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

+ **BAIL APPLN. 3944/2023**

KAMLESH

..... Petitioner

Through: Mr. Piyush Pahuja and Mr. Upender
Kumar, Advs.

versus

STATE OF NCT DELHI

..... Respondent

Through: Ms. Rupali Bandhopadhyay, ASC
with Mr. Abhijeet Kumar, Adv. for
State with SI Praveen Kr. & ASI
Sanjay Tyagi, P.S. Sarai Rohilla.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

10.01.2024

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1. The present application under Section 439 Cr.P.C. seeking regular bail in case FIR No. 122/2023 under Sections 392/397/411/34 IPC registered at Police Station Sarai Rohilla.

2. Status report dated 10.01.2024 authored by Inspector Shish Pal, SHO/PS Sarai Rohilla, has been handed up in Court and is taken on record.

The case of the prosecution as per the said status report is as under:-

“1. That, the Petitioner is seeking regular bail through the present application under Section 439 Cr.P.C. The brief facts of the case are that on receipt of DD No. 76-A dated 05.02.23 PS Sarai Rohilla, IO/ASI Sanjay Tyagi No. 1798/N along with Ct. Deepak No. 2416/N reached at the spot i.e. near MCD School, Sarai Basti, Delhi. Over there, IO recorded the statement of complainant, Sh. Dheer Singh in which he alleged that on 05.02.2023, at about 9:15 PM he was going back to his house located at Shastri Nagar, Delhi. When he reached near MCD School, Sarai Basti, then two



boys came and pushed him due to which he fell down. Further, one boy put a knife at his stomach. One of the boys who pushed the complainant robbed the purse containing Rs. 10300/- and some documents from the back pocket of his pant. While the other boy robbed his mobile phone. After the incident, all the accused fled away from the spot. Accordingly, a case FIR No. 122/23 dated 06.02.2023 U/s 392/397/34 IPC was registered and the investigation was carried out.

2. During investigation, CCTV footages of the area were analysed in which two boys were seen running towards Machhli Market, Daya Basti, Delhi but the faces of them were not clear. Further, on the basis of secret information, one accused namely Suraj @ Chhiddi was arrested on 11.02.23 and weapon of offence i.e. Knife, robbed mobile phone and robbed amount Rs. 1500/- (out of Rs.4300/-) were recovered at his instance. Further on his instance, co-accused namely Kamlesh (present applicant) was also arrested on 11.02.23 and the robbed amount Rs.3500/- (out of Rs.6000/-) and robbed purse containing Aadhar Card of the complainant were recovered at his instance. All the case property has been taken in police possession.

3. It is pertinent to mention here that an application, for judicial TIP of both the accused was moved before the Hon'ble Court of Ld. MM Tis Hazari but the same was refused by the accused persons.

4. Further, after completion of investigation, Charge sheet against the accused Kamlesh and Suraj @ Chhiddi U/s 392/397/411/34 IPC was filed in the Hon'ble Court on 10-04-2023. The accused namely Kamlesh has no previous involvement except to the present case.”

3. Learned counsel for the applicant submits that the complainant/ public witness Dheer Singh (PW-2) has already been examined before the learned Trial Court. It is pointed out that testimony of PW-2 reflects that present applicant, alongwith co-accused were shown to the said witness at the police station. It is further submitted that as per the testimony of PW-2, the role of using a deadly weapon has not been attributed to the present applicant. It is



submitted that the applicant has been custody since 13.02.2023 and he is not involved in any other offence.

4. *Per contra*, learned APP for the State, on instructions of the Investigating Officer submits that the present applicant has been identified by complainant/PW-2 during his testimony before the learned Trial Court. In view of the above, learned APP submits that the offence is serious in nature and therefore, the present bail application may be dismissed.

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

6. The testimony of PW-2 reflects that the present applicant was identified by the said witness when he was called to police station 15-20 days from the date of incident. As per the case of the prosecution, no other public witnesses remain to be examined and the remaining witnesses are official in nature.

7. Nominal roll dated 07.01.2024 has been received from Superintendent of Prisons, Central Jail No.05, Delhi reflects that applicant has been in custody for 10 months and 19 days since 13.02.2023. It is further reflected that there is no previous involvement of the applicant.

8. In view thereof, the present application is allowed. The applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 25,000/- with two sureties of like amount, one of which should be a family member, to the satisfaction of the learned Trial Court/Link Court, further subject to following conditions:

- i. The petitioner shall report to the concerned PS Sarai Rahilla on every Friday, at 04:00 PM. The concerned officer shall release the petitioner by 05:00 PM, after completion of all necessary formalities.
- ii. The applicant shall not leave India without prior permission of the



learned Trial Court.

- iii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
 - iv. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
 - v. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times.
 - vi. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
9. The application is allowed and disposed of accordingly.
 10. Pending application, if any, also stand disposed of.
 11. Needless to state that nothing stated hereinabove is an opinion on the merits of the case.
 12. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
 13. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

JANUARY 10, 2024/nk