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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3572/2023**
GAURAV GARG 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
with Insp. Ashutosh Kumar PS Aman
Vihar
Mr. Sparsh Agarwal, Adv. with
complainant in person.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER
01.04.2024

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1. The present petition has been filed under Section 439 CrPC seeking regular bail in connection with FIR No.128/2023 under Sections 304/323/34 IPC registered at Police Station Aman Vihar, Delhi.
2. The case of the prosecution in brief is that the complainant is the sister-in-law (*bhabhi*) of the present petitioner. The complainant had matrimonial discord with her husband i.e. the brother of the petitioner.
3. On 11.03.2023 the complainant alongwith her father, mother, uncle, as well as, younger brother had gone to her matrimonial home to get her summer clothes, where a scuffle ensued between the in-laws of the complainant as well as the family members of the complainant.
4. The case of the prosecution is that the father of the complainant was beaten by a wooden plank by the petitioner's father whereas the petitioner used a helmet to repeatedly hit the complainant's father, which led to the death of complainant's father.



5. The learned counsel for the petitioner submits that the very fact that a number of persons had come to the matrimonial home of the complainant only to fetch the clothes of the complainant shows the intention of the complainant party.
6. She invites the attention of the Court to the scene of crime visit report to contend that in the said report it has been mentioned that it is on account of scuffle which took place between both sides that the father of the complainant fell from the stairs and suffered injuries.
7. She refers to the post mortem report to submit that the injuries suffered by the deceased are only two in number, which does not support the case of the prosecution that several blows were given by the petitioner, as well as, his father with a helmet and a wooden plank.
8. She submits that as per the prosecution's version, it is apparent that the present case is not a case of pre-planned or pre-meditated fight. It was an unfortunate incident in which the father of the complainant fell from the stairs and suffered injuries but the allegations have been manipulated and exaggerated due to the ongoing matrimonial discord between the complainant and her husband.
9. She submits that the offence invoked against the present petitioner is under Section 304 IPC. She submits that since there was no pre-meditation and the scuffle ensued at the spur of moment, therefore, there was no intention to kill. She submits that taking the allegations on their face value, it is only an offence under Section 304 Part II IPC which is attracted. The said offence is punishable only with maximum punishment of 10 years and there is no minimum punishment prescribed for the same.
10. She submits that the fact that there was no intention on part of the



petitioner as well as other family members to kill the complainant's father is evident from the fact that it is the complainant's family which had come to the matrimonial home of the complainant and not the other way round.

11. It is further the contention of the learned counsel that the petitioner is in custody since 11.03.2023 and is aged about 28 years and has clean antecedents. The investigation is complete and the trial is underway, therefore, the custody of the petitioner is no more required.

12. *Per contra*, learned APP has argued on the lines of the status report.

13. The learned counsel for the complainant submits that till date only one witness i.e. the complainant has been examined and there are other public witnesses i.e. mother, younger brother and the deceased's friend, who are yet to be examined and in the event the petitioner is enlarged on bail, there is a possibility that he may influence the said witnesses. He further submits that an application has also been filed under Section 216 CrPC for amending the charge from 304 IPC to 302 IPC.

14. I have heard the learned counsel for the petitioner, learned APP for the State as well as learned counsel for the complainant.

15. It is the case of the prosecution that there was a matrimonial discord between the brother of the petitioner and his wife i.e. the complainant herein. The complainant's five family members had gone to the matrimonial home of the petitioner only for the purpose of getting the summer clothes of the complainant. The contention of petitioner's counsel that there was no intention on part of the petitioner as well as other family members to kill the complainant's father is evident from the fact that it is the complainant's family which had come to the matrimonial home of the complainant and not the other way round, cannot be negated all together at this stage when *prima*



facie there does not seem to be any pre-meditation and the incident appears of have happened at the spur of moment.

16. The application of complainant seeking to amend the charge to Section 302 IPC is stated to be pending. The question whether the offence under Section 304 Part I IPC or 304 Part II IPC is made out, will be decided by the learned Trial Court but the circumstances discussed above indicate that the incident does not seem to be pre-planned nor there is any allegation of use of any dangerous or deadly weapon.

17. Imprisonment for the offence under Section 304 Part I can extend to life imprisonment whereas the punishment for the offence under Section 304 Part II can extend up to 10 years but there is no minimum punishment prescribed for the said offence. It would indeed be a travesty of justice to keep a person in jail for an indefinite period for an offence which is ultimately found to have not been committed by him or for which the trial court may propose to impose a punishment of imprisonment which is lesser than the period for which he has already been incarcerated.

18. *Prima facie* there also appears to be some substance in the submission of the learned counsel for the petitioner that the post mortem report shows two injuries which is contrary to the version of the prosecution that repeated blows were given on the head of the deceased with the wooden plank as well as by the helmet.

19. It is also a matter of record that co-accused i.e. father of the petitioner against whom similar allegations of hitting the deceased with a wooden plank have been made, has already been enlarged on bail.

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



any criminal record.

21. Insofar as apprehension of the complainant's counsel that the petitioner on being enlarged on bail may try to influence the witnesses, suffice it to say that all the public witnesses are the family members of the complainant. In any case, appropriate conditions can be imposed to dispel the apprehension of the counsel for the complainant by imposing appropriate conditions.

22. Further, the petitioner is a permanent resident to Delhi and does not seem to be a flight risk.

23. Considering the aforesaid circumstances, the petitioner is admitted to bail subject to his furnishing a Personal Bond in the sum of Rs.25,000/- 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 mobile number to the IO concerned which 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 the complainant or any family members of the complainant.

24. The petition stands disposed of.

25. It is made clear that nothing stated above is to be construed as an expression of opinion on the merits of the case.

26. Copy of the order be forwarded to the concerned Jail Superintendent



for necessary compliance and information.

27. Order *dasti* under signatures of the Court Master.
28. Order be uploaded on the website of this Court.

APRIL 1, 2024
N.S. ASWAL

VIKAS MAHAJAN, J