



2024:DHC:3795



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Judgment Delivered on 23.04.2024*+ **BAIL APPLN. 2471/2023****BIJENDER@JUDI THROUGH PAIROKAR RANI.....** PetitionerThrough: Mr. Abhinav Thagath, Mr. Arun
Wighmal and Ms. Shivangini Gupta,
Advs.

versus

THE STATE NCT OF DELHI

..... Respondent

Through: Mr Ritesh Kumar Bahri, APP for the
State.**CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J (ORAL)**

1. The present petition has been filed seeking regular bail in connection with FIR No.0108/2018 under Sections 302/323/34 IPC registered at PS Govindpuri.
2. The case of the prosecution in brief is that the petitioner and his co-accused Ajay @ Lala had caused eve-teasing to the wife of complainant which was objected to by the complainant. On this the accused allegedly left the spot, came back with knives and caused injuries to the wife of the complainant resulting in her death as well as injury to the complainant. It is



further the case of the prosecution that both the accused persons were overpowered by the complainant at the spot with the help of the crowd and handed over to police.

3. Learned counsel for the petitioner submits that all the public witnesses have been examined and none of them supported the case of the prosecution except the complainant/PW-11. He submits that PW-7, PW-12, PW-13, PW-14, PW-17 and PW-20 have been cited by the prosecution as witnesses who witnessed the incident. The witnesses PW-7 and PW-20 stated that they cannot identify the accused persons, whereas, PW-12, PW-13 and PW-14 stated that they had not witnessed the incident. However, PW-17 stated that he could not see the face of the persons who were held by the crowd.

4. Insofar as the testimony of the complainant/PW-11 is concerned, the submission of the learned counsel is that PW-11, in his cross-examination, has admitted that accused were shown to him at the police station, their names were also told to him by the police and that is how he came to know about the names of the accused.

5. He submits that PW-16 was a witness who sells knives and as per the case of the prosecution the accused persons had purchased the knives used in the commission of offence from him. The said witnesses stated that he had not sold any knife in Budh Bazar at Ravidas Marg, Govindpuri, the place of incident, to any boy.

6. It is further contended that the knife was allegedly recovered from the garbage dump which is highly improbable as the accused persons, as per prosecution version, were arrested at the spot and there was no occasion for them to have dumped the knives in the garbage dump. He submits that there is no expert evidence with regard to chance prints or blood samples lifted



from the recovered knives.

7. It is further contended that after his arrest the petitioner was released twice pursuant to the HPC guidelines but every time he surrendered on time and did not misuse the liberty so granted to him. It is further the contention of the learned counsel for the petitioner that the petitioner has clean antecedents with no previous involvements. He, therefore, urges the Court to enlarge the petitioner on bail.

8. *Per contra*, learned APP for the State has argued on the lines of the status report. He submits that the complainant/PW-11 has supported the case of the prosecution, who is an injured witness. He further submits that the accused persons were apprehended from the spot.

9. The bail is also opposed in the status report on the ground that the offence committed is heinous and serious in nature. Further, the public witnesses became hostile while the accused persons were in judicial custody and in case, they are granted bail they may even try to influence the official witnesses.

10. He further contends that the petitioner has previous involvements inasmuch as he is involved in 05 cases.

11. In rejoinder, learned counsel for the petitioner submits that as regards 02 FIRs, i.e., FIR No.0113/2013 under Sections 323/341/354/354A(1)/34 IPC registered at PS Ambedkar Nagar and FIR No.0247/2013 under Sections 323/341/34 IPC registered at PS Ambedkar Nagar, the status of the FIRs is untraceable and the petitioner does not have any knowledge of the said FIRs being registered against him.

12. As regards FIR No.0630/2016 registered at PS Ambedkar Nagar is concerned, the contention of the learned counsel is that the said FIR was



under Section 324 IPC and the petitioner was acquitted in the said case. Similarly, the petitioner was also acquitted in case FIR No.0208/2022 under Sections 25/54/59 of the Arms Act registered at PS Amar Colony. In case FIR No.0039/2018 under Sections 379/411/34 IPC registered at PS R. K. Puram, the contention of the learned counsel is that the petitioner is on bail and the charges have not yet been framed in the said case.

13. I have heard the learned counsel for the petitioner, as well as, the learned APP for the State and have perused the material on record.

14. A bird's eye view of the testimony of public witnesses viz., PW-7, PW-12, PW-13, PW-14, PW-17 and PW-20 shows that they have not supported the case of the prosecution and have turned hostile. While, PW-12, PW-13 and PW-14 stated that they have not witnessed the incident, the other witnesses i.e., PW-7, PW-17 and PW-20 stated that they cannot identify the accused persons.

15. Likewise, PW-16, has also not supported the case of the prosecution. The said witness is a knife seller and was cited by the prosecution to prove that he had sold big knives to the petitioner/accused at Budh Bazar. However, in his testimony, he has stated that he does not sell big knives nor does he sell articles in the weekly Budh Bazar of Ravidas Marg, Govindpuri, New Delhi, which is the alleged place of incident. He also stated that he had not sold any knife in Budh Bazar to any boy.

16. A perusal of testimony of the complainant/PW-11 also shows that the said witness has admitted that accused were shown to him at the police station and their names were also told to him by the police and that is how he came to know about the names of the accused, which aspect has the potential of probalizing the defence of false implication to an extent.



However, the probative value and the credibility of the witnesses will be seen by the learned Trial Court during the course of trial but the circumstances discussed hereinabove tilts the balance in favour of the petitioner for granting of bail.

17. Apart from the merits of the case, it cannot be overlooked that the petitioner is in custody for approximately 05 years and 01 month and there is no possibility of the trial being concluded any time soon, inasmuch as out of 32 witnesses cited by the prosecution, about 20 witnesses have been examined till date. At this stage, there is also a presumption of innocence in favour of the petitioner and in the given circumstance the petitioner cannot be kept in custody to await the outcome of trial, the conclusion of which is likely to take long time.

18. As regards the contention of the learned APP that 05 other cases are registered against the present petitioner, the status of 02 cases is untraceable and the contention of the petitioner's counsel is that the petitioner does not have any knowledge of the said two FIRs i.e. FIR No.0113/2013 registered at PS Ambedkar Nagar and FIR No.0247/2013 registered at PS Ambedkar Nagar.

19. In 02 cases registered *vide* FIR No. 0630/2016 registered at PS Ambedkar Nagar and FIR No.0208/2022 registered at PS Amar Colony, the petitioner has already been acquitted.

20. In FIR No.0039/2018 registered at PS R. K. Puram, the petitioner is stated to be on bail and the charges have not been framed. Further, involvement of the applicant in other cases cannot be the sole ground for



rejection of bail.¹

21. Further, the petitioner was released on interim bail twice pursuant to the recommendation of the HPC guidelines, which liberty was never misused by the petitioner, therefore, the petitioner does not appear to be a flight risk.

22. Insofar as the apprehension expressed in the status report that the petitioner may try to influence the official witnesses, the same can be allayed by imposing appropriate strict conditions.

23. Considering the above discussed circumstances in entirety, I am of the view that the petitioner is entitled to grant of regular bail pending trial. Accordingly, the petitioner is admitted to bail subject to his furnishing a Personal Bond in the sum of Rs. 10,000/- with one surety of like amount, subject to the satisfaction of the Trial Court/Duty Magistrate/CMM, further subject to the following conditions.

- a) Petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- b) The petitioner shall furnish to the IO/SHO PS: Govindpuri, a cell-phone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- c) The petitioner shall report to the IO/SHO P.S: Govindpuri on first Saturday of every month at 11.00 A.M. and he shall be released by the IO/SHO P.S: Govindpuri not later than 01.00 P.M.



d) The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to the complainant or any of the prosecution witnesses or other persons acquainted with the facts of the case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.

24. It is made clear that the observations made herein are only for the purpose of considering the bail application and the same shall not be deemed to be an expression of opinion on the merits of the case.

25. The petition stands disposed of.

26. Copy of the order be forwarded to the concerned Jail Superintendent for necessary information and compliance.

27. Order be uploaded on the website of this Court.

28. Order *dasti* under the signatures of the Court Master.

VIKAS MAHAJAN, J.

APRIL 23, 2024

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