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

+ **BAIL APPLN. 1768/2024**

NAUSHAD

.....Petitioner

Through: Mohd. Shamikh & Mr. Absar Ahmad,
Advocates.

versus

STATE OF DELHI

.....Respondent

Through: Ms. Priyanka Dalal, APP for the
State.

Insp. Prabanshu, SHO/Shastri Park

Insp. Sukhram Pal, SHO/New
Usmanpur.

SI Suresh Kumar, PS New Usmanpur.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

19.07.2024

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1. The present application under Section 439 Cr.P.C has been filed by the Petitioner for grant of regular bail in FIR No.601/2022 dated 01.06.2022, registered at Police Station New Usmanpur, Delhi for offences punishable under Sections 304 IPC.

2. Though the FIR was initially registered for the offence punishable under Section 304 IPC but it was later converted into Section 302 IPC in the chargesheet.

3. The facts of the case reveal that on 01.06.2022, on receipt of GD No. 132A, SI Dev Kumar, who was on Emergency Duty, alongwith H.C. Ranbir No.1696/NE reached at the place of incident as mentioned in the PCR Call where he did not find any eye witness of the incident and he was informed that one Javed has been taken to Jag Parvesh Chandra Hospital, Shastri Park and, thereafter, he along with accompanied staff went to said Hospital. On



reaching there he received an MLC No.21274/22 of Javed aged 33 years wherein it was mentioned by the Casualty Medical Officer that there is a physical assault by 2 neighbours and the patient was declared brought dead. During interrogation, the eye witness Nadeem (brother-in-law of the deceased) stated that on 31/05/2022 at about 08:00 PM he had gone to throw garbage near CNG Pump, Shastri Park, where his brother-in-Law Javed (deceased) was present with one Kamru. He saw that Kamru took his brother-in-law Javed to Naushad and Kamru started shouting towards the deceased that he has stolen some plastic component of a cable belonging to the accused. Thereafter, both of them started beating Javed mercilessly and gave fist blow and both fled away from the spot. The injured Javed was brought to the Hospital, where he was declared brought dead. The present FIR has been registered against the Petitioner on the complaint of Nadeem. The Petitioner was arrested on 01.06.2022.

4. The Autopsy Surgeon in the autopsy report has opined that the cause of death is Haemorrhagic shock as a result of antemortem injury to abdomen produced by blunt force impact. The autopsy report also mentions that on opening of abdominal cavity about 2500 ml of blood was found present and about 200 gms of blood clots were present and the Spleen measuring 280 gms was found enlarged in size and multiple parenchymal deep lacerations were present over whole surface of spleen.

5. The death of the deceased seems to have occurred due to blows in the abdomen which resulted in rupture of spleen of the deceased.

6. It is stated by the learned Counsel for the Petitioner that there was no prior intention of the Petitioner to kill the deceased. He states that the death has occurred due to Haemorrhagic shock as a result of antemortem injury to



abdomen produced by blunt force impact. He states that the autopsy reports reveal that the Spleen of the deceased was found to measuring 280 gms and was enlarged in size and multiple parenchymal deep lacerations were present over whole surface of spleen. He states that the Petitioner is in custody since 01.06.2022 and all the public witnesses have been examined. He, therefore, states that since all the public witnesses have been examined, no useful purpose would be served in keeping the Petitioner in custody.

7. *Per contra*, learned APP for the State, opposes the present Bail Application by contending that the Petitioner is accused of a heinous crime. She further states that even while the Petitioner was in custody, he has tried to threaten PW-2. She states that the contention of the learned Counsel for the Petitioner that there was no prior intention of the Petitioner to kill the deceased cannot be accepted because of the fact that the Petitioner along with the co-accused thrashed the deceased mercilessly only with the intention to kill him. She, therefore, states that the Petitioner ought not to be released on bail.

8. Heard the Counsel for the Petitioner and the learned APP for the State and perused the material on record.

9. The parameters for grant of bail have been succinctly laid down by the Apex Court in several judgments. In Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496, the Supreme Court laid down the parameters for granting or refusing the grant of bail which are as under:

“i. whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

ii. nature and gravity of the accusation;



iii. severity of the punishment in the event of conviction;

iv. Danger of the accused absconding or fleeing, if released on bail;

v. character, behavior, means, position and standing of the accused;

vi. Likelihood of the offence being repeated;

vii. Reasonable apprehension of the witnesses being influenced; and

viii. Danger, of course, of justice being thwarted by grant of bail.”

10. The dispute seems to be trivial in nature where the accused suspected that the deceased was responsible for stealing of some plastic component over a cable. Though the offence is serious in nature which is an offence punishable under Section 302 IPC but the incident occurred due to a fight between the accused and the deceased over stealing of some plastic component over a cable. No weapon has been used in the offence. The spleen of the deceased was enlarged and got ruptured. Out of 14 witnesses, 10 witnesses have been examined. All public witnesses have been examined and only official witnesses are left to be examined.

11. Though the learned APP for the State points out to the deposition of PW-2 that she was threatened, the fact remains that PW-2 has been examined and no public witnesses are left to be examined and, therefore, at this juncture, the threat of influencing the public witnesses is not there.

12. Taking into account the facts and circumstances of the case and the



parameters for grant of bail laid down by the Apex Court, this Court is inclined to enlarge the Petitioner on regular bail, subject to the Petitioner furnishing a personal bond in the sum of Rs.50,000/- with two sureties of the like amount to the satisfaction of the Trial Court/Magistrate/Duty Magistrate and further subject to the following conditions:

- a. The Petitioner shall report to the concerned Police Station every Wednesday at 10:30 AM and should be released after completing all the formalities within an hour.
- b. The Petitioner is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
- c. The Petitioner shall not leave NCT of Delhi without prior permission of the concerned Court.
- d. The Petitioner shall appear before the Trial Court on each and every date of hearing.
- e. Violation of any of these conditions will result in the cancellation of the bail given to the Petitioner.

13. The application is disposed of.

14. All the observations made by this Court in the present Order is only limited for the purpose of grant of bail to the Petitioner and the same is not an opinion on the merits of the case and the Trial Court is directed to come to its own conclusion depending upon the weight of evidence produced before it.

SUBRAMONIUM PRASAD, J

JULY 19, 2024/S. Zakir