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

+ **BAIL APPLN. 3530/2024**

KISHAN

.....Petitioner

Through: **Mr. Ravi Nayak, Adv.**

versus

STATE NCT OF DELHI

.....Respondent

Through: **Mr. Amit Ahlawat APP with Daljeet Singh Advocate & SI Ramwati PS Maurice Nagar**

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

11.11.2024

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1. This petition has been filed seeking regular bail in FIR No.65/2018, P.S. Maurice Nagar under Sections 307/34 IPC. Petitioner has been incarcerated since 22nd December 2018. As per the nominal roll, he has previous involvement in FIR No.62/2012 under Sections 392/411/34, IPC PS Civil Lines, in which petitioner is on bail and was convicted in FIR No. 58/2018 under Section 356/379/34 IPC, P.S. Maurice Nagar.

2. The case of the prosecution is that on 31st May 2018, an information was received of an injured person namely, Simranjeet Singh from Fortis Hospital, Shalimar Bagh. During investigation, he stated that on the said date he along with his friend Konica Gupta wanted to go to the washroom, when they were travelling in University area, and since it was late at night and they were on the road, he took her to Bonta Park where two boys came one wearing a white shirt and the other a red shirt. The man in the white shirt slapped him while another man stabbed him with a knife and then he was taken to the hospital. Subsequently, Gautam @ Sachin was arrested in



the matter on 11th July 2018 and as per his disclosure, petitioner was arrested on 22nd December 2018, basis an information received of arrest of petitioner in another FIR No. 81/2018 under Sections 25/54/59 Arms Act, P.S. Maurice Nagar. As per the prosecution, TIP was conducted before the Magistrate and petitioner was correctly identified.

3. Counsel for complainant who appears through VC stats that he was badly injured in trying to save his female companion while they were at Bonta Park area.

4. Counsel for petitioner points out that question of identification does not arise considering that PW-1 had admitted that there was no street light on *kachha marg* of Bonta Park where the alleged incident took place. This is evident from perusal of testimony on record as well as site plan appended along with this petition. Moreover, it is contended that petitioner was arrested merely on confessional statement of co-accused who was already arrested in another FIR.

5. A perusal of confessional statement, as per petitioner, would show that the co-accused Gautam @ Sachin confessed to few other offences as well, as is evident from his statement. On this basis, counsel for petitioner states that petitioner was arrested without any basis whatsoever. Besides, the victim himself had admitted that they were consuming liquor as per this statement recorded under Section 161 Cr.P.C., as also in his cross-examination recorded on 4th August 2022.

6. The Court has perused the confessional statement of Gautam @ Sachin and it *prima facie* seems omnibus in nature, relatable to many other offences and as part of the same, petitioner was implicated and arrested after 5 months of statement of Gautam @ Sachin being recorded.

7. Submission of counsel for petitioner with respect to victim's



reliability in identifying the petitioner is also noted, considering that petitioner had admittedly consumed alcohol, as also the place of incident had no street lights.

8. In any event, petitioner has been in custody for about 5 years 10 months now and all material witnesses have been examined. As per the APP, 13 out of 28 witnesses have been examined. It would not be appropriate to continue the incarceration of the petitioner indefinitely, awaiting completion of trial.

9. The Hon'ble Supreme Court in **Satender Kumar Antil v. CBI**, (2022) 10 SCC 51, observed as follows:

“12. The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India...”

(emphasis added)

10. The Hon'ble Supreme Court also noted the observations made by Krishna Iyer, J., in **Gudikanti Narasimhulu v. Public Prosecutor**, (1978) 1 SCC 240, as under:

“1. ... the issue [of bail] is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. ... After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of “procedure established by law.” The last four words of Article 21 are the life of that human right.”

(emphasis added)

11. The Hon'ble Supreme Court further made note of their observations in **Sanjay Chandra v. CBI**, (2012) 1 SCC 40, as under:

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the



accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.”

(emphasis added)

12.

13. The Hon’ble Supreme Court in ***Javed Gulam Nabi Shaikh v. State of Maharashtra***, 2024 SCC OnLine SC 1693, observed as follows:

“18. *Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.*

19. *If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency*



should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”

14. Accordingly, this Court finds it to be a fit case for grant of bail to the petitioner. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
- ii. Petitioner shall provide permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- iv. Petitioner shall join investigation as and when called by the IO concerned.
- v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
- vi. Petitioner will mark presence physically/virtually before the concerned I.O. every Monday at 4 p.m., and will be not kept waiting for more than an hour.
- vii. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.



15. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

16. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

17. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

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

ANISH DAYAL, J

NOVEMBER 11, 2024