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

+ **BAIL APPLN. 2672/2023**

RAHUL @ SURJEET

..... Petitioner

Through: Mr. Ramesh Gupta, Sr. Adv. with Ms. M. Begum, Mr. Shailendra Singh, Mr. K.R. Dogra, Mr. Ishaan Jain, Mr. Harsh Choudhary, Mr. S. Khan and Mr. Abhishek Sharma, Advs.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Raghuvinder Verma, APP for State with Insp. Ram Kishan (I.O) and Insp. K.B. Jha (SHO)/Sagarpur.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

04.04.2024

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1. The present petition has been filed under Section 439 CrPC seeking regular bail in connection with FIR No.321/2019 under Section 302 IPC registered at Police Station Sagarpur.
2. The case of the prosecution is that on 13.07.2019, the police received a call from a woman that someone had injured her husband. When the police reached the spot of the incident, they found that blood was lying on the floor and the injured had been taken to the hospital. From the spot the IO went to the hospital where doctor declared the victim as brought dead. Neither at the spot nor in the hospital the IO found any eye-witnesses.
3. Thereafter, the IO came back to the spot and from there he sent a *rukka* to the police station on the basis of which the FIR came to be registered initially under Section 302 IPC.



4. The learned Senior Counsel for the petitioner invites the attention of the Court to the FIR to contend that the DD entry is of 13.07.2019 at 09:46 pm, whereas the *rukka* was sent on 14.07.2019 at around 01:40 a.m and till that time no eye-witness was available with the police as is apparent from the reading of the FIR.

5. He further invites the attention of the Court to the MLC to contend that it is the ASI Sanjay who had brought the victim to the hospital and not the wife of the victim. He submits that the wife of the deceased came subsequent to the registration of the FIR and thereafter, her statement was recorded.

6. The learned Senior Counsel for the petitioner submits that the sole eye witness i.e., wife of the deceased has been examined as PW-1 and referring to the testimony of the said witness, he contends that no role has been attributed to the present petitioner, in as much as, the said witness has categorically stated that injury with the aid of scissor was given to the deceased by co-accused Joginder @ Jogga.

7. He further submits that the present petitioner has only been identified as one of the persons, who were present on the place of occurrence, and no specific role has been assigned to him. He points out to the observation of the learned Trial Court in the testimony of PW-1 to the effect that the said witness does not know the name of the present petitioner.

8. He submits that the name of the petitioner surfaced first during the disclosure statement of the co-accused and the identification of the petitioner was not fixed before the filing of the charge sheet.

9. He submits that the petitioner had refused the TIP and there was no occasion for the witness PW-1 to identify the petitioner during the



investigation, therefore, the identification of the petitioner done for the first time in the Court does not have any evidentiary value.

10. According to the learned Senior Counsel, the petitioner was arrested on 28.08.2019 in the present case and the prosecution has cited as many as 27 witnesses out of which only one witness has been examined till date and said witness i.e., PW-1 was examined only on 12.01.2023 i.e., more than one year ago, which shows that the trial is going to be a protracted one. He further submits that no other eye witness remains to be examined.

11. He submits that in so far as other cases stated to be registered against the present petitioner are concerned, the same are of the year 2019 or prior thereto.

12. He submits that the petitioner is a permanent resident of Delhi and has a family, therefore, he is not a flight risk. He, therefore, urges the Court to release the petitioner on bail.

13. *Per contra*, the learned APP for the State has argued on the lines of the Status Report. He submits that there are as many as 10 cases registered against the present petitioner. He, therefore, urges the Court not to grant bail to the petitioner.

14. 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.

15. Undisputedly, the probative value of the evidence, as well as, the credibility and reliability of the witness i.e., PW-1 will be considered by the learned Trial Court at an appropriate stage. However, this Court cannot be unmindful of the fact that the sole eye witness, i.e., PW-1 has not ascribed any specific role to the petitioner. Further, she has identified the present petitioner only in the court for the first time. There appears to be some



substance in the contention of the learned senior counsel for the petitioner that the evidence of a mere identification for the first time in the court from its very nature is inherently of a weak character.

16. That apart there are other factors which are to be borne in mind while considering the bail application.

17. The petitioner is in custody since 28.07.2019 and out of the 27 witnesses only 01 witness has been examined till date. Evidently, the conclusion of trial is nowhere in sight.

18. Insofar as other cases stated to be registered against the petitioner are concerned, the present status of the same is not available with the IO. However, on instructions, it has been stated by the learned senior counsel for the petitioner that the petitioner has either been acquitted or is on bail in all such cases. In any case, all the said cases are of the year 2019 or prior thereto. It is trite law that involvement in other cases cannot be the sole ground to deny bail.¹

19. The purpose of keeping the accused in custody is only to ensure his presence during trial and to receive punishment in the event he is found guilty. Such presence can be ensured by imposing proper conditions.

20. The sole eye-witness has already been examined, therefore, there is no apprehension that the petitioner will influence the witnesses in case he is enlarged on bail.

21. The petitioner is stated to be a permanent resident of Delhi and also has a family, therefore, the petitioner does not appear to be a flight risk.

22. Considering the aforesaid circumstances in entirety, this Court is of the opinion that the present petitioner is entitled to regular bail.

¹ *Prabhakar Tiwari vs. State of Uttar Pradesh*: (2020) 11 SCC 648



Accordingly, the petitioner is enlarged on regular bail subject to his furnishing a Personal Bond in the sum of Rs. 25,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
 - b) Petitioner shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
 - c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.
23. The petition stands disposed of.
 24. It is made clear that nothing stated above is to be construed as an expression of opinion on the merits of the case.
 25. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.
 26. Order *dasti* under signatures of the Court Master.
 27. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

APRIL 4, 2024/dss/MK