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

+ BAIL APPLN. 3905/2023

MOHAMMAD ALI

..... Applicant

Through: Mr. Mohd. Shamikh, Mr.
Aslam Mansoori & Mr.
Ajit Amar, Advs.

versus

STATE OF DELHI

..... Respondent

Through: Mr. Utkarsh, APP for the
State
Inspector Sanjay Singh &
SI Lalit Kumar, PS- Sadar
Bazar

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

13.03.2024

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1. The present application has been filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeking regular bail in FIR No.331/2023, dated 18.04.2023, for offences under Sections 304/34 of the Indian Penal Code, 1860 ('IPC'), registered at PS Sadar Bazar. Charges have been framed against the applicant under Sections 302/34 of the IPC and Sections 323/34 of the IPC.

2. The brief facts of the present case are as follows:

2.1 On 18.04.2023, information was received from Bada Hindu Rao Hospital that the victim had been admitted by his maternal uncle in the hospital on 17.04.2023, and that he had died during his treatment.

2.2 The present FIR was registered on 18.04.2023 on the

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basis of the statement of the complainant, who was a friend of the deceased.

- 2.3 It is the prosecution's case that four to five days before the death of the deceased, when the complainant and the deceased were sitting in front of Shahi Idgah, Sadar Bazar Delhi, some people came and started saying that the complainant and the deceased had stole the battery of their motorcycle. Despite the refusal of the victims that they had not stolen any battery, the said individuals mercilessly beat them up. It is alleged that the victims were saved by the intervention of some people. It is alleged that the deceased took medication but his condition kept deteriorating due to which he got admitted in the hospital, where he died during his treatment.
- 2.4 The cause of death of the deceased was opined by the doctor as septicemia shock as a result of Perforation peritonitis consequent upon injury to the abdomen of the deceased. The doctor further opined that all the injuries listed in the post mortem report, including external injuries of abrasions and contusions and an internal injury of a bluish black color contusion over the abdominal wall, were ante mortem in nature and caused by hard blunt force impact/weapon.
- 2.5 During the course of investigation, the applicant was arrested at the instance of the complainant. It is alleged that the applicant disclosed that the battery of his motorcycle had been stolen on 13.04.2023. He



disclosed that he along with some unknown persons caught the complainant and the deceased and beat them by fist blows and *danda*. He further disclosed that they had called a barber and forcefully cut the hair of the deceased and the complainant.

2.6 The hair cutting machine was seized from the shop of the barber and exhibits from the same have been sent for FSL analysis, the result of which is awaited.

3. The learned counsel for the applicant submits that the applicant has clean antecedents and has been falsely implicated in the present case.

4. He submits that the applicant was arrested on 02.05.2023 and has remained in custody since then. He submits that the trial is likely to take considerable period of time to conclude.

5. He submitted that the applicant has not been named in the FIR. He further submits that the FIR was registered 4-5 days after the alleged incident.

6. He submits that even though the FIR was filed for the offences under Sections 304/34 of the IPC, charges have been framed for the offences under Sections 302/323/34 of the IPC.

7. He submits that the complainant has been examined and he has not supported the case of the prosecution.

8. He submits that the chargesheet has been filed and the trial is likely to take considerable period of time to conclude.

9. The learned Additional Public Prosecutor ('APP') strongly opposes the grant of bail to the applicant. He submits that charges



have been framed against the applicant for a heinous offence, for which the maximum punishment is death.

10. He further submits that the trial is at a nascent stage and the hair cutting machine used by the assailants has been seized from the barbour shop.

Analysis

11. It is pertinent to note that the complainant, in his statement dated 12.03.2024, has not supported the case of the prosecution. The complainant has stated that no accused was apprehended at his instance and that the applicant was not amongst the assailants who had beaten him and the deceased.

12. It is thus, apparent that the complainant has turned hostile. It is settled law that the statement of a witness is only a piece of evidence, and for the purpose of conviction, the corroborated part of the evidence of a hostile witness regarding the commission of the offence is to be treated as admissible. (Ref. ***Mrinal Das v. State of Tripura : (2011) 9 SCC 479***) The Trial Court while deciding the case has to consider the entire material on record, and can definitely look into the circumstances and other evidence put forth by the prosecution while passing the judgment.

13. However, this Court cannot lose sight of the fact that the present case relates to the beatings given by the assailants to both the deceased and the complainant, where the complainant is the primary eye witness and also a victim in the present case. From the statement of the complainant, the very foundation of the allegations, at this stage, becomes doubtful.

14. Moreover, it is not denied that the applicant was not named

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in the FIR and was only arrested subsequently at the instance of the complainant, who has since turned hostile. Further, the danda used to allegedly give the beatings to the complainant and the deceased has also not been recovered.

15. It is also not denied that the applicant has no antecedents and is in custody since 02.05.2023.

16. It is relevant to note that the chargesheet has been filed and no purpose would be served by keeping the applicant in further custody.

17. The object of Jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment. The applicant cannot be made to spend the entire period of trial in custody specially when the trial is likely to take considerable time.

18. Any apprehension regarding the applicant influencing the trial or committing further crime can be taken care of by imposing appropriate conditions.

19. In view of the above, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹25,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court / Duty MM / Link MM, on the following conditions:

- a. He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;



- b. He shall under no circumstance contact the victim's family members;
- c. He shall under no circumstance leave the boundaries of the Delhi without informing the concerned IO/SHO;
- d. He shall appear before the learned Trial Court as and when directed;
- e. He shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- f. He shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

20. In the event of there being any FIR/ DD entry/ complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

21. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

22. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

MARCH 13, 2024

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