024**

BHUSHAN @ KALU @ CHINESE

..... Petitioner

Through: Mr. Anil Kaushik, Sr. Advocate
with Mr. Ved Pal Rana, Ms.Himani, Ms.Bhawna,
Mr. Rajat Rana and Ms.Jyoti Nambiar, Advocates

versus

THE STATE OF NCT OF DELHI

..... Respondent

Through: Mr.Aashneet Singh, APP for State with
Insp. Giri

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

06.03.2024

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1. By way of present application filed under Section 439 Cr.P.C., the petitioner/applicant seeks regular bail in FIR No.102/2018 registered under Sections 302/34 IPC at P.S. Swaroop Nagar, Delhi.
2. Learned Senior Counsel for the applicant submits that the applicant was taken in custody on 25.03.2018 and since then has been in custody for a period of about 4 years and all the material prosecution witnesses have been examined.

On merits, it is submitted that as per the prosecution case, the incident is of 24.03.2018, when it is alleged that the applicant and one *Narender* (brother of the deceased) alongwith others were consuming liquor. The deceased reached the spot. He scolded his brother *Narender* and sent him



back to home. He further submits that two co-accused persons, who were juveniles, stand acquitted. He further submits that as per the prosecution case, it is alleged that the applicant alongwith others as well as the deceased had travelled from Kadipur to Nathupura on a scooty, which has not been seized during investigation. He submits that the prosecution case of 4 people travelling on a Scooty from Kadipur to Nathupura is also unbelievable. He states that the case is entirely based on circumstantial evidence and further, the recovery at the instance of present applicant is also not believable as the same being done on the disclosure of other co-accused persons. He has also referred to the testimony of one *Surjeet*, who has not supported the prosecution case.

3. Learned APP for the State has opposed the bail application. He contends that not only the recovery of weapon of offence namely *Khat Ki Baahi /Danda* but the FSL report relating to the clothes seized also points to the involvement of the present applicant. He further submits that it has come in the testimony of *Narender* (brother of the deceased) that he had received a phone call from *Aakash* at around 11:50 PM, wherein he informed that all the accused persons alongwith the deceased were present at Kadipur from there they would go to a masala factory. Besides *Narender*, another public witness namely *Jitender* has also supported the prosecution case.

4. I have heard the learned APP for the State as well as learned Senior Counsel for the applicant and have also gone through the material placed on record.

5. The case is based on circumstantial evidence. Indisputably, all the material witnesses have been examined. Though learned counsel for the applicant has contended that recovery of weapon cannot be attributed solely



to the present applicant, merits of the said contention would be seen by the trial court at the conclusion of the trial. At present, the Court is only seized with the bail application and keeping in view the aforesaid facts and circumstances alongwith the period of custody as well as the fact that all the material witnesses have been examined and further the fact that applicant who was statedly released on interim bail has not misused the concession so granted, the applicant is directed to be released on regular bail on his furnishing a personal bond in the sum of Rs.50,000/- with one surety of like amount to the satisfaction of the concerned Jail Superintendent/Duty M.M./Trial Court and subject to the further following further conditions:-

- (i) The applicant shall not leave the NCT of Delhi without prior permission of the concerned Court.
 - (ii) At the time of furnishing bail bond, the applicant shall provide the mobile number, which he undertakes to keep operational at all times during the pendency of the trial.
 - (iii) In case of change of residential address or contact details, the applicant shall promptly inform the same to the concerned IO as well as to the concerned Court.
 - (iv) The applicant shall not directly/indirectly try to get in touch with the complainant or any other prosecution witnesses or tamper with the evidence.
 - (v) The applicant shall regularly appear before the concerned Court during the pendency of the trial.
6. The application stands disposed of in the above terms.
 7. Copy of this order be communicated electronically to the concerned Jail Superintendent for information.



8. Copy of this order be uploaded on the website forthwith.
9. Needless to state that nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case as the observations are only for the purpose of the disposal of the present application.

MANOJ KUMAR OHRI, J

MARCH 6, 2024

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