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

+ **BAIL APPLN. 3273/2024**

HIMANSHU

.....Petitioner

Through: Mr. Karan Singh, Ms. Preeti, Mr.
Devendra Singh Shakya, Advs.

versus

THE STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Ms. Priyanka Dalal, APP for the State
with Inspector Vipin Kumar, PS
Sunlight Colony.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

11.11.2024

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1. The present application has been filed for regular bail in the case FIR No.359/2018, registered under Sections 307/34 of the IPC at PS Sunlight Colony. Subsequently, section 302 was added at the time of filing of the charge sheet.
2. Learned counsel for the petitioner submits that the co-accused Gaurav has already been granted bail by the coordinate Bench of this Court in Bail APPL. No.1442/2023, titled '*Gaurav v. The State Govt. of NCT*' vide order dated 06.05.2024. Learned counsel submits that the petitioner has been in custody since 20.11.2018. Learned counsel submits that the case of the present petitioner is rather on better footing than the co-accused, and even the alleged weapon of offence, i.e. knife, was recovered at the instance of co-accused Gaurav.
3. Learned counsel for the petitioner has also invited the attention of the



Court to the testimony of PW-3 and PW-6, who have not supported the case of the prosecution. Learned counsel submits that, even in the worst-case scenario, it was a case of a sudden altercation without any premeditated intent to commit murder.

4. Learned APP for the State submits that PW-2 has fully supported the case of the prosecution. Learned APP further submits that the remaining witnesses are yet to be examined, and if the petitioner is admitted to bail, he may threaten or intimidate the witnesses.
5. The Coordinate Bench of this Court in Bail APPL. No.1442/2023 titled '*Gaurav v. The State Govt. of NCT*' vide order dated 06.05.2024 after considering the case of the prosecution and the rival contentions *inter-alia* observed as under;

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27. *There also seems to be some merit in the submission of the learned counsel for the petitioner that there is no material on record to support that PW-2 is an injured witness.*

28. *The probative value of the testimonies of the witnesses, their credibility and the aspect whether the case falls under any of the exceptions to Section 300 IPC and it would be punishable under section 304 (Part II) IPC will be considered by the learned Trial Court and any observation at this stage could prejudice the case of either the prosecution or the defence. However, the circumstances discussed above definitely tilts the balance in favour of the petitioner for grant of bail considering his long incarceration.*

29. *At this stage there is presumption of innocence in favour of the petitioner and he has already spent 5 years 5 months in custody. It would be indeed be a travesty of justice in case the Trial Court finds the petitioner guilty of an offence for which there is no minimum sentence prescribed and it proposes to impose the*



punishment lesser than the period for which the petitioner/accused has already been incarcerated.

30. There are other aspects that cannot be overlooked. It has come on record in the form of FSL report that no DNA profile could be generated from the knife recovered at the instance of the petitioner. There is also some merit in the submission of the learned counsel for the petitioner that the recovery was made from an open park which is visited by general public, which raises doubt about the recovery. Further, it is on record that no blood stains or finger prints could be lifted from the place of incident.

31. The testimonies of the public witnesses including that of the complainant have already been recorded, therefore, there is no possibility of petitioner influencing the public witnesses in the event he is enlarged on bail. The co-accused Himanshu, who happens to be the real brother of the petitioner was enlarged on interim bail and he never misused the liberty so granted to him. Besides that, the petitioner is a permanent resident of Delhi, therefore, the petitioner does not seem to be a flight risk. Nevertheless appropriate conditions can be imposed to ensure the availability of the petitioner during trial.

32. It is not the case of prosecution that the petitioner has any criminal record. The age of the petitioner at the time of incident was 21 years. Prolonged incarceration and company of hardened criminal is likely to cause inexorable harm to the mental well-being of such impressionable young individuals. That apart, the prosecution has cited as many as 33 witnesses, out of which only 15 witnesses have been examined as of now, therefore, keeping the petitioner in custody till the conclusion of trial, which is not likely to be concluded anytime soon, will not be in the interest of justice in the given circumstances.”

6. This Court considers that the case of the present petitioner cannot be distinguished from the case of the co-accused Gaurav, who was admitted to bail by the Coordinate Bench of this Court vide a detailed order dated 05.05.2024. The Coordinate Bench of this Court has given



detailed reasoning, and in view of the same, there is nothing that is required to be added.

7. It is settled and trite law that the gravity and seriousness of the offences or charges involved, along with the pendency of other criminal cases against the accused, cannot, in and of themselves, serve as the sole grounds for denial of bail. The Court must undertake a comprehensive assessment of the overall facts and circumstances of each case. Reliance is placed upon **Prabhakar Tiwari vs. State of Uttar Pradesh** (2020) 11 SCC 648; **Dinesh Kumar @ Jony vs State** Bail Appl. 3329/2022. In light of the foregoing, while the offences alleged against the applicant are indeed serious, this alone cannot constitute sufficient grounds for refusal of bail. Also, considering that the main accused person has already been granted bail on the following, amongst the other grounds, there is a presumption of innocence in favour of the petitioner, and he has already spent around 4 years and 10 months in custody.
8. Further, once the investigation is complete, the charge sheet is filed, and given the likelihood of protracted trial proceedings, no purpose would be served by keeping the petitioner in custody till the pendency.
9. Taking into account on the basis of parity and taking into the ground that the order dated 06.05.2024, this Court is of the view that the petitioner is entitled to grant of regular bail. Accordingly, the petitioner is admitted to bail subject to his furnishing a personal bond in the sum of Rs. 20,000/- with one surety of like amount, subject to



the satisfaction of the Trial Court/Duty Magistrate/CMM, further subject to the following conditions:

- a) Petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing;
 - b) The petitioner shall furnish to the IO/S.H.O, P.S. Sunlight Colony, a cell phone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched on at all times;
 - c) The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to the complainant or any of the prosecution witnesses or other persons acquainted with the facts of the case; and
 - d) The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.
10. It is made clear that the observations made herein above are only for the purpose of disposing of the present bail application, and the same shall not be deemed to be an expression or opinion on the merits of the case.
11. The present petition stands disposed of.
12. Copy of the order be forwarded to the concerned Jail Superintendent for necessary information and compliance.

DINESH KUMAR SHARMA, J

NOVEMBER 11, 2024

Pallavi/HT..