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

+ **BAIL APPLN. 1523/2024**

PUSHPENDER RAJAK

.....Petitioner

Through: Mr. Rajbir Singh Sagar, Mr. Rajiv
Pratap Singh, Advs.

versus

THE STATE (GOVT OF NCT OF DELHI)Respondent

Through: Ms. Priyanka Dala, APP for State and
SI Dharmendra, PS Paharganj and SI
Arvingg, PS GTB Enclave.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

01.08.2024

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1. The present application has been filed on behalf of the petitioner seeking regular bail in case FIR No. 508/2023 dated 21.09.2023 under Section 304/34 IPC registered at PS GTB Enclave, Delhi.
2. The facts in brief are that on 20.09.2023 a telephonic information was received at PS Seemapuri from PS GTB Enclave recorded vide DD No. 70A regarding death of one person namely Hafiz S/o Habibul aged 20 years.
3. During enquiry it was revealed that deceased had suffered injuries on the intervening night of 19.09.2023 and 20.09.2023 at around 11:30 P.M. After injuries, he was taken to the home and next day morning his family brought him to GTB Hospital where the doctor declared him dead.
4. A case under Section 304/34 IPC was registered. During investigation, it was found that on 19.09.2023 at about 11:30 P.M. some people gave



beating to deceased Hafiz on being suspicious of having stolen a mobile phone. The CCTV footage reveals that some persons were giving beating to the deceased.

5. On 22.09.2023, the statement of eyewitness Shabana was recorded wherein she stated that on 19.09.2023 while she was returning home at around 11:35 P.M. and reached near Chintamani Chowk on her scooty she saw certain people beating a person with leg and fists blows. The witness identified victim as Hafiz. Ms. Shabana shouted on which the assailants ran away from the spot. Ms. Shabana informed Rakesh @ Chinki about the beating being given to Hafiz for conveying information to his family.
6. The witness stated that she took Hafiz in an auto however on the way his father Habibulmet and she handed over the injured to his father. The witness stated that she can identify the persons who had beaten the victim. The witness went to the spot along with the IO and identified Ramesh as one of the assailants. On this Ramesh was arrested.
7. Subsequently, on the basis of the disclosure statement of said Ramesh co-accused persons were arrested. The present petitioner along with co-accused Gopal Chaurasia and Abhishek Kumar were identified by Ms. Shabana in the police station on 23.09.2023.
8. Ms. Kalawati in her statement on 22.09.2023 merely stated that her phone was snatched by a boy on which she shouted. Ms. Kalawati stated that boy was caught and was given beating by certain people.
9. Learned APP for the State submits that on the basis of the statement of Ramesh present petitioner was arrested and he was duly identified by eyewitness Shabana. The CCTV footage was seen. Learned APP



submits that in CCTV footage only it was seen that certain persons were giving beating to the deceased. However, they cannot be identified.

10. Learned counsel for the petitioner submits that the only evidence against the petitioner is in the form of disclosure statement of co-accused Ramesh. Learned counsel submits that identification in the police station is of no evidentiary value. Learned counsel submits that even TIP was not conducted for the reasons best known to the Investigation Officer. It has been submitted that accused is in custody since 23.09.2023 and therefore he may be released on bail.
11. It has been submitted that the charge-sheet in the present case has already been filed.
12. The principles underlying the grant of bail in serious cases are *inter alia* held in **Kalyan Chandra Sarkar v. Rajesh Rajan** (2004) 7 SCC 528, **Brij Nandan Jaiswal v. Munna** (2009) 1 SCC 678. as well as in **RanjitsingBrahmajeetsing Sharma v. State of Maharashtra**, (2005) 5 SCC 294. It is a settled proposition that rule is bail and not the jail.
13. In **Kalyan Chandra Sarkar** (supra), it has been held as under:

11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to



consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] and Puran v. Rambilas [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] .)

14. In **RanjitsingBrahmajeetsing Sharma (supra)**, it has been held as under:

45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

15. The detention during the course of the trial cannot be punitive detention. The purpose of keeping the person in custody. The criteria for grant of bail in such cases are gravity of the offence, antecedents of the offender and the possibility of the accused fleeing away from the cause of justice.
16. The investigation in this case has been completed. It is a matter of record that the incident is of 19.09.2023 and the statement of eye witness Shabana was recorded on 22.09.2023. It is surprising that the eye witness though saw the offence being committed but did not inform the police. The eye witness went to the police station only after three days. TIP was not conducted for the reasons best known to the



Investigation Officer and this fact has to be appreciated by the Ld. Trial Court during the course of proceedings. The court is not required to meticulously appreciate the facts.

17. I consider that in the totality of the facts and circumstances of the case, the petitioner is entitled to regular bail on furnishing a personal bond in the sum of Rs.20,000/- with one surety of the like amount to the satisfaction of the concerned court/MM/CMM/Duty MM with the following conditions:
- a. the Petitioner shall cooperate in the investigation and appear before the Investigating Officer of the case as and when required;
 - b. the Petitioner shall under no circumstances leave India without prior permission of the Court concerned;
 - c. the Petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
 - d. the Petitioner shall provide his/her mobile number(s) to the Investigating Officer and keep it operational at all times;
 - e. In case of change of residential address and/or mobile number, the Petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.
18. The application stands disposed of.

DINESH KUMAR SHARMA, J

AUGUST 1, 2024/AR..