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

+ **BAIL APPLN. 3402/2023**

KUNAL

..... Petitioner

Through: Mr. Sumit Kr. Rana, Advocate.

versus

STATE

..... Respondent

Through: Mr. Amit Ahlawat, APP for the State
with Insp. Jitender Rana, P.S. Civil
Lines.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

12.03.2024

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1. The present application under Section 439 of the Cr.P.C. seeks regular bail in case FIR No. 176/2019, under Sections 302/308/325/323/149 of the IPC, registered at P.S. Civil Lines.

2. The case of the prosecution is that on 23.10.2019, at about 11:00 PM, a PCR call *vide* DD No. 42A was received at P.S. Civil Lines that one lady has been assaulted with a sword at K Block, Majnu Ka Tila, Barat Ghar, Aruna Nagar. It is stated that on arriving at the spot, it was informed that the injured Smt. Somwati, W/o Ram Chander and her sons were shifted to Sushruta Trauma Centre and were found under treatment there. It is stated that statement of Smt. Somvati was recorded, who stated that on 23.10.2019 during day time, an argument took place between her sons Karan and Dharam with their neighbour Mahesh over the issue of Choley Kulchey



Rehari at near GTB Enclave Metro Station. It is alleged that later on, in the evening at about 10:30 PM, accused Mahesh alongwith Amarpal, his mother Geeta, Imran and Kunal (the present applicant) assaulted the complainant and her sons with sword and stick. Accordingly, the present FIR under Section 307/323/34 of the IPC was registered.

3. The aforesaid Smt. Somvati succumbed to her injuries sustained in the said assault during her treatment on 04.11.2019. Subsequently, Section 302 of the IPC was added in the present FIR.

4. Learned counsel for the applicant submits that the role *qua* the present applicant is of holding the deceased while the alleged sword blow was given by co-accused Amar Pal. It is pointed out that co-accused Imran, who has been assigned similar role by the complainant and other witnesses, has already been granted bail by a co-ordinate Bench of this Court *vide* judgment dated 16.08.2023 in BAIL APPLN. 2535/2022. It is submitted that the role of the present applicant is similar to the aforesaid co-accused. It is submitted that the applicant has earlier been released on interim bail and without misusing the liberty granted to him, has surrendered on time.

5. Learned APP for the State, on instructions, submits that absconded accused Amarpal has now been arrested and testimony of witnesses is being recorded *qua* him before the learned Trial Court.

6. Heard learned counsel for the parties and perused the record.

7. The co-ordinate Bench of this Court while granting bail to the co-accused Imran has made the following observations:

“13. The perusal of the FIR makes it clear that it was Amarpal who hit the deceased with a sword on her head. The reading of the FIR also reveals that in the meanwhile the present petitioner and Kunal were good friend of Amarpal also reach there and started beatings.



15. It is a settled proposition that the Court at the stage of bail cannot enter into the appreciation of the evidence and cannot hold mini trial. The learned Trial Court is yet to appreciate the evidence and this stage, the Court has only to see the prima facie case.

16. Prima facie, the fatal blow was done by Amarpal. The charge as to common objective can only be taken after the trial is over and appreciation of evidence. The detention during the trial cannot be impeditive measure. The accused is already in the custody for the last four years.”

8. The nominal roll received from the concerned Jail Superintendent reflects that as on 15.12.2023, he has undergone custody of 04 years 13 days. It further reflects that the applicant has no other previous involvement. It is further reflected that the present applicant has been released on interim bail for a period of 11.04.2023 to 02.05.2023.

9. In totality of the facts and circumstances of the case, the present application is allowed. The present applicant is directed to be released on bail on his furnishing a personal bond of Rs. 20,000/- with one surety of like amount subject to the satisfaction of learned Trial Court, further subject to the following conditions:

- i) The applicant shall under no circumstances leave India without prior permission of the concerned Court;
- ii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
- iii) The applicant shall provide his mobile number(s) to the Investigating Officer and keep it operational at all times;
- iv) In case of change of residential address and/or mobile number, the applicant shall intimate the same to the Investigating Officer/ Court



concerned by way of an affidavit.

10. The application is allowed and disposed of accordingly.
11. Pending applications, if any, also stand disposed of.
12. Needless to state that nothing stated hereinabove is an opinion on the merits of the case.
13. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
14. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

MARCH 12, 2024/bsr