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

+ **BAIL APPLN. 1601/2024, CRL.M.A. 25481/2024**
MANISH ALIAS TUNTUN

.....Petitioner

Through: Mr. Akshay Bhandari, Mr. Kushal Kumar, Mr. Janak Raj Ambavat, Ms. Megha Sarla, Mr. Anmol Sachdeva, Advs.

versus

STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Mr. Mukesh Kumar, APP for the State with SI Kamal Kant, PS Kapashera
Mr. Ajay Bansal, Ms. Veena Bansal, Mr. Gaurav Yadav, Mr. Sourav Jindal, Advs. for complainant

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

07.10.2024

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CRL.M.A. 25482/2024(Exemption)

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

BAIL APPLN. 1601/2024

3. The present application has been filed under Section 493 r/w Section 482 Cr.P.C. seeking regular bail in FIR no. 58/2023 under Sections 304/34 IPC registered at PS: Kapashera.
4. Brief facts stated by the prosecution is that on 16.01.2023, the complainant / deceased, Mr. Amit Kashyap, was beaten by Gaurav Vats @ Dada and his friends, Manish @ Tuntun (petitioner), Raja, Deepak, Ravinder and Gunga Bahra on the suspicion of theft with wooden dandas



and belt. The deceased was admitted on 19.01.2023 due to his deteriorating health in Safdarjung Hospital. The information was received at PS Kapashera vide DD no. 17A. The statement of the deceased was recorded in the hospital on 21.01.2023 wherein he alleged that Gaurav Vats @ Dada, Gunga Bahra , Manish @ Tuntun (petitioner), Raja, Deepak and 6-7 other persons had beaten him with danda and belt. On such statement, the FIR under Section 308/34 IPC was lodged. During the course of investigation, the petitioner and other co-accused persons were arrested, the wooden dandas and belt were recovered on 21.01.2023, Mr. Amit Kashyap died on 22.01.2024 due to pneumonia and thereafter Section 304 IPC was added to the FIR. On completion of the investigation, the charge-sheet was filed.

5. The prosecution also conducted further investigation with regard to the pen drive provided by the wife of the deceased in the Court. As per the video, the above-mentioned arrested accused persons were seen beating the deceased, Mr. Amit Kashyap after stripping down his clothes. It was clearly seen that the accused persons were abusing the deceased and beating him with belt and dandas by taking turns. The transcription of the recording was taken wherein the roles of the accused were defined. During the course of investigation, mobile phone of witness Monu Kashyap was seized which also contained audio/video recordings of the deceased, Mr. Amit Kashyap. The prosecution has also alleged that after this incident, the accused persons had also given merciless beatings to another person, Mr. Ajit.
6. The status report is not on record. Learned APP for the State has provided the hard copy of the status report. However, the status report be



brought on record.

7. Learned APP for the State has submitted that the accused persons had given merciless beating to the deceased after pouring water on him during the extreme cold weather. Learned APP also submits that there is another involvement of the present petitioner in case FIR no. 15/2017 under Section 356/379/411/414 IPC registered at PS: Kapashera. Learned APP has vehemently opposed the bail application.
8. Learned counsel for the petitioner submits that the present incident as alleged is of 16.01.2023. It has been submitted that after the incident, the deceased was taken to home and was admitted to the hospital on 19.01.2023. Learned counsel submits that the FIR was lodged only on 21.01.2023 after delay of five days. It has further been submitted that subsequently Mr. Amit Kashyap died on 22.01.2024 thus Section 304 IPC was added. Learned counsel submits that as per the death report summary, the deceased died due to the pneumonia and it was no way connected to the alleged incident. Learned counsel submits that therefore, on the face of it, Section 304 IPC is not invoked. Learned counsel further submits that there is no finding in the death summary that any or all of the injuries cumulatively were sufficient to cause the death. It has further been submitted that PW-2, Dr. Abhimanyu Khutell, also in his testimony before the Court, had stated that the injuries cannot cause pneumonia in the ordinary course of nature and the pneumonia could be pre-existing or could be caused during hospitalization as well. Learned counsel has further submitted that since the injured had not died due to any of the injuries alleged caused by the accused persons, therefore, the petitioner may be admitted to bail.



9. Learned APP for the State has submitted that another eye witness, Mr. Avinash Kumar Tiwari, is yet to be examined and therefore, if the petitioner is released on bail, he may threaten the witness or tamper with the case. Learned counsel for the complainant has also opposed the bail application on the ground that the allegations against the accused are serious in nature.
10. The criteria for grant of bail in heinous offences are very well settled. The consideration to be taken into account while grant of regular bail are the nature and gravity of the respondent's accusations and the antecedents of the applicant, possibility of the Applicant to flee from justice, the possibility of threatening and intimidating the witnesses and other circumstances. However, it is a settled rule that the Court at the stage of the bail cannot hold mini trial and has to see only the *prima facie* case as produced by the prosecution. 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.
11. In the present case, the incident is of 16.01.2023. The deceased was admittedly taken to home after the injuries. The record also reveals even deceased was not inclined to be taken to the hospital as he was afraid of the case being registered against him. It is also a matter of record that the deceased was taken to the hospital only on 19.01.2023 and the FIR was



registered only on 21.01.2023. The FIR was initially lodged under Section 308 IPC. The death summary has placed on the record indicates that on clinical examination, the deceased was found to have acute retention of urine for which a per urethral Catheterization was done, It also indicates that on 21.01.2023, the deceased / patient developed mild respiratory distress, which was managed low flow oxygen inhalation via mask intermittently that lead him to shifting him to another ward. The death summary further indicates that the general condition of the patient worsened and his pulse and other vitals were unrecordable and was declared dead at 3:40 PM on 22.01.2023. PW-2 was examined in the Court and subsequently stated in the cross-examination that the fracture of S I vertebrae cannot cause pneumonia in ordinary course of nature. The Doctor further voluntarily stated that pneumonia can be pre-existing or it can be caused during hospitalization as well.

12.The plea of the learned APP that the bail application is to be rejected as the Doctor, PW-2, in his cross-examination has stated that it was possible the patient might have caught respiratory infection during hospitalization and in that case pneumonia could be caused to the patient due to vulnerable position of the patient as his immunity was low at that time, cannot be accepted for rejecting the bail application as it is a matter of trial and final appreciation of evidence by the Trial Court. It is a settled proposition that there has to direct nexus between the injuries caused and the cause of the death. The case is at the stage of the trial. Any further discussion on this may prejudice the parties.

13.As per nominal roll dated 09.09.2024, the petitioner is in custody since 21.01.2023. Regarding the another involvement, learned counsel for the



petitioner has submitted that he was not being summoned in that case. It is also a matter of record that in the status report also, no mention of the earlier involvement of the petitioner has been made. The mere apprehension and without any substantive reasons that the accused / petitioner if released on bail, may threaten or intimidate the witnesses without any substantive reason cannot be the ground for denial of bail.

14. In the peculiar facts and circumstances, the petitioner is admitted to regular bail upon furnishing a personal bond of Rs. 20,000/- with one surety of the like amount to the satisfaction of the concerned learned trial court, subject to the verification of address and subject to the following further conditions:

- a) the petitioner shall regularly appear before the Court as and when the matter is taken up for hearing;
- b) the petitioner shall attend the trial regularly and shall not threat, intimidate or tamper with any other prosecution witness;
- c) the petitioner shall remain available on the address, to be given to the IO and shall not leave the country without the permission of the learned Trial Court;
- d) the petitioner shall further remain in touch telephonically with police officer in-charge on his mobile number on the first Monday of every month;
- 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.
- f) No expression made herein shall tantamount to be an expression on the merits of the case.



15. With the above directions, the application along with pending applications stands disposed of.

16. A copy of this order be sent to concerned Jail Superintendent for information and necessary compliance.

DINESH KUMAR SHARMA, J

OCTOBER 7, 2024/JN/DG..