



2024:DHC:3616



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

Pronounced on: 06.05.2024

+ **BAIL APPLN. 1442/2023**

GAURAV

..... Petitioner

Through: Mr. Karan Singh, Mr. Randheer Singh and Ms. Preeti, Advs.

versus

THE STATE GOVT OF NCT

..... Respondent

Through: Mr. Ritesh Kumar Bahri, APP for State alongwith SI Atul Prabhakar P.S. Sunlight Colony.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present application has been filed seeking regular bail in connection with FIR No. 359/2018 under sections 302/307/34 IPC registered at police station Sunlight Colony.
2. *Vide* order dated 03.05.2023, notice was issued in the bail application and the State was directed to file a Status Report. The State has filed the status report, which forms the part of record.
3. The brief facts of the case as borne out from the status report are that on 20.11.2018 an information was received *vide* DD No. 3A at 00:07 am at



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PS Sunlight Colony from AIIMS Trauma Centre regarding MLC. The said information was entrusted to SI Brahm Prakash for further necessary action.

4. The IO went to the AIIMS Trauma Centre and found injured Mohit aged 15 years under treatment *vide* MLC No. 500137992/18 on which doctor had mentioned “A/H/O Unknown mechanism of injury and injury incise wound approx 3x3 cm present over spurs pubic region of the abdomen”.

5. During inquiry it came to light that two persons were injured on the intervening night of 19/20.11.2018 in the quarrel that took place in the marriage at Jai Ram Ashram Dharamshala, Ashram Chowk, New Delhi. The other injured person namely, Arthur @Lovely was found to be the resident of Sun Light Colony-II. The victim/complainant Arthur@ Lovely alleged that Gaurav (petitioner herein) and Himanshu both sons of Late Sh. Yogender had inflicted injury to him and his friend Mohit with knife. This led to the registration of FIR under section 307/34 IPC. Later victim Mohit died and section 302 IPC was added in the case.

6. During the course of investigation, both the accused persons, namely, Petitioner/Gaurav and Himanshu were arrested in the present FIR. A knife, alleged to be the weapon of offence, was recovered at the instance of the present petitioner. The recovery was allegedly made from the park where the petitioner had hidden the knife.

7. After the completion of investigation, the chargesheet was filed against the accused on 14.03.2019 and further charges for the offences punishable under sections 302/307/323 read with 34 IPC were framed.

8. The bail application of the petitioner was dismissed by the learned Trial Court *vide* order dated 09.01.2023, on the ground that the nature of



allegations against the applicant are serious in nature and the material public witnesses are to yet to be examined.

9. The learned counsel appearing on behalf of the petitioner submits that material public witnesses i.e. PW-3 and PW-6 have not supported the case of the prosecution. It is only the complainant / PW-2, the alleged injured witness as per prosecution, who has supported the case of the prosecution to an extent. He submits that a bare perusal of the charge sheet shows there is no material to show that PW-2 is an injured witness. Even PW-1, father of PW-2, has not stated that his son got injured, rather he has stated that *"I had taken my son Arthar @ Lovely to AIIMS hospital on the instructions of the IO where blood samples of my son were collected."* Therefore, the presence of PW-2 at the place of incident does not get stamped and raises doubt about his presence at the place of incident as well as regarding his reliability.

10. He submits that the statement of complainant, who was examined as PW-2, is full of contradictions and inconsistencies vis-à-vis testimonies of other witnesses.

11. He refers to the statement of ASI Ravi Kumar, Crime team, recorded u/s 161 CrPC to contend that the said witness has stated that he did not find any blood stains on the spot/place of incident nor any fingerprints could be lifted, which creates doubt as regards the place of incident and its genesis.

12. He submits that the recovery of weapon of offence has been made from an open park. Further, the FSL report shows that DNA profile could not be generated from the knife. This itself makes the recovery doubtful.

13. Alternatively, submission is made by the learned counsel that even taking case of prosecution on its face value premised on the testimony of complainant/PW-2, at the best it is an incident which happened in a sudden



fight in the heat of passion upon a sudden quarrel without petitioner having acted in a cruel manner when deceased Mohit intervened in the altercation between the petitioner/accused and the complainant and then forcefully kicked the petitioner accused who fell down at some distance. According to the learned counsel, intention to kill could not be attributed to the petitioner as it is not the case of prosecution that there was a previous enmity between the petitioner and his brother on one side and the deceased and the complainant on the other side nor there seem to be any pre-planning or pre-meditation. At the best it will be a case falling under Exception 4 to Section 300 IPC punishable under Section 304 (Part II) IPC for a term that may extend to ten years but there is no minimum punishment prescribed for the same.

14. He submits that the sequence given by complainant/PW-2 also shows that there was grave and sudden provocation, bringing the case within Exception 1 to Section 300 IPC, as well.

15. He submits that the antecedents of the petitioner are clean and he is permanent resident of Delhi, therefore, he is not a flight risk. Further, the co-accused Himanshu was earlier granted interim bail and he never misused the said liberty, therefore, there is no likelihood of tampering with the evidence.

16. He further contends that all public witnesses have already been examined, therefore, there is no possibility of petitioner influencing the witnesses, in the event he is enlarged on bail.

17. He contends that the bail of the petitioner ought not to have been denied by the learned Trial Court on the ground that the allegations are serious in nature as the same cannot be a sole ground to deny bail.

18. Additionally, it is submitted that the petitioner has remained



incarcerated for more than 05 years and the trial is not likely to be concluded anytime soon as the prosecution has cited as many as 33 witnesses and till date only 15 have been examined, therefore, the petitioner may be enlarged on bail. Reliance has been placed on the decision of ***Indrani Pratim Mukerjea v. CBI, 2022 SCC OnLine SC 695***, as well as, on the decision of ***Rabi Prakash v. State of Odisha 2023 SCC OnLine SC 1109***.

19. Per contra, the learned APP for state has argued on the lines of the status report. He submits that the present petitioner has been accused of a grave and serious offence, therefore he may not be enlarged on bail.

20. He submits that as far as the testimonies of the witnesses and injured witness are concerned, the injured witness/complainant Arthur@Lovely (PW-2) who survived has already testified against the accused and the defence has not been able to point out any material inconsistencies in his testimony.

21. He submits that eye witnesses PW-3/Kuldeep and PW-6/Priyanshu during their examination-in-chief have supported the prosecution version to the extent that a fight ensued between the parties and the petitioner dragged the complainant to the service road. He submits that it is a settled law that part of the testimony of a hostile witness which favor the prosecution's case can be relied upon.

22. He contends that the weapon of offence i.e. knife was recovered at the instance of the present petitioner.

23. He further submits that the present petitioner is the resident of the same locality as the eye witness, therefore, in case the petitioner is enlarged on bail, there are definite chances that the petitioner may threaten the witness or he may tamper with the evidence.



24. I have heard the learned counsel for the petitioner, as well as, the learned APP for the State and have perused the record.

25. A bird's eye view of the testimonies of two eye-witnesses PW-3/Kuldeep and PW-6/Priyanshu shows that they have not supported the case of the prosecution insofar the fight between the accused and the deceased Mohit is concerned. They have only testified *qua* the fight having taken place between the accused and the complainant/PW-2 but none of them have stated that they witnessed the incident of petitioner/accused stabbing deceased Mohit, rather they have feigned ignorance about the same.

26. *Prima facie* there also seems to be some substance in the contention of the learned counsel for the petitioner that from the testimony of the complainant/PW-2 it appears to an incident which happened without pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel without the petitioner having acted in a cruel manner when deceased Mohit intervened in the altercation between the petitioner/accused and the complainant and kicked the petitioner/accused who fell down at some distance and in retaliation stabbed the deceased Mohit. Further, the submission of the learned counsel for the petitioner that there was no intention to kill the deceased cannot be negated all together as there was no previous enmity between the petitioner and his brother on one side and the deceased on the other side nor it is case of any pre-planning or pre-meditation.

27. There also seems to be some merit in the submission of the learned counsel for the petitioner that there is no material on record to support that PW-2 is an injured witness.

28. The probative value of the testimonies of the witnesses, their



credibility and the aspect whether the case falls under any of the exceptions to Section 300 IPC and it would be punishable under section 304 (Part II) IPC will be considered by the learned Trial Court and any observation at this stage could prejudice the case of either the prosecution or the defence. However, the circumstances discussed above definitely tilts the balance in favour of the petitioner for grant of bail considering his long incarceration.

29. At this stage there is presumption of innocence in favour of the petitioner and he has already spent 5 years 5 months in custody. It would be indeed be a travesty of justice in case the Trial Court finds the petitioner guilty of an offence for which there is no minimum sentence prescribed and it proposes to impose the punishment lesser than the period for which the petitioner/accused has already been incarcerated.

30. There are other aspects that cannot be overlooked. It has come on record in the form of FSL report that no DNA profile could be generated from the knife recovered at the instance of the petitioner. There is also some merit in the submission of the learned counsel for the petitioner that the recovery was made from an open park which is visited by general public, which raises doubt about the recovery. Further, it is on record that no blood stains or finger prints could be lifted from the place of incident.

31. The testimonies of the public witnesses including that of the complainant have already been recorded, therefore, there is no possibility of petitioner influencing the public witnesses in the event he is enlarged on bail. The co-accused Himanshu, who happens to be the real brother of the petitioner was enlarged on interim bail and he never misused the liberty so granted to him. Besides that, the petitioner is a permanent resident of Delhi, therefore, the petitioner does not seem to be a flight risk. Nevertheless



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appropriate conditions can be imposed to ensure the availability of the petitioner during trial.

32. It is not the case of prosecution that the petitioner has any criminal record. The age of the petitioner at the time of incident was 21 years. Prolonged incarceration and company of hardened criminal is likely to cause inexorable harm to the mental well-being of such impressionable young individuals. That apart, the prosecution has cited as many as 33 witnesses, out of which only 15 witnesses have been examined as of now, therefore, keeping the petitioner in custody till the conclusion of trial, which is not likely to be concluded anytime soon, will not be in the interest of justice in the given circumstances.

33. Considering the above discussed circumstances in entirety, this Court is of the view that the petitioner is entitled to grant of regular bail. Accordingly, the petitioner is admitted to bail subject to his furnishing a personal bond in the sum of Rs. 20,000/- with one surety of like amount, subject to the satisfaction of the Trial Court/Duty Magistrate/CMM, further subject to the following conditions:

- a) Petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- b) The petitioner shall furnish to the IO/S.H.O P.S: Sunlight Colony, a cell-phone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- c) The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to the complainant or any of the prosecution witnesses or other persons acquainted with the facts of the case. The



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petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.

34. It is made clear that the observations made herein above are only for the purpose of considering the bail application and the same shall not be deemed to be an expression of opinion on the merits of the case.

35. The petition stands disposed of.

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

37. Order dasti under the signatures of the Court Master.

38. Order be uploaded on the website of the Court

VIKAS MAHAJAN, J.

May 06, 2024
N.S. ASWAL