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

+ **BAIL APPLN. 4184/2024**

ROSHAN KUMAR MISHRA

.....Petitioner

Through: Mr. Hirein Sharma, Mr. Vimal Tyagi,
Mr. Tripurari Jha, Mr. Akshay Rathi,
Mr. Balaji Pathak and Mr. Paras
Sharma, Advs.

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Aman Usman, APP for State with
ASI Arvind Kumar, PS. Burari.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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17.01.2025

1. The present petition has been filed under Section 483 BNSS, 2023 seeking regular bail in connection with FIR No.261/2020 registered under Sections 307/323/509/34 IPC at P.S. Burari, Delhi.
2. The case of the prosecution is that a complaint was registered on the statement of husband (Puran Lal) of the victim, who is stated to be the eye-witness. As per his statement, a scuffle took place between his wife Mamta and a neighbour namely, Geeta over removing a motorcycle parked on the street. The accused persons namely, Roshan Kumar Mishra (petitioner herein) and Deepak also entered the scuffle to support their mother Geeta. It is the further case of prosecution that at the time of said scuffle, the petitioner brought a knife from his house and stabbed Mamta (victim) three to four times while the co-accused Deepak had caught hold of Mamta. On seeing the blood oozing out, the accused persons fled from the spot and the



complainant took his wife to the hospital.

3. The learned counsel appearing on behalf of the petitioner submits that the complainant and his wife were aggressors and they were beating the mother of the petitioner. He submits that the co-accused Deepak, as well as, the petitioner's mother namely, Geeta have been granted regular and anticipatory bail, respectively. He submits that the petitioner has completed the custody of 02 years 06 months and 25 days as on 05.12.2024.

4. He submits that the petitioner was also released on interim bail on 24.05.2021 in terms of the recommendations of High Powered Committee on account of the pandemic and the liberty granted during that period was never misused by the petitioner.

5. It is further contended that the testimony of the victim namely, Mamta was recorded on 27.09.2024. Further, the testimony of the son of victim has also been recorded on 12.11.2024. Only one public witness namely, Puran Lal (complainant) remains to be examined, who did not appear for his evidence despiteailable warrants having been issued against him. Accordingly, his name was dropped from the list of witnesses, as recorded in the order dated 14.01.2025.

6. He further submits that insofar as testimony of the victim/Mamta and the statement of the complainant Puran Lal recorded under Section 164 CrPC is concerned, there is a contradiction as regards the role assigned to the present petitioner. Elaborating on his submission, he submits that the victim in her testimony has attributed stab injuries to the present petitioner whereas Puran Lal has attributed the same to co-accused Deepak. He, thus, contends that the witness Puran Lal has been dropped only for the reason that his statement under Section 164 CrPC is not in consonance with the



testimony of the victim.

7. He further contends that the petitioner does not have any criminal antecedents and he is not a flight risk. It is, therefore, prayed that the petitioner be enlarged on bail.

8. *Per contra*, the learned APP appearing on behalf of the State has argued on the lines of the status report. He submits that the victim has supported the case of the prosecution. Further, the blood stains on the knife, as well as, on the clothes of the petitioner matched with the blood of the victim as per the FSL report. It is further contended that the petitioner and the victim are residents of the same locality, therefore, there is every possibility that on being released, the petitioner might intimidate and cause harm to the victim. In this backdrop, it is urged that the bail application of the petitioner be dismissed.

9. I have heard the learned counsel for the petitioner, as well as, the learned APP for the State.

10. Though at this stage, the credibility of a witness or the probative value of the evidence is not to be considered and the same is within the domain of the learned Trial Court, however, there is some substance in the submission of the learned counsel for the petitioner that there is a contradiction as to the role and identity of the present petitioner, in as much as the victim has attributed stab injuries to the present petitioner whereas the complainant Puran Lal in his statement under section 164 CrPC has attributed the same to co-accused Deepak, who has been enlarged on bail.

11. On a query posed by the court, the learned APP, on instructions from the IO, has stated that all the public witnesses have been examined. The order of the learned Trial Court dated 14.01.2025 also shows that Puran Lal



(complainant) has been dropped from the list of witnesses, therefore, only official witnesses remain to be examined.

12. It is also not in dispute that the petitioner was released on interim bail in the year 2021 on account of the pandemic on the recommendations of High Powered Committee but he duly surrendered and did not misuse the liberty granted to him. Even the co-accused, Deepak has been granted regular bail.

13. The prosecution has not pointed out a single instance of threat or any harm having been caused to the victim after the release of co-accused Deepak or during the period the present petitioner was on interim bail.

14. The nominal roll available on record also shows that the petitioner has remained in custody for a period of 02 years 06 months and 25 days as on 05.12.2024. Since the official witnesses are yet to be examined, the conclusion of trial is likely to take some more time and the petitioner cannot be kept incarcerated for an indefinite period to await the conclusion of trial, especially when all the public witnesses stand examined and the petitioner's custody is no more required.

15. It is also not the case of prosecution in the status report that the petitioner has any criminal record or that he is a flight risk. In any case, appropriate conditions can be imposed to ensure the presence of the petitioner during trial or to deter him from extending any kind of threat or exerting any influence over the victim or any other witnesses.

16. Considering the aforesaid circumstances in entirety, this court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is admitted to bail subject to his furnishing a Personal Bond in the sum of Rs.25,000/- and one Surety Bond of the like



amount to the satisfaction of the Trial Court/JMFC/Duty JM, further subject to the following conditions:

- (a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
 - (b) Petitioner shall not change his address without prior intimation to the Investigating Officer concerned.
 - (c) Petitioner shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
 - (d) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the victim or witnesses directly or indirectly.
17. The petition stands disposed of.
 18. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on merits of the case.
 19. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.
 20. Order *dasti* under signatures of the Court Master.
 21. Order be uploaded on the website of this Court

VIKAS MAHAJAN, J

JANUARY 17, 2025/aj