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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2019/2023**
MD UBESH ALIAS SHAHRUKH

..... Petitioner

Through: Mr.Himal Akhtar, Mr.Imran
Kamal, Mr.Mohd. Javed &
Mr.Junaid Salmani, Advs.

versus

STATE

..... Respondent

Through: Mr.Aman Usman, APP.
Insp. Karmveer Singh, PS
Dayalpur.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
30.01.2024

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1. This application has been filed under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 (in short, 'C.r.P.C') praying for the applicant to be released on Bail in FIR No. 68/2019 registered at Police Station: Dayalpur, North-East District, Delhi.

2. It is the case of the prosecution that on 28.02.2019, a PCR call regarding a scuffle was received, which was recorded as DD No. 4A. Constable Kaushal reached the spot of the incident and found that the injured had been shifted to the GTB Hospital. When the Police reached the GTB Hospital, the opinion of the Doctor was obtained, who, as per the MLC, stated that this was a case of physical assault and the patient was fit to give the statement. The victim, however, did



not give her statement, allegedly due to a bandaged face and pain.

3. It is further stated that though the IO tried to search for an eye-witness, none was found. It was only on 03.03.2019, that the grandson of the injured gave a statement to the IO wherein he stated that on the intervening night of 27-28.02.2019, he was sleeping on the first floor of the house and around mid-night he heard some noise. When he woke up and went to the rooftop he saw his neighbors, including the applicant herein, hitting his grandmother with some pointed article on her face, the applicant's mother was slapping, while his cousins and the alleged co-accused Saddam @ Ata Ur Rehman were holding his grandmother. When he raised the alarm, the accused persons ran away while threatening to kill her at the next chance. Based on the statement of the grandson of the injured, Sections 308/341/506/34 of the IPC were invoked against the accused persons. As the victim died on 07.03.2019, charge under Section 308 of the IPC was replaced by Section 302 of the IPC.

4. It is further alleged that on 08.03.2019, the applicant was taken to the spot where he recovered a broken piece of *Danda* around 1.5 feet long, which he claimed to have used to cause injuries to the deceased. The postmortem report, for the cause of death, stated as under:-

“Septicemic shock consequent upon ante mortem injury to head as a result of blunt force impact.”

5. It was opined by the Doctor that the injury sustained by the deceased is *ante mortem* in nature and is sufficient to cause death in



the ordinary course of nature.

6. The learned counsel for the applicant submits that the applicant has been in custody since 07.03.2019. He was released on Bail on the recommendations of the High Powered Committee, Delhi (in short, 'HPC') on 24.05.2021, and duly surrendered on 26.04.2023. There is no allegation of the applicant having misused the indulgence so granted. He submits that in the meantime, the trial has proceeded and 13 witnesses out of the 16 witnesses have been examined. Only the Investigating Officer(s) remain to be examined.

7. The learned counsel for the petitioner submits that as per the case of the prosecution itself, the victim, though she was fit to make a statement, did not give her statement to the police implicating the applicant as an assaulter. He submits that it is only later that the applicant was sought to be implicated on the basis of the statement of the grandson of the victim, which was recorded almost four days after the alleged incident. He further submits that the alleged recovery of the *Danda* at the behest of the applicant is also doubtful. He submits that the conduct of the applicant while he was released on Interim Bail under the HPC guidelines is also to be considered.

8. On the other hand, the learned APP for the State submits that the trial is at the fag end. He submits that there is a recovery of the weapon/*Danda* made on the basis of a disclosure statement made by the applicant. He submits that the offence committed by the applicant is also grave and, therefore, he should not be released on Bail.

9. I have considered the submissions made by the learned counsels for the parties.



10. As is evident from the above, the major witnesses in the trial have already been examined. The applicant was taken into custody on 07.03.2019 and was later released on Bail on 24.05.2021. He remained on Bail till 26.04.2023, and there is no allegation of him having misused the indulgence so granted. Though it is submitted that the trial is towards its fag end, it is still likely to take some time. The nature of the allegations against the applicant has also been perused. There are no other previous criminal cases recorded against the applicant and he has clean antecedents.

11. Keeping in view the above facts and circumstances, the applicant is directed to be released on Regular Bail in FIR No. 68/2019 registered with Police Station: Dayalpur, North-East District, Delhi on furnishing a personal bond in the sum of Rs.25,000/- with one surety of the like amount, subject to the satisfaction of the learned Trial Court, and further subject to the following conditions:

- i. The Applicant will not leave the country without the prior permission of the learned Trial Court.
- ii. The Applicant shall provide his permanent address to the learned Trial Court. The applicant shall also intimate the Court, by way of an affidavit, and to the IO regarding any change in his 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 shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the applicant in



a working condition at all times and shall not be switched off or changed by him without prior intimation to the learned Trial Court and the IO concerned. The mobile location be kept on at all times.

- v. The Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact, directly or indirectly, with any of the prosecution witnesses.

12. Needless to state, any observation touching upon the merits of the case is purely for the purposes of deciding the question of grant of Bail and shall not be construed as an expression on the merits of the matter.

13. The application is disposed of in the above terms.

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

NAVIN CHAWLA, J

JANUARY 30, 2024/rv/AS

Click here to check corrigendum, if any