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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3562/2023**
DEEPAK KUMAR @ KALIYA Petitioner
Through: Ms. Sakshi Sachdeva, Adv.
versus
THE STATE (GOVT. OF NCT OF DELHI) THROUGH SHO P.S.
AMAN VIHAR Respondent
Through: Mr. Raghuinder Verma, APP for State

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

% **ORDER**
22.02.2024

1. The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in connection with FIR No. 265/2020 under Sections 302/34 IPC read with Sections 25/27 Arms Act registered at Police Station Aman Vihar, Delhi.
2. The case of the prosecution is that the wife of the deceased made a statement on 11.06.2020 to the effect that around 11.30 PM, she was standing in the balcony with her daughter Kashish. Her husband was talking on phone with one person namely, Suraj who lives in the same locality. After a while Suraj came on his motorcycle and parked it in front of their house. In the meantime two more persons came on a scooty out of which the pillion rider was Deepak @ Kaliya (petitioner herein). All of a sudden they attacked her husband and started to beat him. Deepak Kaliya with co-accused Mukesh held the deceased and another accused Suraj stabbed him several times. Thereafter, the wife of the deceased took her husband to the hospital where he was declared as brought dead.



3. The learned counsel for the petitioner submits that the MLC shows that the deceased suffered three injuries viz., (i) one on the chest which was opined to be sufficient to cause death in ordinary course of nature, (ii) another injury in the form of an incised wound on back of left thigh, and (iii) three reddish bruises on left thigh, right leg and left leg.
4. She further submits that there are contradictions in the testimony of daughter of the deceased who was examined as PW1, as well as, the testimony of the wife of the deceased who was examined as PW2.
5. She submits that fatal injury has been attributed to the co-accused Suraj and the role attributed to co-accused Mukesh as well as to the present petitioner by PW1 and PW2 in their testimony is similar in nature, as much as, the allegations against both of them is that they were present at the place of incident and they encircled the deceased because of which he could not escape and this enabled the main accused Suraj to stab him.
6. She submits that the CCTV footage does not show that the present petitioner, as well as, Mukesh had held the deceased, as was the case projected by the prosecution initially.
7. She further submits that the petitioner is in custody since 23.02.2021. She, therefore, urges the Court to enlarge the petitioner on bail.
8. *Per contra*, learned APP argued on the lines of the status report.
9. I have heard the learned counsel for the petitioner, as well as, learned APP for the State and have perused the material on record.
10. The case of the prosecution is that the stab injury given to the petitioner that proved to be fatal has been attributed to co-accused Suraj. No overt act has been attributed to the present petitioner. The only role attributed to the present petitioner is that he alongwith co-accused Mukesh encircled the



deceased.

11. It is also not in dispute that co-accused Mukesh has been enlarged on bail and the role ascribed to the present petitioner is similar to co-accused Mukesh.

12. That apart, the petitioner is in custody since 23.02.2021 and the prosecution has cited as many as 37 witnesses but only 04 witnesses have been examined till date, therefore, the conclusion of trial is nowhere in sight. In the given facts and circumstances of the case the petitioner cannot be kept in judicial custody for an indefinite period to await the outcome of trial. An ultimate acquittal with continued custody would be a travesty of justice.

13. It is trite that at the stage of trial there is a presumption of innocence in favour of the accused. The main reason for which the custody of the accused is required is only to ensure his presence during the period of trial and to receive the punishment which is awarded to him at the conclusion of trial. In the present such presence of the petitioner could be ensured by putting appropriate conditions on the petitioner.

14. Further, since the eyewitnesses have already been examined, there is no possibility of the petitioner influencing the said witnesses in the event he is enlarged on bail.

15. Insofar as the criminal record of the petitioner is concerned it is not in dispute that in other cases registered against the petitioner, he has either been acquitted or an untrace report has been filed due to lack of evidence.

16. The apprehension expressed in the status report that the petitioner might abscond in the event he is enlarged on bail, can be dispelled by imposing appropriate conditions.

17. Considering the aforesaid circumstances in entirety, I am of the view



that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is admitted to regular bail subject to his furnishing a Personal Bond in the sum of Rs.25,000/- and one Surety Bond each of the like amount to the satisfaction of the learned 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 permanent address, as well as, his mobile number to the IO concerned. The mobile number shall be kept in working condition at all times and he 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 any of the witnesses.

- 18. The petition stands disposed of.
- 19. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on the merits of the case.
- 20. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.
- 21. Order *dasti* under signatures of the Court Master.
- 22. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

FEBRUARY 22, 2024/N.S. ASWAL