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

+ **BAIL APPLN. 3356/2023**

VINOD KUMAR @ BABLE

.....Petitioner

Through: Mr. Lakshay Yadav, Advocate.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Yudhvair Singh Chauhan, APP for
the State.

SI Mahendra Patel (D/6799), PS
Narela

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

03.09.2024

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1. The Petitioner has approached this Court in FIR No.120/2022 dated 28.02.2022, registered at Police Station Narela for offences punishable under Sections 307/452 IPC.

2. Material on record reveals that on 28.02.2022, information was received vide DD No.48A regarding an incident which took place at Bankner, Narela, Delhi stating that in a quarrel, one person has been stabbed. On getting the information, the police reached the spot where they were informed that the injured Sunil R/o H.No.835, Bankner, Narela has been taken to SRCH Hospital, Narela, Delhi where he was being treated vide MLC No.935/22 dated 28.02.2022. The Police took the statement of injured Sunil who stated that he was arrested in a double murder case and he was out on interim bail on 02.06.2021 and was working in MCD. He stated



that on 28.02.2022 at about 10:50 AM when he was sitting with his family members in his house, the Petitioner/accused under the influence of liquor came and inflicted injuries on his chest, abdomen and hand with a knife. He stated that he was somehow saved by his family members. The injured Sunil has specifically named the Petitioner who has inflicted injuries on him. It is stated that the Petitioner was caught on the spot along with the knife and was taken into custody forthwith. Thereafter, the present FIR was registered against the Petitioner.

3. The MLC report of the victim indicates that the injury inflicted upon him is grievous in nature. Chargesheet has been filed. Charges have been framed. Victim and the mother of the victim have been examined.

4. Learned Counsel appearing for the Petitioner states that two separate information were received i.e., vide DD No.47A and DD No.48A by independent persons and the said persons have not been brought as witnesses and the entire case of the prosecution revolves around the interested witnesses. He states that DDs do not state as to who was being stabbed because the person who has given the information would not have known the identity of the person being stabbed. He states that the Petitioner has been in custody from 28.02.2022. He states that the Petitioner has no criminal antecedents and therefore, the Petitioner should be enlarged on bail.

5. *Per contra*, learned APP appearing for the State draws attention of this Court to MLC report and submits that the victim has suffered three stabbed wound on the chest i.e., 2x1 cm, 3x1 cm and 2x1 cm. There were also transverse stab wound of 3x1 cm on the left upper **quadrant** reaching upto the peritoneum of the victim. He states that there were also other stabbed injuries on the other parts of the body of the victim. He states that



the intention of the Petitioner was, therefore, to kill the victim but somehow the victim managed to survive. He states that three more eye witnesses are yet to be examined and releasing the Petitioner at this juncture would result in threatening the witnesses and tampering with the evidence by the Petitioner. He states that the propensity of the Petitioner to repeat the offence also cannot be ruled out.

6. Heard learned Counsel appearing for the Parties and perused the material on record.

7. The parameters for grant of bail have been laid down by the Apex Court in several judgments. In Gurcharan Singh v. Delhi Administration, (1978) 1 SCC 118, the Apex Court has held as under:-

*“24. Section 439(1) CrPC of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike under Section 437(1) there is no ban imposed under Section 439(1), CrPC against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1) CrPC of the new Code. **The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) CrPC of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim***



and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out.” (emphasis supplied)

8. In Ram Govind Upadhayay v. Sudarshan Singh, (2001) 3 SCC 598, the Apex Court explained the factors to be considered for granting bail, wherein the Apex Court has held as under:-

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind



not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.” (emphasis supplied)

9. In Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr., 2010 (14) SCC 496, the Apex Court has observed as under:-

“9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:



(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, behaviour, 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.

[See State of U.P. v. Amarmani Tripathi [(2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] (SCC p. 31, para 18), Prahlad Singh Bhati v. NCT of Delhi [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] , and Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] .]

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal. In Masroor [(2009) 14 SCC 286 : (2010) 1 SCC (Cri) 1368] , a Division Bench of this Court, of which one of



*us (D.K. Jain, J.) was a member, observed as follows :
(SCC p. 290, para 13)*

“13. ... Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided, but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence.”

(See also State of Maharashtra v. Ritesh [(2001) 4 SCC 224 : 2001 SCC (Cri) 671] , Panchanan Mishra v. Digambar Mishra [(2005) 3 SCC 143 : 2005 SCC (Cri) 660] , Vijay Kumar v. Narendra [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195] and Anwari Begum v. Sher Mohammad [(2005) 7 SCC 326 : 2005 SCC (Cri) 1669] .)”

10. Applying the aforesaid parameters to the facts of the present case, it is seen that the Petitioner has been caught on the spot. There are eye witnesses who have seen the Petitioner stabbing the victim. The eye witnesses are yet to be examined, and therefore, the possibility of the Petitioner, if enlarged on bail, in threatening the witnesses and tampering with the evidence cannot be ruled out at this juncture. Even though the Petitioner has been in custody for about 02 years and 06 months, this Court is not inclined to grant bail to the Petitioner at this juncture.

11. However, looking at the fact that the Petitioner has been in custody for about 02 years and 06 months, the Trial Court is requested to examine the remaining three eye witnesses expeditiously, preferably within a period of 04 months from today.



12. With the observations, the bail application is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

SEPTEMBER 3, 2024

S. Zakir