



\$~8

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

+ **BAIL APPLN. 3222/2023**

SALMAN @ RIYAZUDIN

..... Petitioner

Through: Mr. Naveen Kohar, Mr. Aakash
Chauhan, Advs.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Ritesh Kumar Bahri, APP for
State with W/SI Damini and Insp.
Baljit Singh PS Vikas Puri
Dr. Aman Gaur, Adv. for victim.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

03.04.2024

%

1. The present petition has been filed under Section 439 CrPC seeking regular bail in connection with FIR No.326/20/16 under Sections 302/307/452/427/147/148/149/34/120B IPC registered at PS Vikas Puri.
2. The case of the prosecution in brief is that on the intervening night of 23.03.2016 and 24.03.2016 an incident of scuffle took place between two groups in which husband of the complainant got injured and subsequently while being treated he succumbed to his injuries. Another person namely, Vikas Sethi also received injuries in the said scuffle. This led to the registration of aforesaid FIR.
3. The learned counsel for the petitioner submits that the incident is of 24.03.2016 and by 28.03.2016 all 09 accused persons seen in the CCTV



footage were arrested. Out of the said arrested accused persons PC remand of two accused was taken on 28.03.2016 to find out the remaining accused persons. On the basis of a disclosure made by the said accused persons, 02 other persons were arraigned as an accused namely Behruddin and Potli. He submits that the petitioner was not named by any of the said accused persons in their disclosure statement.

4. The learned counsel submits that the only incriminating circumstance against the present petitioner is the extra judicial confession made by the petitioner on 01.04.2016 before PW31 namely, Govind. The said witness has also not supported the case of prosecution and further, the extra judicial confession is a weak type of evidence.

5. He submits that the petitioner is not visible in the CCTV footage of alleged incident. In so far as refusal of TIP by the petitioner is concerned, the submission is that the petitioner refused his TIP as his photograph was taken by the IO and shown to the public witnesses before filing of the chargesheet and this fact is borne out from the chargesheet.

6. As regards identification of the present petitioner by the 04 witnesses viz. PW1, PW4, PW20 and PW28 in the Court, the submission of the learned counsel is that the said witnesses have identified the accused persons only in general terms and have stated that the persons in the Court were present at the place of incident. None of the witnesses have ascribed any specific role to the present petitioner.

7. As regards the recovery of *danda* at the instance of the present petitioner, the submission of the learned counsel is that the said *danda* was never sent to the FSL unlike other offence weapons which were recovered at the instance of co-accused.



8. He further submits that the petitioner was released twice on interim bail on the recommendations of the HPC and he never misuse the liberty so granted to him.

9. On the other hand, the learned APP has argued on the lines of the status report. Additionally, he submits that the testimony of PW31 Govind is not in the form of an extra judicial confession. The said witness over heard the petitioner claiming to be involved in the murder of Dr. Pankaj Narang.

10. He submits that the 04 witnesses have clearly identified the present accused. He, therefore, urges the Court to reject the bail of the present petitioner.

11. The learned counsel appearing on behalf of the complainant expresses apprehension that PW-31 Govind is still to be cross-examined by other co-accused and in case the petitioner is enlarged on bail, he may try to influence the said witnesses.

12. I have heard the learned counsel for the petitioner, the learned APP for the State, as well as, the learned counsel for the complainant and have perused the record.

13. It is the case of the prosecution itself that only 09 accused persons were seen in the CCTV footage and on the basis of the disclosure statement of two accused persons whose PC remand was taken, 02 more accused were arraigned in the case namely, Behruddin and Potli. It is not the case of the prosecution that the present petitioner was named by any of the accused person in their disclosure statement.

14. Irrespective of the fact whether the statement of PW31 namely, Govind is in the form of extra judicial confession or not, the fact remains that the said witness has not supported the case of the prosecution to the



fullest. It is also not in dispute that the petitioner is not visible in the CCTV footage which captures part of the incident.

15. Insofar as the identification of the present accused by the 04 witnesses in the Court is concerned, the same is in very general terms. There is no specific role attributed to the present petitioner by any of the witnesses.

16. It is also not in dispute that the *danda* which was recovered from the present petitioner was never sent to FSL. The justification given by the learned APP is that the *danda* was not blood stained, therefore, the same was not sent to FSL. Be that as it may, the recovery is not a substantive piece of evidence and the evidentiary value of the same will have to be seen in the light of other evidence by the learned Trial Court during the trial.

17. A perusal of the nominal roll also shows that the petitioner is in custody since 02.04.2016 and has been incarcerated for almost 05 years 08 months approximately.

18. The prosecution has cited as many as 45 witnesses in the chargesheet and till date only 32 witnesses have been examined, therefore, the conclusion of trial is nowhere in sight in the near future.

19. On a query posed by the Court, the learned APP on the instructions from the IO, who is present in Court fairly states that the petitioner does not have criminal record.

20. The petitioner is stated to be resident of Delhi, therefore, he does not appear to be a flight risk. Insofar as the apprehension expressed by the learned counsel for the complainant is concerned, the same can be dispelled by imposing appropriate conditions.

21. Considering the aforesaid circumstances in entirety and further regard being had to the long incarceration of the petitioner, the petitioner has made



out a case for grant of regular bail. Accordingly, the petitioner is granted regular bail subject to his furnishing a Personal Bond in the sum of Rs.5,000/- 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 his mobile number to the IO concerned which shall be kept in working condition at all times and 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 complainant.
22. The petition stands disposed of.
23. It is made clear that nothing stated above is to be construed as an expression of opinion on the merits of the case.
24. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.
25. Order *dasti* under signatures of the Court Master.
26. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

APRIL 3, 2024

N.S. ASWAL