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

+ BAIL APPLN. 1759/2024

PANKAJ KUMAR

.....Petitioner

Through: Mr. Kanhaiya Singhal, Mr. Ujwal
Ghai, Ms. Vani Singhal, Mr.
Prasanna, Mr. Ajay Kumar, Advs.

versus

STATE NCT OF DELHI

.....Respondent

Through: Ms. Priyanka Dalal, APP for State
and Insp. Chetan Singh, PS Khyala,
Delhi and IO/Insp. Rajni Chopra.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

01.10.2024

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1. The present bail application has been filed under Section 439 Cr.P.C. seeking regular bail on behalf of petitioner in FIR No. 236/2016 under Section 302/341/452/324/120B/34 IPC PS Khyala.
2. Briefly stating the facts are that on 19.05.2016 on receipt of DD No. 52A, IO/SI Surta Nand reached at the sport RZ-B/105, Nar Singh Garden, Delhi, wherein the blood was found scattered on the spot. The victim was stated to have been taken to GGSG Hospital. IO reached at the Hospital and collected MLC No. 46892/2016 on injured Deepak, who succumbed to the injuries later on. In the MLC it was stated that there was stab injury by sharp object on 19.05.2016 at about 10:45 PM. IO came back to the spot and recorded the statement of Ms. Sonia (PW-9). On the statement of Ms. Sonia, the FIR was lodged.



3. Ms. Sonia Singh, aged 22, a resident of Narsing Garden, Khyala, Delhi, in her FIR has alleged that on May 19, 2016, around 10 PM her brother, Deepak, was assaulted by Uday Kumar, his brother Pankaj, their relative Rajesh, and their friend Raju Kabaddi. Sonia stated that Uday Kumar, who runs a cloth shop nearby, along with his brothers and associates, regularly engaged in unruly behaviour. Following a prior argument between her family and Uday's group, the same individuals—Uday, Pankaj, Rajesh, and Raju Kabaddi—assaulted Deepak. During the altercation, Raju stabbed Deepak in the thigh. When Deepak fled home, the assailants followed and attacked him inside the house as well. Sonia called the police, and her brother was hospitalized. Based on Sonia's statement and medical evidence, the police registered a case under IPC sections 341, 324, 452, and 34 at P.S Khayala was registered. Bloodstains were found at the scene, and further investigation was initiated.
4. Sh. Kanhaiya Singhal, learned counsel for the petitioner submits that the petitioner is in custody for the last more than 06 years. It has been submitted that it is a case of 2016 and the prosecution has yet not been able to complete its trial. Learned counsel submits that out of 48 witnesses only 13 witnesses have been examined. Learned counsel submits that therefore in view of the prolonged incarceration the petitioner is entitled to bail on this ground only. Learned counsel has referred that in the recent past, the Apex Court has taken note of the fact that if there is delay taking place in the trial, the accused persons cannot be allowed to be remained in jail for an indefinite period. Learned counsel also submits that no delay can be attributed to the



petitioner.

5. Sh. Kanhaiya Singhal, learned counsel for the petitioner has further read the testimony of PW-9 and submits that there are several contradictions in the testimony of PW-9. Learned counsel submits that PW-9 herself has contradicted to the case projected by the prosecution. Learned counsel submits that the injuries were not on the vital part of the body. It has been submitted that at the best even if the case of the prosecution is taken at the gospel truth, the conviction cannot be recorded under Section 302 IPC. Learned counsel submits that though the minute examination of the witnesses is not permissible at this stage but the Court is required to see the prima facie case.
6. Learned APP for the State has vehemently opposed the bail application on the ground that the allegation against the accused are serious in nature. Learned APP submits that PW-9 has fully supported the case of the prosecution. Learned APP submits that the contradictions which has surfaced in the cross-examination does not go to the root of the case. Learned APP has further submitted that one of the eye witness Manoj Kumar has yet not been examined and he is not found available. Learned APP submits that efforts are being made to trace the witness.
7. The principles underlying the grant of bail in serious cases are *inter alia* held by the Hon'ble Supreme Court in ***Kalyan Chandra Sarkar v. Rajesh Rajan*** (2004) 7 SCC 528 :
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.

8. The present case pertains to the murder of injured Deepak. The allegations are that the petitioner along with co-accused persons went to the house of the injured and there the injured was assaulted with knife, danda and brick. The allegations are also that the bullet fire was also made. The Court at the stage of bail is not required to meticulously examine the facts. The contradictions which have appeared, if any, in the testimony of the prosecution witness are required to be appreciated at the stage of final trial. One of the important witness PW Manoj Kumar is yet to be examined. These are the serious cases and merely on the ground of period of incarceration the accused persons cannot be admitted to bail. However, at the same time, the Court is conscious of the fact that the liberty is a fundamental right and the Courts are required to conduct the trial as expeditiously as possible.
9. Since the present FIR is of the year of 2016 and only 13 witnesses out



of 48 witnesses have been examined. Learned Trial Court is directed to give the block dates for recording the testimony of prosecution witnesses and all endeavour be made to conclude the trial within the period of 08 months. However, I consider that the case for bail is not made out. Hence, the present bail application stands dismissed.

DINESH KUMAR SHARMA, J

OCTOBER 1, 2024/AR/DG..