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

+ **BAIL APPLN. 717/2024**

SH SUNDER @ RANDWA Applicant
Through: Mohan Meakin Indora &
Sarvesh Kumar, Advs.

versus

THE STATE NCT OF DELHI Respondent
Through: Mr. Pradeep Gahalot, APP
for the State with Adv.
Namrata Singh.
SI Kapil Singh, PS
Timarpur.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
21.03.2024

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1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 (**CrPC**) seeking regular bail in FIR No. 336/2022 dated 06.10.2022, registered at Police Station Timarpur, for offences under Sections 392/394/34 of the Indian Penal Code, 1860 (**IPC**).

2. The FIR was registered on a complaint made by one Manju Devi / complainant, who alleged that on 05.10.2022, the applicant along with other co-accused persons came to her house and inflicted injuries upon her and her workers by giving *danda* blows and also took her gas cylinder, fridge and water burner from her house. The complainant further alleged that the applicant broke the chair kept in her house and tried to hit her brother-in-law with the stick of the broken chair and also poked her in the ribs with the same stick.

3. Consequently, the applicant was arrested on 10.11.2022.

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4. The chargesheet in the present case has been filed under Sections 395/394/427/34 of the IPC against the applicant.
5. The learned Trial Court had dismissed the regular bail application preferred by the applicant by order dated 24.01.2024. Hence, the present bail application.
6. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case, solely on the basis of false and fabricated story. He submits that neither any explicit role has been attributed to the applicant nor has any recovery been proved against him.
7. He submits that the material witnesses including the complainant have been examined and the trial is likely to take a long time. He submits that there is material contradictions and improvements in the statements made by the complainant at the time of registration of her complaint and deposition before the learned Trial Court.
8. He submits that in the present case, the co-accused persons have already been enlarged on bail by the learned Trial Court. He submits that since the role of the applicant is similar to that of the co-accused persons, the applicant is entitled for bail on the ground of parity.
9. He submits that the investigation in the present case is complete. The chargesheet is filed and the trial is ongoing and no purpose would be served by keeping the applicant in custody.
10. He further submits that even as per the MLC Report, the injuries sustained by the complainant were simple in nature.
11. Lastly, he submits that the applicant is around 27 years of age and has a wife and three minor children to take care of.
12. The learned Additional Public Prosecutor (**APP**) for the State, vehemently opposes the grant of bail to the applicant and
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submits that the nature of the alleged offence is serious in nature. He states that the applicant is a habitual offender, having previous involvements.

Analysis

13. The Hon'ble Supreme Court in the case of **Ram Govind Upadhyay v. Sudarshan Singh And Others: (2002) 3 SCC 598**, has enunciated the following guiding principles for granting bail:

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.



(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

14. At the same time, the object of Jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment. The applicant cannot be made to spend the entire period of trial in custody specially when the trial is likely to take considerable time and is being delayed due to no fault of the applicant.

15. The allegation against the applicant is that he was actively involved in the alleged offence and had inflicted injuries with the help of wooden *danda* on the complainant and her workers and took gas cylinders and fridge from her house. It is not denied that the alleged injuries are ‘simple’ in nature according to the MLC Report. It is also not denied that the complainant during her examination has not been able to identify the present applicant as the one who allegedly broke the chair and tried to hit her brother-in-law by the stick of the chair.

16. It is also well settled that at the stage of grant of bail, the Court is not required to dwell upon detailed analysis of the evidence on record as that would be a matter of trial. At the same time, gravity of the offence cannot be the sole basis for denied of bail. The Hon’ble Supreme Court in ***Prabhakar Tewari v. State of U.P. : (2020) 11 SCC 648*** held that despite the alleged offence



being grave and serious also the fact that there are criminal cases pending against the accused, would not by themselves be the basis for refusing bail.

17. It is an admitted case that the chargesheet in the present case has already been filed, the investigation qua the applicant is also complete and the complainant has already been examined before the learned Trial Court. Appropriate conditions can be put to allay the apprehension of there being any threat to the witnesses or the evidence being tampered. Moreover, it is the duty of the State to protect every witness.

18. It is pertinent to note that identically placed co-accused persons have already been enlarged on bail by the learned Trial Court.

19. In view of the above, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹25,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court / Duty MM / Link MM, on the following conditions:

- a. He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. He shall under no circumstance contact the complainant / other witnesses;
- c. He shall under no circumstance leave the boundaries of the National Capital Region without informing the concerned IO/SHO;
- d. He shall appear before the learned Trial Court as and when directed;



- e. He shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- f. He shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

20. In the event of there being any FIR/ DD entry/ complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

21. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

22. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

MARCH 21, 2024
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