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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3496/2023**
HITESH @ HAPPY

.....Petitioner
Through: Mr. Shivanshu Bhardwaj, Mr. Rajiv
Sing hand Mr. Mridul Gaur,
Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent
Through: Mr. Amit Ahlawat, Ld. APP with
Insp. Bijay Kumar, P.S. Bawana.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER
04.07.2024

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1. A Bail application under Section 439 read with Section 482 Cr.P.C has been filed on behalf of the petitioner/accused Hitesh @ Happy for grant of regular bail in FIR No.177/2019 under Section 302/120-B/34 IPC and 25/27 Arms Act.
2. It is submitted in the application that the petitioner/accused is 33 years old man who is a victim of circumstances and has been implicated falsely in the criminal cases which is evident from the fact that he is discharged in one of such case in the past. It is asserted that charge sheet has been prepared on bogus and false facts which are fabricated, concocted and manipulated. At the time of alleged incident in respect of which the FIR has been registered, the applicant was in judicial custody and the other co-accused who have



purportedly committed the crime and were allegedly present on the scene of crime, have no relationship whatsoever with the applicant herein. It is apparent from the Charge Sheet itself that the reason for implicating the applicant is the baseless apprehension expressed by the brother of the deceased in his statement to the Police that the applicant is apparently involved in the killing of the deceased victim. The statement of the brother is purely conjectural and emotional and has no legal substance. In fact, the applicant had no acquaintance whatsoever, either with the brother of the deceased or the deceased himself. He did not have any rivalry with the deceased or the family members.

3. Out of the list of 11 cases in which the accused has been shown involved, he has already been discharged in one case, acquitted in four cases and is on bail in the two cases.

4. It is further submitted that there were three FIRs under Section 302 IPC that were registered against him within a short span of three months i.e. 22.05.2019, 19.06.2019 and 20.04.2019 (which is the present FIR) while the accused was in judicial custody. He has already been granted bail in the other two cases by the learned ASJ.

5. It is further submitted that the applicant is willing to abide by any terms that may be imposed while granting bail and also undertakes not to directly or indirectly threaten or cause any inducement or promise to the witnesses acquainted with the present case. Hence, a prayer is made for grant of bail.

6. Learned counsel on behalf of the applicant has argued that the first piece of evidence relied upon by the prosecution is the statement of the brother of the victim which only expresses an apprehension of the



involvement of the accused in the commission of crime. The second evidence is the CDR records which shows that the accused while in custody had a mobile phone through which he was in contact with his family members and third parties. None of these CDR records establish any contact of the accused with the co-accused and there is nothing from where it can be inferred that accused was in any way connected with the commission of the offence. It is further submitted that the accused has already been granted bail in FIR No.273/2019 and 227/2019, in which he had been named as an accused on the identical allegations. It is, therefore, submitted that the applicant may be granted regular bail.

7. Learned Prosecutor has opposed the bail on the ground that there are apprehensions of the accused extending threat to the witnesses.

8. **Submission heard.**

9. There is no denial that the accused was in judicial custody at the time of commission of offence. It is also not in dispute that while he was in jail within a span of three months, his similar involvement was shown in other two FIR Nos.273/2019 and 227/2019 in which he has been granted bail.

10. In the present case, the only incriminating evidence on which reliance has been placed by the prosecution is the statement of the brother of the deceased which is nothing but expressing an apprehension which cannot be termed as legal evidence. The other piece of evidence is CDR record which admittedly do not establish any contact of the accused with the co-conspirators/co-accused.

11. Considering the factual matrix and in the circumstances as detailed above, the accused is admitted to bail on furnishing Rs.35,000/- with one surety of the like amount to the satisfaction of the concerned Jail



Superintendent/ concerned Court/Duty M.M. and subject to the following further conditions:-

- i) The applicant shall not leave the NCR without prior intimation to the I.O.
 - 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.
12. The bail application is disposed of in the above terms.
13. Copy of the order be communicated to the learned M.M. and the concerned Jail Superintendent electronically for information.

NEENA BANSAL KRISHNA, J

JULY 4, 2024/va