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

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***Reserved on: 15.02.2024
Pronounced on: 16.02.2024***+ **BAIL APPLN. 3733/2023**

DEEPAK

..... Petitioner

Through: Mr. Faiz Imam, Mr. Bhupesh
Narula, Ms. Rinku Narula, Ms.
Poonam Nagpal, Mr. Anugrah
Ekka and Mr. Swetabh
Sharma, Advocates

versus

STATE OF N.C.T. OF DELHI

..... Respondent

Through: Mr. Manoj Pant, APP for the
State with SI Narendra Singh,
P.S. Ranhola.

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The instant application under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of the applicant seeking grant of regular bail in case FIR bearing no. 709/2020, registered at Police Station Ranhola, Outer District, Delhi for the offence punishable under Sections 302/34 of the Indian Penal Code, 1860 ('IPC').



2. Briefly stated, the case of the prosecution is that on 11.07.2020 at about 12:35 PM, an information was received regarding a stabbing incident. Investigation reveals that the victim had been taken to DDU Hospital, Hari Nagar, Delhi wherein he had been declared brought dead. During investigation, the statements of the eye witness of the incident and deceased's sister Smt. Deepmala were recorded wherein she had alleged that on 11.07.2020 at about 12.00 PM, accused Shoyab had come to their house, when she was standing outside her house with her mother. Shoyab had told her mother that co-accused Saif Ali was calling Shubham i.e. the deceased in this case. As stated, co-accused Saif Ali was standing with some other boys at some distance from their house. When her brother Shubham had reached near Saif Ali, he had stabbed her brother. She had run towards those boys to save her brother, however, the boys who were holding her brother had run away. It was further revealed by her, that her brother had then run towards home, however, co-accused Saif Ali had run after him, had caught hold of her brother and had stabbed him again. She had picked a brick and had tried to hit Saif Ali to save her brother, however, he had held her hand and had pushed her and had then run away from the spot. Thereafter, her brother Ravinder and her mother had taken the deceased to the hospital where he was declared brought dead. It was stated by the eye witness that 2-3 days prior to the incident, her brother had told her that a quarrel had taken place with co-accused Saif Ali who had threatened to kill him. Therefore, she had informed the police that Saif Ali alongwith his friends had murdered her brother. During investigation, statement of witnesses



were recorded. Exhibits were seized from the place of occurrence. The place of occurrence was inspected, photographed and the crime team had visited the place of crime. During investigation, accused Saif Ali, Sahil, Raj Kumar, Deepak i.e. applicant herein and one CCL were arrested. The post mortem report was obtained wherein the cause of death was mentioned as *“haemorrhagic shock vis injury No.1, which is sufficient cause of death in ordinary course of nature. Injury No.1, 2 & 3 are caused by a sharp stabbing weapon. Injury No. 4 is caused by blunt force impact. All the injuries are fresh in duration and antemortem in nature. The matter of death is homicidal”*. After completion of investigation, chargesheet was filed.

3. Learned counsel for the present accused/applicant argues that the applicant has not caused the fatal injury on the victim, and the eye witness in this case has turned hostile before the learned Trial Court. It is stated that the allegations against the applicant can only be considered within the ambit of Section 326 of IPC. It is also stated that as per allegations, the applicant has caused injury on the chest of the deceased and as per the post-mortem report, the deceased has died due to stomach injury. It is stated that all the material witnesses have been examined, and the accused was about 23 years of age when he was arrested and he has been in judicial custody since 03.10.2020. It is, therefore, prayed that the present bail application be allowed.

4. Learned APP for the State, on the other hand, argues that allegations against the accused are serious in nature. It is argued that PW1 Deepmala, PW3 Savita i.e. mother of deceased, who are also



the eye witnesses to the incident, have been examined before the learned Trial Court, and they have fully supported the case of the prosecution. It is further pointed out that PW1 Deepmala has also deposed before the learned Trial Court that she had been threatened by one of the co-accused. It is therefore stated that considering the serious nature of the offence and the role of present applicant, the present bail application be rejected.

5. This Court has heard arguments addressed by learned counsel for applicant as well as learned APP for the State and has perused material on record.

6. In the case at hand, having gone through the material placed on record, this Court is of the opinion that the contention of the learned counsel for applicant that the fatal injury was not caused by the applicant herein, is without merit since the present applicant was the first person who had caused injury on the chest of deceased and had also caught hold of the deceased alongwith the other co-accused persons. Thereafter, when the deceased had tried to save himself and was running towards his house, the other co-accused had stabbed him in his stomach. The charge in this case has been framed under Section 302/34 of IPC. Section 34 of IPC reads as under:

“34. Acts done by several persons in furtherance of common intention. - When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone...”



7. Thus, the act committed by the accused persons in furtherance of their common intention cannot be segregate at this stage, when other witnesses are yet to be examined before the learned Trial Court.

8. This Court also notes that PW-1 and PW-3 have fully supported the case of the prosecution. Copies of the statements of witnesses have been placed on record, perusal of which reveals that these witnesses have given the details of as to how the deceased was murdered in front of their eyes and the motive behind it. PW-1, who is sister of deceased and eye witness of the incident, has deposed against the accused persons, that she has been threatened by the accused persons.

9. A young life has been lost in this case due to the injury caused by the accused persons. Other prosecution witnesses in this case are yet to be examined. The punishment in this case, if the accused persons are convicted, can be imprisonment for life or even death sentence. In these circumstances, it is the gravity of the offence which is the basis of deciding as to whether the bail can be granted to an accused or not.

10. Considering the overall facts and circumstances of the case and the manner in which the accused persons including the applicant herein have murdered the deceased in front the sister and mother of the deceased, this Court finds no ground to grant regular bail to the applicant at this stage.

11. Accordingly, the present application stands dismissed.

12. It is, however, clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on merits of the case.



13. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 16, 2024/zp