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

+ **BAIL APPLN. 1202/2024**

ASHISH

..... Petitioner

Through: Mr. Prince Arora, Mr. Badal
Chataniya and Mr. Sanchit Arora, Advocates.

versus

STATE THROUGH SHO

..... Respondent

Through: Ms. Shubhi Gupta, APP for the State
with SI Arvind Kumar, PS: Bara Hindu Rao.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

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16.05.2024

1. This application has been preferred on behalf of the applicant Ashish S/o Mohar Singh, under Section 439 Cr.P.C. seeking regular bail in case FIR No.293/2022 dated 26.12.2022 under Section 308 IPC registered at PS: Bara Hindu Rao. Subsequently, Sections 323/149/34 IPC were added in the charge sheet and Section 307 IPC was added in place of Section 308 IPC in the supplementary charge sheet.
2. Status report has been filed on behalf of the State. Case of the prosecution is that on 25.12.2022, information was received vide DD No. 11A from Hindu Rao Hospital regarding a medico-legal case, pursuant to which ASI Harender reached the hospital and obtained the MLCs of Anas, Ashish and Salman, who were injured in the alleged incident. Salman sustained multiple injuries and was admitted in Trauma Centre in RML Hospital for further treatment and was declared unfit for statement by the Doctors. The other two injured were not available at their residences and in



the absence of any eye-witness to the incident, present case was registered on the basis of DD No. 11A.

3. It is stated in the Status Report that during the course of investigation, statements of injured Anas, Ashish and Salman as well as other witnesses were recorded under Section 161 Cr.P.C., where they stated that on 25.12.2022, co-accused Akash called Salman at the petrol pump near Sabzi Mandi Mortuary as they had some issues to settle. Salman along with his 5-6 friends i.e. injured Ashish Gupta and Anas, witness Faisal, Sahil and Guddu reached the petrol pump at around 10:45 PM to speak to Akash. Akash and his friends were already present at the spot and after some heated arguments, a scuffle broke out between them. During the scuffle, co-accused Akash bought a stick (*Danda*) from a nearby shop and Abhijeet had an iron rod in his hand while applicant had a knife. Abhijeet hit Salman on his head with the iron rod while Akash hit with a *Danda* and applicant attacked Salman with a knife. It is also stated that co-accused Deepak, Vishal and Harsh caught hold of Salman and Ashish Gupta and gave beatings to them and Anas, resulting in injuries to all the three victims. MLCs of Anas and Ashish Gupta were obtained, wherein nature of injuries was opined to be 'simple'. MLC of Salman reflected that the injuries were 'grievous'. Subsequent opinion of the Doctors from RML hospital, given on the direction of the Trial Court was: "*lacerated wound may be possible/possibility by sharp object*" and nature of the injury was "*Pt. had (2) Sutured cut laceration wounds over the Right and Left Frontal region. CT was S/O (L) frontal EHD with extensor to right.*"

4. It is further stated that on completion of investigation, charge sheet was filed against Akash, Harsh @ Kaka and Deepak under Sections



308/323/149/34 IPC and first supplementary charge sheet was filed against Abhijeet under Sections 308/323/149/34 IPC. All the co-accused namely, Akash, Harsh @ Kaka, Deepak and Abhijeet have been granted bail by the Trial Court. Applicant could not be arrested as his address was unknown. He filed an anticipatory bail before the Trial Court, which was dismissed vide order dated 01.06.2023. Anticipatory bail application filed thereafter before this Court was also dismissed vide order dated 06.12.2023. Applicant surrendered before the Trial Court on 18.12.2023 and was formally arrested and remanded to Police custody for one day. After completion of investigation, second supplementary charge sheet has been filed and on the basis of evidence received so far including opinion on the injuries inflicted on Salman, Section 307 IPC has been added in the charge sheet in place of Section 308 IPC against the applicant and other co-accused persons.

5. Learned counsel for the applicant submits that applicant is innocent and has been falsely implicated in the present case. Applicant was not named in the FIR but was wrongly roped in on the basis of a statement given by Salman on 02.01.2023 in RML Hospital, days after the alleged incident on 25.12.2022. The first version of the incident came on 26.12.2022 when statement of Ashish Gupta was recorded under Section 161 Cr.P.C., wherein the accused Akash and Deepak for causing injuries to Salman and no role was attributed to the applicant. Statements of Salman, Anas and Faisal came later and as an afterthought, allegations were levelled against the applicant also. In the statement of Ashish Gupta, there is no reference to a knife and none has been recovered till date, which falsifies and belies the case of the prosecution that applicant stabbed Salman with a knife on his head.



6. It is argued that the Trial Court while rejecting the bail observed that Salman, Anas and Faisal are unanimous in their statements that applicant had inflicted injuries on the head of Salman. This finding overlooks the fact that none of the three have stated that the applicant inflicted injury on the head of Salman with a knife and Salman also did not state that applicant assaulted him on his head with a knife. As per the MLC, there are two wounds on the left frontal part of the head of Salman and going by the prosecution case, if Abhijeet and Akash had hit Salman, it is obvious that there was no third assailant. Moreover, both Abhijeet and Akash have been granted bail by the Trial Court. Reliance on the report of RML Hospital to show that the injury on Salman was with a sharp object, is misplaced. Salman was initially admitted to Hindu Rao Hospital where the wound was stitched, which is evident from the Discharge Summary and therefore, it was medically impossible for the Doctor at RML Hospital to opine after several days that the wound was caused by a sharp object.

7. It is argued that investigation is complete and charge sheet and supplementary charge sheets have been filed and further custody of the applicant is thus not required. Applicant is in judicial custody for the past 4 months. He is a young boy aged 24 years, with no criminal antecedents. Reliance is placed on the judgment of a Co-ordinate Bench of this Court in ***K. Rajapandian v. State of NCT of Delhi, 2022 SCC OnLine Del 1315***, where the FIR was registered under Sections 279/338 IPC and subsequently Sections 307/308 IPC were invoked and the Court after referring to the judgment of the Supreme Court in ***Sanjay Chandra v. Central Bureau of Investigation, 2011 SCC OnLine SC 1502*** and other judicial precedents on grant of bail and considering the fact that investigation was complete and



charge sheet had been filed, granted bail. Court observed that the applicant was languishing in jail for a period of two months and whether he had the intention to commit the offence or the ingredients of Sections 307/308 IPC were made out, would be best left to be decided by the Trial Court at the appropriate stage. Reliance is also placed on the judgment of this Court in ***Rohit Sharma v. State NCT of Delhi, 2021 SCC OnLine Del 4490***, where in similar circumstances, regular bail was granted to the applicant, alleged to have committed offences under Sections 186/353/307 IPC, observing that evidence had been collected and charge sheet had been filed and thus no purpose would be achieved in keeping the applicant in custody.

8. Ms. Shubhi Gupta, learned APP for the State opposes the bail application on the ground that allegations against the applicant are serious. Relying on the status report and the MLC of Salman, it is urged that injuries on the body of Salman are grievous. Discharge summary reflects lacerated wounds by a sharp object on his head. On the directions of the Trial Court, fresh medical opinion was sought from RML Hospital and the Doctors opined that lacerated wounds were possible due to a sharp object, which clearly in this case was the knife with which the applicant had attacked Salman. It is argued that it is true that in the statement under Section 161 Cr.P.C., Ashish had not referred to any knife in the context of the applicant, however, Salman and Anas, the injured persons and Faisal, the eye-witness have in their statements under Section 161 Cr.P.C. while describing the incident stated that applicant assaulted Salman with a knife on his head. Charge sheet has been filed but charges are yet to be framed and material witnesses will be examined only thereafter. It is submitted that the chances



of the applicant tampering with material evidence cannot be completely ruled out, if released on bail.

9. Heard learned counsel for the applicant and learned APP for the State.

10. Parameters required to be kept in mind by the Court while considering an application for bail have been elucidated by Courts from time to time and pithily put are: (a) whether there is a *prima facie* or reasonable ground in support of the offence alleged against the accused; (b) nature and gravity of the accusation; (c) severity of the punishment in case of conviction; (d) danger of the accused absconding or fleeing, if released on bail; (e) character, behaviour, position and standing of the accused; (f) likelihood of the offence being repeated; (g) reasonable apprehension of witnesses being influenced; and (h) danger of justice being thwarted by grant of bail. In ***Sanjay Chandra (supra)***, the Supreme Court observed as follows:-

“40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.”

11. It needs no reiteration that the object of bail is to secure the presence of the accused during trial and ensure that he is available to receive the sentence, if convicted. In ***K. Rajapandian (supra)***, this Court has observed that possibility of evidence being tampered or witnesses being influenced is an important factor along with gravity of the offence, but no single circumstance in isolation should be considered as a universal phenomenon



justifying grant or refusal of bail. Object of bail is neither punitive nor preventative.

12. Charge sheet and supplementary charge sheets have been filed in the present case and investigation is complete. The knife i.e. alleged weapon of offence has not been recovered till date. Applicant has pointed out contradictions in the testimonies of Ashish Gupta, Salman, Anas and Faisal to the extent of assault with a knife as also the improbability of an assault by a third person with a knife, premised on the argument that only two wounds were found on Salman's head and as per prosecution's own case, Abhijeet had hit Salman with an iron rod and Akash with a *danda*. In any event, these are issues which can only be decided by the Trial Court, after evidence is led. Abhijeet and Akash have been enlarged on bail by the Trial Court. Applicant has been in judicial custody for over 4 months and his antecedents are clean. No purpose will be achieved by keeping him in custody, once the investigation is concluded and supplementary charge sheets have been filed. Till date, even charges have not been framed and the trial is not likely to conclude soon. Apprehension expressed by the learned APP that witnesses may be influenced, can be taken care of by imposing stringent conditions.

13. Considering the aforesaid facts and circumstances, the application is allowed and it is directed that the applicant be released on regular bail, subject to his furnishing a personal bond in the sum of Rs.50,000/- with two sureties of the like amount to the satisfaction of the learned Trial Court and further subject to the following conditions:

- (1) Applicant will not leave the country without prior permission of the Trial Court;
- (2) He shall furnish his permanent residential address to the IO and



shall intimate the Court by way of an affidavit and the IO regarding any change in the residential address;

- (3) He shall provide his mobile number to the IO concerned and keep the same active at all times and the mobile number shall not be changed without prior intimation to the IO;
- (4) He shall appear before the Trial Court, as and when the matter is taken up for hearing;
- (5) He shall not indulge in any criminal activity directly or indirectly and will make no attempt to contact the victims and/or other witnesses associated with the case; and
- (6) He shall contact the IO once in a month on a video call.

14. Court is apprised by the IO that while permanent residence of the applicant is in Ghaziabad but he also has a house in the same locality where the victims reside and there are chances that he may attempt to intimidate the victims and witnesses. Responding to this, counsel for the applicant, on instructions from his *paikar*, who is present in Court, undertakes that the applicant shall not enter into the locality in which the victims reside, during the pendency of the trial and will not contact them in any manner whatsoever. The undertaking is taken on record.

15. It is made clear that nothing stated in this order shall tantamount to expression of an opinion on merits of the case.

16. Application stands disposed of.

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

JYOTI SINGH, J

MAY 16, 2024/shivam