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

+ **BAIL APPLN. 3909/2023**

VARUN KUMAR

..... Petitioner

Through: Mr. Ashwin Vaish, Adv.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Ashish Dutta, SPP with Insp.
Santosh Kumar PS Kashmiri Gate

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

10.05.2024

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1. The present petition has been filed seeking regular bail in connection with FIR No. 70/2020 under Sections 147/148/149/302/307/396/436/455/201/188/34 IPC registered at Police Station Bhajanpura.
2. The case of the prosecution is that on 25.02.2020 some persons committed arson and rioting and in the process the complainant's mother lost her life. The investigation revealed that the house of the complainant was set on fire by the rioters and the complainant's mother died of asphyxia. It is further the case of the prosecution that the petitioner was seen carrying the match box.
3. The learned counsel for the petitioner submits that the incriminating material against the present petitioner is in the form of the testimonies of



PW1(complainant), PW2 (complainant's son) and PW21.

4. He submits that the incident is of 25.02.2020 whereas the statement of PW2 was recorded only on 10.03.2020 and even in the said statement PW2 has not stated that the present petitioner was carrying any incendiary object such as match box in his hand.

5. He submits that though PW1 has identified all the accused persons but the learned Additional Sessions Judge while granting bail to co-accused Suraj Singh @ Telli has discarded the testimony of PW1 for the reason that the said witness has not named any accused person despite the fact he claims that his son had informed the names of the accused persons.

6. Learned counsel submits that though the petitioner is neighbour of the said witnesses i.e., PW-1 and PW-2 and they knew him very well, therefore, the non-mentioning of petitioner's name at the initial stage itself, goes to show that the petitioner was not involved in any manner.

7. Insofar as PW21 is concerned, the learned counsel has invited the attention of the Court to his cross-examination to contend that though the incident is of 25.02.2020, but the said witness has admitted having informed the police about the present petitioner taking match box from the persons standing in front of their house only on 23.04.2020. He submits that this part of the statement of PW21 is also clear improvement over his statement under Section 161 CrPC as observed by the learned Trial Court while recording his testimony.

8. He submits that the petitioner is in custody since 10.03.2020 and it is on record that the petitioner has voluntarily surrendered before the police as the place of petitioner's arrest is shown as Police Station Bhajanpura.

9. Yet another contention of the learned counsel is that all other five co-



accused have already been enlarged on bail and the petitioner is the only accused in the present FIR who is languishing in jail for past more than 04 years.

10. He submits that the petitioner does not have any criminal record and the conclusion of trial is likely to take long time regard being had to the fact that the prosecution has cited as many as 53 witnesses and till date number of witnesses still remain to be cross-examined. According to him even PW1 and PW2 have not been cross-examined.

11. He, therefore, urges the Court to enlarge the petitioner on bail.

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

13. I have heard the learned counsel for the petitioner, as well as, learned SPP for the State and have perused the record.

14. A bird's eye view of the testimony of PW2 shows that the statement of the said witness was recorded only on 10.03.2020 though the incident is of 25.02.2020 and even in the said statement recorded on 10.03.2020, he has not stated that the present petitioner was carrying any object like match box in his hand.

15. Insofar as testimony of PW1(complainant) is concerned, the learned Additional Sessions Judge has already discarded the same while dealing with the bail application of co-accused Suraj Singh @ Telli for the reason that the said witness did not name any of the accused persons despite admitting that the names of all accused persons were told to him by his son (PW-2).

16. A bird's eye view of the testimony of PW21 also shows improvement insofar as the allegation that petitioner had taken a match box from 03-04



persons standing in front of his house, is concerned.

17. Though the probative value of the evidence, as well as, the credibility of the witnesses will have to be seen by the Trial Court at the stage of trial but the above discussed circumstances which have come on record, undisputedly tilts the balance in favour of the petitioner for grant of bail.

18. Apart from the merits of the case it cannot be ignored that the petitioner is in custody since 10.03.2020 and at this stage there is a presumption of innocence in his favour. Further, regard being had to the fact that the prosecution has cited as many as 53 witnesses and number of witnesses are yet to be examined, inevitably the trial is going to be a protracted one. In the given circumstances of the present case the petitioner cannot be kept in custody for an indefinite period to await the outcome of trial.

19. It is also not in dispute that the petitioner does not have any criminal record nor the petitioner appears to be a flight risk. Nevertheless, to ensure the availability of the petitioner during trial, appropriate conditions can be imposed. Besides that, all other accused have already been enlarged on bail.

20. Considering the aforesaid circumstances in entirety, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is enlarged on bail subject to his furnishing a Personal Bond in the sum of Rs. 30,000/- 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 witnesses.

21. The petition stands disposed of.

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

23. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.

24. Order *dasti* under signatures of the Court Master.

25. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

MAY 10, 2024

N.S. ASWAL