



\$~5

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 4296/2024**
MOHMAD QASIM MANSOORI @ UMAR @ SONU.....Petitioner

Through: Mr. Kanhaiya Singhal, Mr. Prasanna,
Mr. Ajay, Mr. Rishabh, Ms. Parul
Sharma, Ms. Ankita Makan, Mr. B.
Singh, Mr. Pulkit Jolly, Mr. Aaditya
Saraf, Advs.

versus

STATE NCT OF DELHIRespondent
Through: Mr. Aashneet Singh, APP with Insp.
Manoj Kataria, PS New Usmanpur

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER
18.02.2025

%

1. This is a petition filed under section 439 of Code of Criminal procedure, 1973 seeking grant of regular bail to the petitioner in FIR No. 709/2018, dated 07.09.2018, registered at PS New Usmanpur, under section 302 of IPC, 1860.
2. The chargesheet has also been filed under section 302 of IPC, 1860 and the petitioner is in custody since 30.10.2018.
3. Briefly stating the facts are that two persons, namely, Mustakim and Sakib along with Wasim (since deceased)/victim, after finishing their work on 06.09.2018, hired an auto rickshaw to go from Bus Adda to Khajoori Khas. At around 4:30 A.M. on 07.09.2018, when the auto rickshaw reached the Shastri Park Red light, they saw that one boy, holding a bag (petitioner) was having a fight with another person. Wasim got down from the auto rickshaw to stop the



said altercation. The petitioner thereafter, caught hold of Mr. Wasim and took out a knife from his shirt and stabbed him with the knife, which led to Wasim's death.

4. Hence the present FIR came to be registered.

5. Mr. Singhal, learned counsel for the petitioner states that in the present case, even assuming the best case of the prosecution, the petitioner did not know the deceased and there was no *mens rea* on the part of the petitioner. Further, there was no enmity between the petitioner and the deceased and at best, the case could be under section 304 Part (2) of IPC, 1860 and not under section 302 IPC.

6. He further states that the petitioner has undergone incarceration for a period of about 6 years and till date only 21 out of 31 witnesses have been examined and the trial will not conclude in the near future.

7. Per Contra, Mr. Singh, learned APP opposes the present petition and states that the petitioner is guilty of committing a heinous offence.

8. I have heard learned counsel for the parties.

9. In the present case, even though the allegations against the petitioner are serious and grave in nature and the petitioner is accused of committing a murder, however the fact remains that the petitioner is still an under trial prisoner and the charges against the petitioner are yet to be proved.

10. The prosecution has cited 31 witnesses in total, out of which only 21 witnesses have been examined and 2 witnesses have been dropped, leaving another 8 witnesses to be examined and the trial is unlikely to conclude in the near future. Till the trial is concluded, there is a presumption of innocence in his favour.

11. As per the Nominal Roll dated 12.12.2024, the petitioner has



undergone incarceration for a period of 5 years, 7 months and 25 days.

12. The rights under Article 21 of the Constitution of India are paramount and every accused is entitled to a speedy trial. Further, the petitioner has clean antecedents and is not involved in any other criminal case.

13. The fact that the petitioner had no previous enmity or pre-determined mindset to kill the deceased and hence can only be charged with section 304 Part (2) or with 302, is an issue which will be decided by the concerned court after going through the entire evidence. *Prima-facie* it cannot be said today that the petitioner had an intention to kill the victim.

14. For the said reasons, the petition is allowed and the petitioner is directed to be released on bail on the following terms and conditions:

- a. The petitioner shall furnish a personal bond in the sum of Rs 10,000 (Rupees ten thousand only) each with 1 surety in the like amount, to the satisfaction of the concerned trial court;
- b. The petitioner shall not leave the country without the permission of the competent court and if the petitioner has a passport, he shall surrender the same before the concerned trial court;
- c. The petitioner shall furnish to the IO concerned the 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;
- d. The petitioner will furnish his permanent address to the concerned IO and in case he changes his address, he will inform the IO concerned;
- e. The petitioner shall not indulge in any act or omission that is unlawful, illegal or that would prejudice the proceedings in



pending cases, if any;

- f. The petitioner shall not communicate with, or come into contact with the complainant or any of the prosecution witnesses, or tamper with the evidence of the case.
15. The petition is disposed of accordingly.

JASMEET SINGH, J

FEBRUARY 18, 2025/DM

Click here to check corrigendum, if any