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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 1140/2024

GULSHAN SINGH

..... Petitioner

Through: Mr. M.L. Yadav and Mr. Harish
Chand, Advs.

versus

STATE

..... Respondent

Through: Mr. Ritesh Kumar Bahri, APP for
State with Insp. Vikas Malik, PS.
M.S. Park.
Mr. Gaurav Kochar and Mr. Vishal,
Advs. for complainant.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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20.05.2024

1. The present petition has been filed under Section 439 CrPC seeking regular bail in connection with FIR No.33/2020 under Section 302 IPC (*subsequently Sections 201/34 IPC were added in the charge sheet*) registered at Police Station Mansarovar Park.
2. The case of the prosecution is that eye witness Vikky Singh @ Pappan stated that on 25.01.2020 accused Gulshan (petitioner herein) had come to him at about 04:00 p.m. and snatched away a bundle of *Gutka* and Rs.800/- from him. At that time, Gulshan was accompanied with Gursewak @ Bittu, Gurdas and one boy who was Sardar.
3. Thereafter, the witness went to his uncle Rishi Kapoor (deceased). Then the deceased, along with his brother Vishnu Kumar, Pinki and Shivani, reached the railway line, where accused Gulshan was present along with other accused persons. All the accused persons were in inebriated condition.



Petitioner/accused Gulshan was angry and started abusing. He also took out a *chhuri* (small knife) and threatened to stab the deceased in his abdomen. Thereafter, the persons present there intervened.

4. Later on, at about 09:00 p.m., the witness went to the house of deceased Rishi Kapoor and asked him to get his money and bundle back from Gulshan. The deceased agreed to go and meet Attar Singh, father of the accused Gulshan. When the witness, along with deceased Rishi Kapoor and Shivani, reached the intersection at Gali No. F-5, Mansarovar Park, Gulshan was present there near pavement of *Mausi's Dukkan* with his friends Gursewak @ Bittu, Gurdas and one Sardar.

5. It is the case of the prosecution that Gulshan advanced towards deceased Rishi Kapoor, caught hold of his neck and started hurling abuses at the deceased. Co-accused Gursewak @ Bittu, Gurdas and the Sardar also joined in and started hurling abuses at Rishi Kapoor. Gulshan, thereafter, started beating Rishi with blows which was objected to by the eye-witness, Vikky Singh @Pappan while Shivani, daughter of the deceased, cried to save her father. Gulshan slapped Vikky Singh @ Pappan and warned him not to interfere and pushed Shivani away.

6. It is further alleged that accused Gursewak @ Bittu and the Sardar caught hold of deceased Rishi Kapoor from the back and Gurdas caught hold of deceased's left hand. In the meanwhile, the accused Gulshan (petitioner herein) took out a knife from his waist and stabbed the deceased on his leg with full force. On account of said injury, the petitioner was admitted in the hospital where he succumbed to his injury while he was being treated.



7. The learned counsel for the petitioner submits that the injury in the present case is on the non-vital part of the body. He further submits that in case the petitioner really intended to commit murder of the deceased, he would have given injury on the vital part of the body of the deceased.

8. He submits that the absence of injury on any vital part shows that the petitioner had not intended to cause the death of deceased or to cause any bodily injury as was likely to cause death. It is also not possible to attribute any knowledge to the petitioner that the injury inflicted on the thigh of deceased was likely to cause death, the same being on non-vital part.

9. He submits that as per prosecution version it is the deceased and other persons who were on lookout for the petitioner and not the other way round. According to him, the prosecution story shows that the incident happened in a sudden fight without any premeditation in a heat of passion upon a sudden quarrel without the petitioner acting in a cruel manner.

10. It is further the contention of the learned counsel that the petitioner is in custody since 30.01.2020 and the investigation in the matter is complete, therefore, no further recovery is required to be made.

11. He submits that apart from the present case, there is only one other case against the present petitioner registered *vide* FIR No.33/2020 under Section 25 of the Arms Act registered at Police Station Special Cell. In the said case, the petitioner has already been enlarged on bail. He, therefore, urges the Court that the petitioner may be enlarged on bail in the present case as well.

12. *Per contra*, the learned APP for the State has argued on the lines of the Status Report, which has been handed over in the Court and is taken on record.



13. He submits that the injury was inflicted with a knife with full force and the knife was recovered at the instance of a co-accused. The FSL report shows that the DNA of the blood stains found on the knife matches the DNA of the deceased. Further, as per doctor's opinion, the injury was sufficient in the ordinary course of nature to cause death. The subsequent opinion of the doctor also shows that injury on the leg of deceased could be possible with offence weapon recovered at the instance of co-accused.

14. He further submits that out of four public witnesses, only one witness is under examination while other three public witnesses are yet to be examined. He, therefore, urges the Court that present petition be dismissed.

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

16. It is a case of the prosecution itself that the injury was inflicted by the petitioner by a knife on the thigh of the deceased, which is undisputedly a non-vital part of the body, therefore, *prima-facie* there seems to be some substance in the contention of the learned counsel for the petitioner that had the petitioner really intended to kill the deceased, he would have given injury on the vital part of the body of the deceased.

17. However, the aspects whether the petitioner intended to cause the death of the deceased or to cause any bodily injury as was likely to cause death or whether any knowledge could be attributed to the petitioner that injury inflicted on the thigh of the deceased, a non-vital part of the body, is likely to cause death, will be gone into by the learned Trial Court at an appropriate stage. Likewise, the aspect whether the death of the petitioner had direct nexus with the injury caused by the petitioner will also be considered by the learned Trial Court.



18. Any comment by this Court on the said aspects at this stage is likely to prejudice the case of the prosecution or of the defence.

19. It is not the case of the prosecution that the petitioner/accused had gone to the place of deceased, rather the case set up by the prosecution suggest that the deceased and other persons were on lookout for the petitioner/accused, who had allegedly taken away the bundle of *Gutka* and Rs. 800/- from the complainant. In this backdrop the contention of the learned counsel for the petitioner that the incident happened in a sudden fight without pre-meditation when the complainant party and the accused party came across each other, cannot be rejected outrightly, but again it for the learned Trial Court to take an ultimate call at an appropriate stage of the trial as to whether the benefit of Exception 4 of Section 300 IPC is to be extended to the petitioner or not and whether it is a case warranting alteration of charge from Section 302 IPC to Section 304 IPC.

20. However, at this stage, the circumstances noted above coupled with the fact that the petitioner is in custody since 30.01.2020 and the investigation in the matter is complete and the custodial interrogation of the petitioner is no more required, tilts the balance in favour of the petitioner for grant of regular bail.

21. The offence under Section 302 IPC is punishable with life imprisonment and while the offence under Section 304 part I IPC, attracts the sentence of an imprisonment for life or imprisonment which may extend to 10 years. Likewise, the punishment for an offence under Section 304 Part II IPC is maximum 10 years. Notably, no minimum punishment is prescribed for the offence under Section 304 IPC.



22. It would indeed be a travesty of justice to keep a person in jail for an indefinite period for an offence which is ultimately found not to have been committed by him or for which the learned Trial Court may propose to award punishment of imprisonment which is lesser than the period for which the accused has already been incarcerated. Likewise, this Court cannot be unmindful of the well settled law that at pre-conviction stage, there is presumption of innocence.

23. In the charge sheet, the prosecution has cited as many as 28 witnesses and it is not in dispute that only the first witness is under examination. Inevitably, the trial is going to be a protracted one. The delay in trial in the present case cannot be attributed to the petitioner as he is already in custody. The circumstances of the present case do not warrant keeping the petitioner in custody for indefinite period to await the outcome of trial.

24. In so far as the petitioner's involvement in another case FIR No. 33/2020 under Section 25 of Arms Act, is concerned, it has been stated that the petitioner has already been enlarged on bail in the said case.

25. It is not the case of the prosecution that the petitioner is a flight risk. In so far as the apprehension expressed by the prosecution in the Status Report that the petitioner if enlarged on bail may extend threat to the eye witnesses, the said apprehension can be dispelled by imposing appropriate conditions.

26. 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 bail subject to his furnishing a Personal Bond in the sum of Rs. 25,000/- 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 appear before the Court as and when the matter is taken up for hearing.
 - b) 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.
 - c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.
27. The petition stands disposed of.
 28. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on the merits of the case.
 29. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.
 30. Order *dasti* under signatures of the Court Master.
 31. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

MAY 20, 2024/dss