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

+ **BAIL APPLN. 3374/2024**

GAUTAM @ AAKASH

.....Petitioner

Through: Mr. Mukesh Thakur and Mr.
Dhirendra Singh, Advocates.

versus

STATE THROUGH GNCT DELHI

.....Respondent

Through: Ms. Richa Dhawan, APP for the State
with Insp. Dinesh Rana, P.S. Dwarka
North.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

15.01.2025

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1. This hearing has been done through hybrid mode.
2. The present application under Section 439 read with Section 482 of the Cr.P.C seeks regular bail in case FIR No. 457/2022, under Sections 302/506(II)/34 of the IPC, registered at P.S. Dwarka North, Delhi.
3. The case of the prosecution as per status report dated 11.11.2024, authored by SHO, P.S. Dwarka North, Delhi is as under:

1. That the above mentioned case was registered on dated 15.07.2022 on DD No/PCR call received vide DD No35 A & 36A Dated 15.07.06.2022 at PS Dwarka North. The PCR caller stated that "*Caller ne bataya ki raat ko 4 ladkone mil kar mere padosi ko pita hai jo ghambir halat mein hospital le gye hai, need police help.*" Similarly in another PCR call, caller stated that "*Caller bta rha hai ki yaha par ek k sath rat mein jhagda huwa tha jiski halat najuk hai.*" The above DD entries were marked to SI Jeet Ram PS Dwarka North for enquiry who reached at the spot i.e. H No C-9/R, New Adarsh Apartment, Sector 16 B, Dwarka, Delhi. The Io found



that the injured had been shifted to DDU hospital. Thereafter, IO reached at DDU hospital where injured namely Mukesh S/o Bhure Lal R/o C-9/R, New Adarsh Apartment, Sector 16 B, Dwarka, Delhi aged-35 Yrs was declared brought dead on vide MLC No 6098/22 by the doctor. The dead body of deceased preserved in hospital mortuary. The relative of deceased namely Poonam (wife).

2. That thereafter, IO recorded statements of Poonam (wife of deceased) Mukesh. She was stated in her statement that she is living at above mentioned address along with her husband Mukesh, mother in law Smt Asha Devi, daughter, and Satender (uncle of Mukesh). On 14.07.2022 at around 6.30 PM, her husband came at home. They all had taken dinner. At around 9.30 PM, her husband went at roof of the house for sleep in night as there was an extreme heat condition inside the room. After few minutes later, she heard the sound of crying of her husband. She rushed towards roof and found that their neighbors namely Gautam and Arun were beaten to her husband by wooden sticks, fist & kicks. They dragged to Mukesh downward from stairs of the building. Arun was caught the neck of Mukesh and both thrown him from stairs. They also loudly had spoken that they would not leave Mukesh today because he daily harassed their sister. They continued to beaten Mukesh by wooden sticks, fist and kicks. She and her mother in law intervened and trying to escape Mukesh but both Arun and Gautam also had beaten them. In the mean time, other neighbors also gathered there. They succeeded to escape Mukesh. She brought her husband inside the room. They did not report this incident on that time to police because both Arun and Gautam threatened them to not report the matter to police. Her husband felt severe pain in chest during whole night. In the morning, his health conditions had worsened. They brought him to DDU hospital where doctors declared him brought dead.

3. That on the basis of MLC and statement of Poonam, a case vide FIR No 457/2022 u/s 302/323/506/34 IPC was registered and investigation taken up by IO Insp Sanjeev Kumar. During investigation of the case, IO recorded the statements of u/s 161 CrPC of the eye witnesses namely (1) Master Sarfraz S/o Aslam R/o Adarsh Apartment, sector 16B, Dwarka, (2) Master Anshu S/o Sonu R/o C-9/T, 4th Floor, New Adarsh Apartment, Sector 16 B, Dwarka, Delhi Age 16 Yrs. They stated that they were present at



the spot where Gautam and Arun beaten to Mukesh. They confirmed the version of Poonam. IO also recorded statement of Asha Devi and other witnesses. Poonam and Asha Devi also got medically examined.

4. That accused Arun and Gautam were arrested in the case. They produced before the court and their one day PC remand had taken. During PC Remand, Bamboo sticks, Pieces of Bricks used to beaten to Mukesh by accused persons also recovered on their instance.

5. That the PM report of deceased Mukesh also obtained from DDU hospital. The doctor opined that *1. The cause of death is due shock associated with multiple blunt trauma at different parts of the body and lacerations of liver caused by blunt forceful impact like slapping, punching, boxing and beaten by danda/bricks etc with possible involvement of more than one person. 2 Manner of death is homicidal. 3 The liver injury was sufficient to cause death individually and rest of injures were sufficient to cause death in combination course of nature.* During course of investigation subsequent opinion regarding consistency of weapons of offence with injuries sustained on the body of deceased Mukesh also obtained. The doctor opined as subsequently that *“All injuries (1 to 5) mentioned in PM report No 1191/2022 of external injuries, could be possible in examined weapons of offence i.e wooden Danda and half piece of Bricks.”* The exhibits which were seized during investigation also sent to FSL for experts opinion.

6. That after completion of investigation accused Arun and Gautam Were charge sheeted for the offence u/s 302/323/506/34 IPC. The FSL result was collected and submitted through supplementary chargesheet before the trial court.

7. That currently case is pending trial at the stage of prosecution evidence. Till now, 19 out of 32 witnesses have been examined before trial court. All the eye witnesses of murder namely Poonam, Asha Devi, Satender and Master Sarfraz and Anshu supported their statements before the trial court. There are sufficient evidences against the both accused Arun and Gautam. They are involved in a heinous crime of murder. The accused Gautam @ Aakash and victim family are residing in same locality. If accused will come



out on bail, he may threaten and harm to them.”

4. Learned counsel appearing on behalf of the applicant submits that as per the case of the prosecution, the incident had occurred on 14.07.2022 at around 09:30 P.M., however, the deceased was taken to hospital on 15.07.2022 at about 07:28 A.M. It is pointed out that no complaint was made by the family member of the deceased immediately after the alleged incident and even as per PW-1, who is wife of the deceased, it is the admitted position she had taken her husband to their room and only after when the health of her husband deteriorated, one Satender Singh, PW-4 had called the police.

5. Learned counsel for the applicant further submits that the defence of the present applicant is that the deceased was under the influence of alcohol on the date of alleged incident, and had misbehaved with the sister of the applicant and on account of the same, there was a scuffle between the deceased and the applicant along with other persons who had objected to the same and during the said scuffle, he had fallen down from the stairs. It is the case of the applicant that on account of the same, there was no complaint made by the family of the deceased at that particular point of time. It is further pointed out that PW-2, Sh. Anshu Kashyap, who is stated to be nephew of the deceased, has admitted in his cross-examination that his uncle, *i.e.*, the deceased was an alcoholic and on the date of said incident also he had consumed alcohol and was intoxicated.

6. Attention of this Court has been drawn to the testimony of PW-9, Dr. Aslam Ahmed, who had prepared the MLC Report No. 6099 of the deceased on 15.07.2022. The said witness in his cross-examination has stated as per MLC report, there was no fresh external injury noticed nor any blood stains were found on the body or on the clothes of the deceased. However, he states



that some frothy substance was coming out of his mouth. It is the case of the applicant that the said fact of the frothy substance coming from the mouth has not been investigated by the prosecution in any manner nor any opinion given by the doctor conducting post-mortem with regard to the same.

7. It is further submitted that all the public witnesses including the alleged eye witnesses have already been examined and out of the 32 witnesses cited by the prosecution, 22 witnesses have been examined so far and the trial is likely to take some time. The applicant has been in custody since 17.11.2024. It is further pointed out that the applicant is not involved in any other case prior to the registration of FIR.

8. *Per contra*, learned APP for the State submits that the prosecution witnesses including the wife of the deceased as well as other alleged eye-witnesses have been examined who have supported the case of the prosecution and have stated that the present applicant along with his brother had assaulted the deceased on 14.07.2022. It is pointed out that on account of internal injuries suffered by the deceased in the said assault, he eventually passed away on 15.07.2022.

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

10. It is a matter of record that the first complaint made on behalf of the family of the deceased was on 15.07.2022 at 07:30 AM, after he was taken to the hospital and was declared dead. Admittedly, the incident had occurred on 14.07.2022 at about 09:30 P.M. and there was no call made by any of the relatives of the deceased to the police with regard to the said incident. It is pertinent to note that even as per the testimony of PW-2, the reason for assaulting the deceased given by the applicant was that, as per him, the deceased had been harassing his sister which as per this witness was incorrect.



This statement of the said witness, however, becomes relevant inasmuch as the defence of the applicant has been that the said incident had occurred on account of the fact that the deceased had, in fact, misbehaved with the sister of the applicant and there were other persons who had gathered there and started beating the deceased. It is also a matter of record that there was no previous enmity between the applicant and the deceased.

11. It is also a matter of record that the MLC Report records that there was no external injury or blood stains found on the body of the deceased. It is relevant to note, that it is the case of the prosecution that the deceased was beaten by the applicant and his brother with sticks and rods and, thus, he was bleeding.

12. The applicant has been in custody since 16.07.2022. Out of 32 witnesses cited, the prosecution has already examined 22 witnesses and all the relevant eye witnesses have already been examined. The nominal roll dated 13.01.2025 reflects that the applicant has been in custody for 2 years 5 months and 26 days and had been on interim bail on previous occasions. There is nothing on record to suggest that he has misused the concession granted to him. It is also relevant to note that the applicant is not involved in any other offences.

13. In totality of the fact and circumstances, the applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 25,000/- with one surety, to the satisfaction of the learned Trial Court/Link Court, further subject to following conditions:

- i. The applicant shall not leave India without prior permission of the learned Trial Court.
- ii. The applicant shall intimate the learned Trial Court by way of an



affidavit and to the concerned Investigating Officer regarding any change in residential address.

- iii. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
 - iv. The applicant is directed to give his mobile number to the concerned Investigating Officer and keep it operational at all times.
 - v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witnesses in any manner.
 - vi. The applicant shall not go near the residence of the complainant or any of the other witnesses.
14. The application is allowed and disposed of accordingly.
 15. Pending application(s), if any, also stand disposed of.
 16. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the present bail application.
 17. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
 18. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

JANUARY 15, 2025/bsr

Click here to check corrigendum, if any