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

+ **BAIL APPLN. 1141/2024**

MANOJ KUMAR Applicant

Through: Mr. Virender Verma, Adv.
(through VC)

versus

THE STATE NCT OF DELHI & ANR. Respondents

Through: Mr. Ajay Vikram Singh,
APP for the State with Mr.
Dhruv Saini, Mr. Harsh
Tomar and Ms. Janhvi
Nautiyal, Advs. with SI
Krishan Kumar, PS
Bawana.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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15.05.2024

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 (**CrPC**), seeking regular bail in FIR No. 766/2023 dated 21.09.2023, registered at Police Station Bawana, for offences under Sections 285/337/304/427 of the Indian Penal Code, 1860 (**IPC**) and Section 9(B) of the Explosives Act, 1884.

2. It is alleged that on 20.09.2023, a PCR call was received vide DD No. 124, with regards to a blast in a factory No. O-58, Sector-3, DSIIDC, Bawana, Delhi. It is alleged that upon inquiry at the spot, it was found that the injured persons were taken to the hospital.

3. During the Course of investigation, it was found that the accident was caused by an explosion in the basement of the

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factory, which melted plastic items, including a large quantity of plastic cigarette lighters and their pieces, and other plastic items. It is alleged that broken plastic bags, a broken wall, plastic granules (Dana), and other items were lying scattered, and plastic lighters were also scattered near the Grinder Machine.

4. It is alleged that the MLC of all the injured and deceased were obtained and MLCs bearing no. 5335/2023 and 5336/2023 with respect to Harbir and Ashok @ Chachu, both deceased, and MLCs bearing no. 5332/2023, 5333/2023, 5413/2023 and 5414/2023, with respect to injured namely Bhanu, Sonu Srivastava, Usha and Sanjeev were obtained. It was opined that all have suffered industrial explosive burns. The deceased were declared brought dead

5. It is alleged that by the injured Sanjeev that all the workers were working under the supervision of the factory owner, the applicant herein, in the basement of the factory, where a grinder machine was installed to cut plastic lighters used for lighting beedis and cigarettes. It is stated by the injured Sanjeev that plastic granules (Dana) were prepared from plastic lighters with the help of machines installed on the upper floor in the factory, and these lighters, brought in the form of plastic lighter scrap, were put in the grinder machine to break into pieces.

6. It is alleged that many plastic gas lighters were brought to the factory filled with gas, and the applicant was informed about the same, many times, that the presence of gas-filled lighters posed a risk of fire, blast, or other accidents, and also that the workers were not provided with any protective equipment.

7. The learned counsel for the applicant submits that the applicant is in custody since 05.10.2023. He submits that the during the course of investigation, the investigating agency has

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obtained all necessary information. He submits that the investigation against the applicant is complete, chargesheet has been filed and the applicant is no longer required to be kept in further incarceration.

8. He submits that the applicant can't be held liable for the alleged incident since the incident occurred only because of the rash and negligent act of the labours.

9. He submits that on the date of the alleged incident the applicant was not even present at the factory and all the work was left under the supervision of a person namely, Chand Khan, who is stated to be a supplier of raw material to the applicant's factory. He submits that the applicant does not even know as to what happened or the exact reason as to how the alleged blast took place.

10. He submits that safety precautions were taken by the applicant in the factory and the applicant had installed two fire extinguishers and the signage prohibiting any smoking in the factory premises.

11. He submits that there are thirty-five prosecution witnesses to be examined and the trial is likely to take considerable amount of time and the applicant cannot be kept in custody for an indefinite period before the trial is concluded.

12. He submits that the invocation of offence against the applicant under Section 304 of the IPC, is erroneous as the applicant could not have any intention or knowledge of the likelihood of the accident/incident. He submits that the offence at the highest be termed rash and negligent act punishable under Section 304A of the IPC, which is bailable in nature. He submits that apart from Sections 304 of the IPC and Section 9 B of the Explosives Act 1884, all the Sections, that the applicant is

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charge-sheeted, are bailable in nature.

13. He submits that the averments made in the FIR, contents of the charge sheet, statements of the witnesses, and other material placed on record do not satisfy the ingredients of Section 285/337/304/427 of the IPC and 9 (B) of the Explosives Act 1884.

14. He submits that there is no cogent, credible, direct evidence placed on record to connect the applicant with the alleged offense and to establish a prima facie case against the applicant.

15. The Additional Public Prosecutor for the State has opposed the bail application. He submits that the allegations against the applicant are grave in nature, since he is stated to be the owner of factory and all the work was done under his supervision.

16. He submits that the applicant was fully aware of the fact that cutting of plastic lighters used for burning bidis and cigarettes was dangerous and could cause fire/blast or any other untoward incident, however, he did not take any security measures to avoid any such untoward incident which resulted in loss of three human life and grievous injuries to others injured persons.

17. He submits that during the course investigation, no safety equipment was found in the factory i.e. fire extinguisher, fire alarm system, etc.

18. He submits that the applicant did not have any license or permission regarding such work. He submits that the machines which were used in the factory were also inspected and it was found that no safety guard was provided on the belt and pulley of the grinding machine. Also there was no proper ventilation in the premises which led to accumulation of flammable gases. There

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was lack of supervision and training, which was found to be the reason for the alleged incident.

19. He submits that the applicant was running industrial activities, without taking prior permissions from the concerned departments, like GST department, DPCC licence, permission from factory and labour department, No Objection from the Fire Department, ESI registration etc.

20. I have heard learned counsel for the parties.

21. Section 304 of the IPC reads as under:

“304. Punishment for culpable homicide not amounting to murder:—Whoever commits culpable homicide not amounting to murder shall be punished with 1 [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

22. From the bare perusal of the above Section, it makes it clear that the Section is in two parts. The first part applies where the accused causes bodily injury to the victim with **intention** to cause death; or with **intention** to cause such bodily injury as the same is likely to cause death. On the other hand, the second part applies when death is caused by an act with the **knowledge** that such act is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause

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death.

23. For conviction under Section 304 of IPC, the following ingredients must be satisfied:

- i. the death of the person must have been caused;
- ii. such death must have been caused by the act of the accused by causing bodily injury;
- iii. there must be an **intention** on the part of the accused (a) to cause death; or (b) to cause such bodily injury which is likely to cause death; (Part I) or
- iv. there must be knowledge on the part of the accused that the bodily injury is such that it is likely to cause death (Part II).

24. To attract the provisions of Section 304 IPC, there has to be knowledge that the act of accused would likely cause death. For instance, in a case of a person driving, under the influence of alcohol, in an inebriated state, the same can in given facts give rise to an inference that the person so driving had the knowledge that his act was likely to cause death. The fact situation in the case at hand is not comparable to a case of drunken driving in an inebriated state.

25. Although the state has contended the fact there were no precautions taken by the applicant and the applicant did not possess proper permissions for running a factory of such nature, as alleged, the same in the opinion of this Court would be a matter of trial.

26. The allegations and the investigation carried out at this stage points towards the rash and negligent act on part of the applicant. There may have been some infraction of regulatory

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requirements to run a factory, but that from the investigation carried thus far does not point towards the facts that the applicant had knowledge or intention that the fire is imminent and would result in death/injuries to the workers.

27. The Hon'ble Apex Court in the case of ***Sushil Ansal v. State, (2014) 6 SCC 173***, that is the case also known as 'Uphaar Tragedy case' wherein a fire broke out in a cinema hall resulting in a large number of casualties, has held as under :

“198.2. What converts a case apparently falling under Section 304-A into one under Section 304 Part II IPC is the knowledge that the act is likely to cause death.

xxx xxx xxx

199. The decision in Alister Anthony Pareira case [Alister Anthony Pareira v. State of Maharashtra, (2012) 2 SCC 648 : (2012) 1 SCC (Civ) 848 : (2012) 1 SCC (Cri) 953] or that delivered in Sanjeev Nanda case [State v. Sanjeev Nanda, (2012) 8 SCC 450 : (2012) 4 SCC (Civ) 487 : (2013) 3 SCC (Cri) 899] does not lay down any specific test for determining whether the accused had the knowledge that his act was likely to cause death. The decisions simply accept the proposition that drunken driving in an inebriated state, under the influence of alcohol would give rise to an inference that the person so driving had the knowledge that his act was likely to cause death. The fact situation in the case at hand is not comparable to a case of drunken driving in an inebriated state. The case at hand is more akin on facts to Keshub Mahindra case [Keshub Mahindra v. State of M.P., (1996) 6 SCC 129 : 1996 SCC (Cri) 1124] where this Court was dealing with the question whether a case under Section 304 Part II IPC was made out against the management of Union Carbide India Ltd., whose negligence had resulted in highly toxic MIC gas escaping from the plant at Bhopal. The trial court in that case had framed a charge against the management of the Company for commission of an offence under Section 304 Part II IPC, which was upheld by the High Court in revision. This Court, however, set aside the order framing the charge under Section 304 Part II and directed that charges be framed under Section 304-A IPC instead....”

(emphasis supplied)

28. It is not the case of the prosecution that such accidents had happened on earlier occasions also and despite that the applicant ignored and thus he had the knowledge that the act was likely to

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cause death.

29. Considering the aforesaid facts and circumstances, also the fact that the investigation is complete, the charge sheet has already been filed, the trial is likely to take considerable amount of time and the fact the accused is in judicial custody since 05.10.2023, I am satisfied that the applicant has made out a case for the grant of regular bail.

30. The applicant is, therefore, directed to be released on bail on furnishing a bail bond for a sum of ₹25,000/- with two sureties of the like amount, subject to the satisfaction of learned Trial Court / Duty Metropolitan Magistrate on the following conditions:

- a. The applicant shall upon his release provide his mobile number to the concerned IO / SHO and keep it switched on at all times;
- b. The applicant shall appear before the learned Trial Court on every date of hearing and shall not take any unwarranted adjournment;
- c. The applicant shall not in any manner contact the complainant/victim or any of the witnesses;
- d. The applicant shall upon his release furnish a proof of residence where he shall reside upon his release to the concerned IO/SHO, and in the event of change in address he shall intimate the same to the concerned IO/SHO.

31. In the event of there being any FIR/DD Entry/complaint lodged against the accused/applicant, it would be open to the State to seek redressal by filing an appropriate application for cancellation of bail.

32. It is clarified that the observations made in the present

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judgement/order are for the purpose of deciding the present bail application, and should not influence the outcome of the Trial. The said observations should not be taken as an expression of opinion on the merits of the case.

33. The present application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

MAY 15, 2024