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

+ **BAIL APPLN. 3587/2023**

**JAVED**

..... Petitioner

Through: Mr. Sunil Kapoor, Mr. Mohammad  
Suaib, Advs.

versus

**THE STATE (GOVT. OF NCT OF DELHI)** ..... Respondent

Through: Mr. Amit Ahlawat, APP for State  
with Insp. Jitendra Tiwari & SI  
Manish, P.S. Welcome.

**CORAM:**

**HON'BLE MR. JUSTICE AMIT SHARMA**

**ORDER**

**14.03.2024**

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1. The present application under Section 439 of the Cr.P.C. seeks regular bail in case FIR No. 258/2022 under Sections 302/120B/34 of the IPC, registered at P.S. Welcome.
2. The case of the prosecution is that on a call being received through PCR, officials from P.S. Welcome reached the place of incident i.e. Gali No.2, Chajju Gate, Bhabarpur, Welcome, where they were informed that the injured was taken to GTB Hospital by some known persons to him. It is stated that the concerned SI searched for eye witnesses but could not find any. The IO on reaching GTB Hospital, MLC of Bhure Khan (the deceased) was taken, and on that basis the present FIR was initially registered under Section 307/34 of the IPC. After registration of FIR,



aforesaid Bhure Khan passed away on 28.03.2022, on account of injury received by him, and the present FIR was converted into the offence of Section 302 of the IPC.

3. During the investigation, the statement of PCR Caller i.e. Vipin Kumar (examined as PW-1 before the learned Trial Court) was taken wherein he deposed that he works as a property dealer and on the alleged date of incident, i.e., 28.03.2022, while he was present in the office he heard some noise. It is stated when he came out of his office, he saw two boys aged around 20-25 years running away from the location and the injured Bhure Khan (the deceased) was standing holding his throat/neck, from where blood was oozing out. PW-1 then got to know from Bhure Khan (the deceased) that the said two boys had inflicted injuries to him with a blade/cutter.

4. During the course of investigation, statement of the brother of the deceased namely Mushraff Khan @ Chhuttan was recorded in which he stated that 10-12 years ago, some quarrel had taken place between the deceased and one Mukhtyar and his brothers. It is further stated that in the year 2020, Mukhtyar the brother of the present applicant was killed, and Sharif and Hanif were arrested for the said murder. On account of this, there was an animosity between the present applicant and his brother Arif with the deceased. It is alleged that the present applicant alongwith his brothers Arif and Yaseen got Bhure Khan (the deceased) killed on account of the said animosity. Thereafter it is stated on the basis of secret information, three accused persons namely Nitesh, Arjun and Sonath Chauhan @ Monu Chauhan were apprehended and the co-accused Arjun in his disclosure statement gave the name of the present applicant as a person who hired him



to kill the deceased, and that the applicant and his brother Arif had contacted him for the same in exchange of a payment of Rs. 3 lakhs.

5. On the basis of the aforesaid disclosure statement, the present applicant and his brother were arrested. It is also the case of the prosecution that the present applicant was in touch with the co-accused Arjun on the date of incident i.e. 28.03.2022, and the same is sought to be proved from the CDR analysis of the phone of the present applicant and the co-accused which reflects that 2 calls were exchanged between the two on the said date.

6. Learned counsel for the applicant submits that the case of the prosecution *qua* the present applicant is on the basis of disclosure statement. It is further stated that eye witness of the prosecution i.e., PW-1 Vipin Kumar (PCR caller) did not identify the other accused persons before the learned Trial Court during his testimony, as recorded on 30.11.2023. It is further stated that despite a passage of 10-12 years of animosity between the deceased and the present applicant, there is nothing on record to show that any complaint was made by the deceased against the present applicant and his brothers with regard to any threat. It is further pointed out that the applicant has been in judicial custody since 05.04.2022 and he is not involved in any criminal offence.

7. Learned APP for the State, on instructions of the Investigating Officer, submits that in his disclosure statement, the co-accused Arjun has taken the name of the present applicant as a person, who hired him and also paid Rs. 1 lakh to him out of which Rs. 10,000/- has been recovered from co-accused Nitesh. A sum of Rs. 32,600/- was also recovered from co-accused Arjun. It was further submitted that the other evidence against the present applicant is the CDR analysis on the basis of which the prosecution



is demonstrating the connectivity of the present applicant with the co-accused Arjun.

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

9. The case of the prosecution is that the present applicant alongwith his brother had hired co-accused Arjun, who alongwith the two other co-accused persons murdered the deceased. As noted hereinabove, PW-1 Vipin Kumar, stated to be the eye witness did not support the case of the prosecution and did not identify the aforesaid co-accused Arjun or other two accused persons, who have been charged with murdering the deceased. The other circumstance, which is being relied upon by the prosecution is the CDR analysis of the mobile phones of aforesaid co-accused Arjun and the present applicant, which is a matter of trial and would be determined by the Trial Court during the course of prosecution evidence.

10. As per the nominal roll dated 15.12.2023 received from Superintendent of Prison, Central Jail No.11, Mandoli, Delhi, the applicant has been in judicial custody since 05.04.2022. It is further reflected that the present applicant has not been involved in any offence.

11. In totality of the facts and circumstances, the present application is allowed. The applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 50,000/- with two sureties of like amount, to the satisfaction of the learned Trial Court/Link Court, further subject to following conditions:

- i. The applicant shall not leave India without prior permission of the learned Trial Court.
- ii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in



residential address.

- iii. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- iv. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times.
- v. The applicant shall report the concerned SHO, P.S. Welcome twice in a month, i.e., on every second and fourth Friday at 4:00 P.M. and the concerned officer is directed to release him by 5:00 PM after recording his presence and completion of all the necessary formalities.
- vi. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
12. The application is allowed and disposed of accordingly.
13. Pending application(s), if any, also stand disposed of.
14. Needless to state that nothing stated hereinabove is an opinion on the merits of the case.
15. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
16. Order be uploaded on the website of this court *forthwith*.

**AMIT SHARMA, J**

**MARCH 14, 2024/nk**