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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2865/2024**
ASHUTOSHPetitioner
Through: Ms. Dolly Sharma, Advocate.

versus

STATE OF NCT OF DELHIRespondent
Through: Mr. Laksh Khanna, APP for State.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER
06.09.2024

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1. By way of present application, the petitioner/applicant seeks regular bail in FIR No.572/2019 registered under Sections 302/34 IPC and Sections 25/27/54/59 Arms Act, at P.S. Sagarpur, Delhi.
2. Ms. Sharma, learned counsel for the applicant submits that the prosecution has cited the son of the deceased as an eye witness, whose presence at the spot of the incident is doubtful. In this regard, she has referred to his testimony as well as his cross examination. While in the testimony, he stated that at the relevant time, he was standing in the *gali*, in the cross examination, he admitted that he was 100 meters away from the exact place of incident. She further refers to the MLC of the deceased to submit that the history of assault recorded in the MLC mentions '*fall from stairs*'. Additionally, it is contended that there is no recovery of bullet from the spot of incident. It is further submitted that the applicant is in custody since 28.01.2020 and till date, only 7 out of 30 witnesses have been examined.



3. The bail application is vehemently opposed by learned APP for the State, who submits that the deceased, Vijendri Devi, was the landlady. The two co-accused, namely *Krishna* and *Pawan @ Prakash*, were the tenants. In the earlier part of the day, when *Sandeep*, son of the deceased, on request of his mother went upstairs to collect rent, the co-accused *Krishna Mishra* started misbehaving with him and did not pay the rent. Thereafter, *Sandeep* called his mother upstairs and an altercation took place between them and the two tenants/co-accused, *Krishna Mishra* and *Pawan*, which led to the deceased slapping *Krishna Mishra*. The deceased further locked the door, whereafter, the two left the room by extending threats. On the same day, at about 5:00 pm, the aforementioned two tenants came back with two of their friends, namely *Chintu @ Bengali* and the present applicant. Learned APP submits that as per the testimony of *Sandeep*, at the time of the incident, his father had gone alongwith his younger brother *Pushpadeep* to the tuition centre. Further, *Sandeep* stated in his testimony that initially, he was standing in the *gali*, however, he came back to the house and witnessed the incident thereafter. Learned APP further states that the history recorded in the MLC is given by *Sandeep*'s uncle, who is not a witness to the incident.

In so far as the contention about non-recovery of the bullet/lead is concerned, learned APP has referred to the site plan as well as the recovery memo, indicating that the bullet/lead was recovered from the spot. The testimony of the eye witness is also corroborated by the post-mortem report, wherein it has been opined that the death has occurred on account of a gunshot injury.

4. I have heard learned counsels for the parties and have gone through the material on record.



5. The case relates to an eye witness account. During the course of submissions, learned counsel for the applicant has failed to establish doubt as to the presence of the eye witness at the spot of incident. The incident has taken place inside the house and the eye witness is none other than the son of the deceased. The role attributed to the present applicant is of catching hold of the hands of the deceased along with the co-accused, *Krishna Mishra*, while the co-accused *Chintu* fired the gunshot.

7. Considering the aforesaid, I find no ground to interfere with the impugned order. The bail application is, accordingly, dismissed.

MANOJ KUMAR OHRI, J

SEPTEMBER 6, 2024

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