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

+ **BAIL APPLN. 3051/2023**

ADIL

..... Petitioner

Through: **Mr.Sunil Choudhary, Adv.**
(through VC)

versus

STATE NCT OF DELHI

..... Respondent

Through: **Mr.Aman Usman, APP with SI**
Sandeep

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

05.01.2024

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1. This application has been filed by the Applicant seeking bail in Sessions Case No. 51/2021, registered on FIR No. 218/2020, Police Station: Desh Bandhu Gupta Road, Delhi, under Sections 304/342/34 of the Indian Penal Code, 1860 (in short, 'IPC').

2. The learned counsel for the Applicant, drawing reference to the contents of the FIR, states that it is the case of the prosecution that the deceased-Mr.Shadab, along with the informant-Faheem, went on a scooty to meet someone at Mukherjee Market. Mr.Shadab had told Faheem that he had to return some money to some person there. Mr.Shadab went up to the first floor of the shop belonging to Mr.Shahabuddin, who is a co-accused in the case. As he did not come down for a considerable period and suddenly Faheem saw two-three people running out of the premises, he felt something amiss. He called his employer-Furkan, and along with him, went up to the premises on



the first floor, where he found the deceased unconscious. The FIR further states that the deceased bore injuries. It states that instead of taking the injured to a hospital to receive medical treatment, Faheem and Furkan called a family member of the deceased-Mr.Naseem, who again, instead of taking the deceased to a hospital for medical treatment, took the deceased to his home. It was only on the next day, when the position of the deceased deteriorated further, that he was taken to the RML Hospital. Accordingly, the FIR was registered under Sections 323/342/34 of the IPC. Later, as the deceased died, Section 304 of IPC was also added in place of Section 323 IPC.

3. The learned counsel for the Applicant submits that the above course of action is not normal inasmuch as, if the deceased was indeed suffering from an injury, he would have been rushed to the hospital immediately upon being found in that condition. He submits that subsequently, FSL report and a Medical Opinion has been filed by the prosecution before the learned Trial Court, which show that the deceased has not died due to any injury suffered by him but because of the conduct of the accused persons.

4. The learned APP has handed over a copy of the Status Report, which states that a charge-sheet was filed on 05.12.2020, but after the filing of the charge-sheet, FSL report was received and, therefore, a supplementary charge-sheet has been filed before the learned Trial Court, bringing on record the FSL report, which opines as under:

“On chemical, microscopic, TLC, GC-MS & GC-MS examination, metallic poisons, ethyl and methyl alcohol, cyanide, phosphide, alkaloids, barbiturates, tranquillizers and pesticides could not be detected in exhibits.”



5. He also hands over a copy of the 'Subsequent Opinion' from the Department of Forensic Medicine and Toxicology, Vardhman Mahavir Medical College and Safdarjung Hospital, New Delhi, which opines as under:

***"OPINION:** After going through the FSL, Histo-pathology & Post-mortem report, I am of the opinion that "Death in this case is due to aspiration of gastric content and its sequelae".*

6. I have considered the submissions made as also the medical report/opinion. From the contents of the FIR, the FSL report and the Medical Opinion, and also considering that the Applicant has been in judicial custody since 08.09.2020, I am of the opinion that the Applicant has been able to make out a case for grant of bail.

7. Keeping in view the above facts and circumstances, the Applicant is directed to be released on bail subject to his furnishing a personal bond in the sum of Rs.25,000/-, with one local surety of the like amount to the satisfaction of the Ld. Trial Court, and further subject to the following conditions:

- i. The Applicant will not leave the NCT without the prior permission of the Ld. Trial Court.
- ii. The Applicant shall provide his permanent address to the Ld. Trial Court. The Applicant shall also intimate the Court, by way of an affidavit, and to the IO, regarding any change in his residential address.
- iii. The Applicant shall appear before the Ld. Trial Court as and when the matter is taken up for hearing.



iv. The Applicant shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the Applicant in a working condition at all times and shall not be switched off or changed by him without prior intimation to the Ld. Trial Court and the IO concerned. The mobile location be kept on at all times.

v. The Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact, directly or indirectly, with any of the prosecution witnesses.

8. Needless to state, any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on the merits of the matter.

9. The Bail Application is disposed of in the above terms.

10. Copy of this order be sent to the Jail Superintendent for information and necessary compliance.

NAVIN CHAWLA, J

JANUARY 5, 2024/ns/AS

Click here to check corrigendum, if any