



\$~26

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

+ **BAIL APPLN. 1099/2024**

MASUM

..... Petitioner

Through: Mr. V.P. Rana, Adv.

versus

THE STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Hemant Mehla, APP for the State
with Ms. Mridul Sharma, Advocate.
SI Ishant, PS Mukherjee Nagar.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

16.05.2024

%

1. The present application under Section 439 of the Cr.P.C. seeks regular bail in case FIR No. 945/2023 under Sections 307/34 of the IPC, registered at P.S. Mukherjee Nagar, Delhi.
2. Status report has been handed up in Court today and the same is taken on record.
3. The case of the prosecution as per the status report dated 2.05.2024, authored by Insp. Rajiv Shah, SHO PS: Mukherjee Nagar is as under:-

“1) That the present bail application has been moved by petitioner Masum before this Hon'ble court for seeking regular bail in FIR No. 945/23 U/s 307/34 IPC PS Mukherji Nagar, Delhi.
2) That, the brief facts are that, on 29/10/2023, a PCR Call vide DD No. 86 was received at PS Mukherji Nagar, Delhi and the same was marked to SI Ishant No D-1173 who along with Staff reached the spot Near Jhuggi No N-14/112, Munshiram colony, Mukherji Nagar, Delhi. On reaching the spot IO/SI Ishant found that the victim Amar S/o Ram Swaroop R/o N-14/459, Munshiram colony, Mukherji Nagar, Delhi has already been shifted to BJRM Hospital, Jahangir Puri, Delhi. IO reached BJRM hospital and found that Victim Amar was admitted in BJRM



hospital vide MLC No. 238560/2023 and has been referred to LNJP Hospital, Delhi. IO/SI Ishant collected the MLC - 238560/2023 in which the Doctor had District. The exhibit (weapon of offence - knife) was found near the spot. The khaka of knife was also prepared by the IO and taken into police possession through seizure memo. After inspection of the crime team, the IO reached LNJP Hospital for recording of the statement but the victim Amar S/o Ram Swaroop was found unfit for statement. Statement of the victim Amar was recorded after he was found fit for statement.

3) That as per the statement of complainant Amar, he lives in N-14/459, Munshiram colony, Mukherji Nagar, Delhi and work as a labourer. On 29/10/2023 at around 7:30 pm he was going from Parmanand Colony to Batra cinema Mukherji Nagar for some work and on his return, when he reached near kalim meat shop, Munshiram colony, he saw that Mukesh @, chitta, Golu and his younger brother Suresh were having arguments with Chandan Rai and Rajesh Rai and some outsiders. Mukesh @, chitta always used to have arguments with Chandan Rai and Rajesh Rai over work and money. The complainant tried to intervene in the fight to save Mukesh @ chitta and Golu. Both the accused Sandeep and Masum started Quarreling with complainant. Sandeep caught the complainant tightly from behind and instigated Masum to finish him off today, after which Masum attacked him with a knife with intention of killing him. The complainant Amar survived the first attack but Masum attacked again and which hit him on right side below the chest between the ribs, After which both the accused Masum and Sandeep fled from the spot and the complainant fell on the ground and lost consciousness.

4) That on the statement of the victim Amar, the present FIR was registered and both the accused Masum and Sandeep were arrested on 30/10/2023. The exhibit i.e weapon of offence- knife along with the blood sample of the victim Amar was sent to FSL for expert opinion and the result of which is still awaited.

5) That the Doctor has opined injury on MLC result of MLC No. 238560/23 as "Simple".

6) That after the completion of investigation, chargesheet U/s 307/34 IPC was prepared and filed before the Hon'ble court. The case is under stage of charge before the Hon'ble court of Ms. Shefali Sharma, Ld ASJ, Rohini Courts, Delhi. The NDOH is 11/07/2024.

7) That vide court order dated 14/12/2023, co-accused Sandeep was granted bail by the Hon'ble court of Sh. Satish Kumar Ld ASJ Rohini courts, Delhi.

8) That vide court order dated 03/01/2024, the First bail application of



main accused Masum was rejected by the Hon'ble court of Ms. Shefali Sharma Ld ASJ Rohini courts, Delhi.

9) That vide court order dated 11/03/2024, the second bail application of main accused Masum was rejected by the Hon'ble court Ms. Shefali Sharma Ld ASJ Rohini courts, Delhi.

10) That the present bail application of accused Masum is strongly opposed as he is the main person who attacked and tried to kill complainant Amar. There is a possibility that after getting bail he may attack the complainant or his family members.”

4. Learned counsel appearing on behalf of the applicant submits that the applicant has been falsely implicated in the case as the FIR and subsequent proceedings are ante-time, i.e., the seizure memo of the knife was prepared on 29.10.2023, whilst the applicant was arrested on 30.10.2023. Furthermore, it was submitted that the SI reached the concerned LNJP hospital (the hospital where the complainant/victim was referred to) to record the statement of the complainant/victim after the exhibits of crime were already seized. It is further submitted that the khaka of knife (weapon of offence) which should have been simultaneously prepared along with the seizure memo dated 29.10.2023, mentions the date to be 30.10.2023. It is further submitted that co-accused Sandeep was granted bail by the learned ASJ *vide* order dated 14.12.2023. Furthermore, the co-accused Sandeep is stated to have previous enmity with the complainant/victim's family, whilst there are no such allegations against the present applicant. It is further submitted that the MLC of the victim/complainant dated 29.10.2023 (Annexure P-7) records the nature of injury inflicted as “simple”. Furthermore, it is submitted that the applicant has clean antecedents as he has no previous involvements and the Nominal Roll dated 02.05.2024 records the conduct of the applicant as “satisfactory”.

5. *Per contra*, learned APP for the State submits the incident took place



on 29.10.2023 at night approximately around 10.12 pm and the applicant along with co-accused Sandeep was arrested on 30.10.2023. Besides, on instructions of the IO, he submits that the complainant/victim was not fit to give his statement during the night of the incident, i.e., on 29.10.2023, as he was bleeding profusely and subsequently, his statement got recorded on 30.10.2023. It is further submitted that the applicant is the primary person who inflicted knife blows upon the complainant/victim and bail cannot be sought on parity as the role of the co-accused Sandeep was only confined to holding/restraining the complainant/victim from behind while the applicant inflicted blows.

6. Heard the learned counsel for the parties and perused the record.

7. As per the contents of the FIR, the complainant/victim was trying to intervene in a quarrel between two sets of groups, during which the alleged attack had taken place. The statement does not reflect that the present applicant had any previous enmity with the complainant/victim. The discrepancy in the documents as pointed out by the learned counsel for the applicant is a matter of trial, which will be determined by the Learned Trial Court. The investigation is complete, the chargesheet stands filed. As per the status report, the nature of injury suffered by the complainant is simple and co-accused Sandeep has already been granted bail by the learned ASJ *vide* order dated 14.12.2023.

8. As per the Nominal Roll dated 02.05.2024 received from the Superintendent of Central Jail No.04, Tihar, New Delhi, the applicant is in judicial custody since 30.10.2023 and as on 02.05.2024, has undergone 6 months and 3 days of judicial incarceration.

9. It is also a matter of record that the present applicant has no other



previous involvement.

10. In totality of the facts and circumstances, the present application is allowed. The applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 25,000/- with one surety of like amount, to the satisfaction of the learned Trial Court/Link Court, further subject to following conditions:

- i. The applicant shall not leave India without prior permission of the learned Trial Court.
- ii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
- iii. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- iv. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times.
- v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.

11. The application is allowed and disposed of accordingly.

12. Pending application(s), if any, also stand disposed of.

13. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the present bail application.

14. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.



15. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

MAY 16, 2024/nk

Click here to check corrigendum, if any