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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1911/2024**

NAFEES

.....Petitioner

Through: Mr. Nagendra Singh and Mr. Sanchit
Sehgal, Advocates.

versus

THE STATE OF DELHI

.....Respondent

Through: Mr. Laksh Khanna, APP for State
with Insp. Sumit Kumar, P.S. Moti
Nagar.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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27.09.2024

1. By way of present bail application, the applicant seeks regular bail in FIR No. 0384/2022 registered under Sections 304/34 IPC at P.S. Moti Nagar, Delhi.
2. Learned counsel for the applicant submits that applicant is in custody since 24.05.2022 and seeks bail as all the material witnesses including the alleged eye witnesses stand examined and only police witnesses are remaining to be examined. Learned counsel further submits that the FIR came to be registered after a delay of 2 days of incident, under Sections 308/34 IPC. Subsequently, the injured person was hospitalised and upon his discharge, the injured person's condition was opined as stable as per the discharge summary. Thereafter, the injured person was taken by his brother to their native village in Amethi, where he died of uncertain cause and there is no post-mortem report available on record. He also submits that even as per the prosecution case, the altercation had ensued between the injured



person and one co-accused, *Mohd. Istkar* and that the role of the applicant is that he subsequently joined the altercation.

3. Learned APP, on the other hand, has vehemently opposed the bail application by contending that as per the statements of the eye witnesses, the presence of the applicant has been established on the spot of the incident. Attention is brought to the statement of the eye witnesses, namely *Pradeep Kumar*, *Ram Avtar* and *Mohd. Asif*, who have clearly stated that they were present near the spot and had seen the applicant alongwith the aforesaid co-accused, giving beatings to the injured/deceased. He further submits that though the beatings were given by hand, the nature of the injuries suffered by the injured/deceased were noted in the admission summary, wherein the injured was also advised for mechanical ventilation as well as referral to Higher Centre, Safdarjung Hospital for ICU/Ventilation. It is also submitted that there is neither any motive nor any post-mortem opinion as after being discharged, the injured/deceased was taken to his native place where he died and was cremated by the local villagers. Lastly, it is submitted that the incident was also captured in the CCTV camera which forms part of the charge-sheet. Furthermore, it is submitted that though the charge-sheet was filed under Sections 304/34 IPC, the charge was framed under Sections 304-II/34 IPC.

4. I have heard the learned counsels for the parties and perused the records.

5. The alleged incident has taken place on 12.05.2022 at around 10.30 PM. During the trial, the prosecution has examined the eye witness, *Pradeep Kumar* (PW1) who, on seeing the CCTV footage, stated that it was the deceased who had started the altercation with the co-accused, *Mohd. Istkar*,



whereafter the latter also gave beatings to the injured/deceased. He also submits that while the scuffle was going on, the co-accused was joined by the present applicant who thereafter also participated in giving beatings to the injured/deceased. The testimony of other two witnesses is cumulative to the deposition of *Pradeep Kumar*. The bail application is accompanied by the MLC of the deceased conducted at Acharyashree Bhikshu Govt. Hospital as well as his discharge summary. The deceased was admitted on the intervening night of 12.05.2022 and 13.05.2022, from where he was shifted to Safdarjung Hospital and discharged on 18.05.2022 whereas the injured expired on 19.05.2022. In the said discharge summary prepared at Safdarjung Hospital, the condition of the injured/deceased was noted as stable and improved. The injured/deceased was further advised to come for review in Neurosurgery after two weeks.

6. Considering the totality of the facts and circumstances and the fact that the applicant is in custody since 24.05.2022 and all the eye witnesses stand examined, this Court deems it fit to release the applicant on regular bail, subject to him furnishing a personal bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/concerned Court/Duty J.M. and subject to the following further conditions :-

- i) The applicant shall not leave the NCR without prior permission of the concerned Court.
- ii) The applicant shall provide his mobile number to the Investigating Officer on which he will remain available during the pendency of the trial.
- iii) In case of change of residential address or contact details, the applicant shall promptly inform the same to the concerned Investigating



Officer as well as to the concerned Court.

iv) The applicant shall not directly/indirectly try to get in touch with the complainant or any other prosecution witnesses or tamper with the evidence.

v) The applicant shall regularly appear before the concerned Court during the pendency of the trial.

7. The bail application is disposed of in the above terms.

8. Copy of the order be communicated to the concerned Jail Superintendent for information and necessary compliance.

9. Needless to state that the observations made hereinabove are only for the purpose of disposal of present bail application and which shall not have a bearing on the trial of the case.

MANOJ KUMAR OHRI, J

SEPTEMBER 27, 2024

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