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

+ **BAIL APPLN. 4511/2024**

VIJAY

.....Petitioner

Through: Mr. Vineet Jain, Advocate

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Ms. Kiran Bairwa, APP for the State

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

29.01.2025

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1. The present application under Section 439 of the Code of Criminal Procedure, 1973 (hereafter '*Cr.P.C.*') read with Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereafter '*BNSS*') has been filed on behalf of the applicant seeking grant of regular bail in case arising out of FIR bearing no. 586/2018, registered at Police Station Nihal Vihar, Delhi for offence punishable under Section 302/34 of Indian Penal Code, 1860 (hereafter '*IPC*') read with Sections 25/27/54/59 of Arms Act, 1959.

2. Briefly stated, the facts of the present case are that on 14.09.2018, an information was received that someone was stabbed at G99, Dev Nath Mandir, Rajender Public School. The injured person was identified as Monu @ Mohit. The MLC No. 3063/18 stated that the victim had suffered a stab injury on his right thigh and was declared brought dead at RML Hospital. Thereafter, the FIR was registered for offence punishable under Section 307



of IPC and Section 302 of IPC was subsequently added to the present case. During investigation, it was revealed as per the statement of the father of the victim/deceased that on 14.09.2018, when the victim opened the door of their house, the accused persons namely Vijay (applicant), Kamal, Ravi Bagdi and Prince came there. It is alleged that the applicant herein and the co-accused Prince @ Daulat had stabbed the victim with knives on his thigh. It is alleged that the father of the victim had tried to intervene but co-accused persons Kamal and Ravi Bagdi had pulled him back and helped the applicant and co-accused Prince@ Daulat in fleeing on their motorcycles.

3. During investigation, on 14.09.2018, the present applicant and co-accused Kamal were arrested. On 19.09.2018, co-accused Prince @ Daulat was arrested and he pointed out the place of incident and the weapon of offence was recovered from the adjacent plot of his residence, from the scrap. The bail application of the applicant was dismissed by the learned Sessions Court *vide* order dated 27.07.2024; hence, the present application for grant of bail has been filed.

4. The learned counsel appearing on behalf of the applicant argues that the applicant is in judicial custody since 14.09.2018, except the period when he was released on interim bail in view of HPC guidelines and that the applicant never misused the liberty of interim bail granted to him. The learned counsel further argues that the applicant has only been roped in the present case at the instance of belated statement of the father of the deceased. He argues that that there is no eyewitness and the present FIR is based solely on the statement of police official - Shankar Singh. The learned counsel argues that one witness of the alleged incident who has been examined by the Prosecution as PW-4 namely Sh. Ram Babu (father of the



deceased), has turned hostile. It is stated that another witness Sh. Brij Kishore has also turned hostile. Therefore, it is argued that there is no cogent evidence against the applicant in the chargesheet as well as in the evidence lead by the prosecution before the learned Trial Court, and the prosecution has failed to establish any motive to depict involvement in alleged offence against the applicant. It is also pointed out that all co-accused have been granted bail in this case.

5. The learned APP for the State, on the other hand, opposes the bail application of the applicant. He submits that the allegations against the accused are serious in nature. The present case is at the stage of prosecution evidence and there is a strong apprehension that if the applicant is released on bail, he may try to influence the witnesses or tamper with the evidence. Therefore, it is prayed that bail application be dismissed.

6. This Court has heard arguments addressed on behalf of both the parties and has perused the material available on record.

7. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc. However, at the same time, period of incarceration is also a relevant factor that is to be considered.

8. The applicant has been in incarceration since 14.09.2018, except for the period when he was released on interim bail in view of HPC guidelines. It is not denied that the applicant never misused the liberty of interim bail



granted to him.

9. It is relevant to note that though the status report states that the father of deceased in his statement stated that the applicant stabbed the deceased with a knife, the same is doubtful since, during the examination before the learned Trial Court, the father of the deceased who is the only eye witness has denied giving any statement to the police that the applicant had given any knife blow to the deceased.

10. The applicant cannot be made to spend the entire period of trial in custody especially when the trial is likely to take considerable time as several prosecution witnesses are yet to be examined. In the opinion of this Court, no purpose would be served by keeping the applicant in further custody.

11. The investigation in the present case already stands concluded with the filing of chargesheet followed by framing of charges and the material witnesses have already been examined by the learned Trial Court. All the co-accused persons have also been granted regular bail, including Prince @ Daulat who was also alleged to have stabbed the victim.

12. Considering the overall facts and circumstance of the present case, this Court is inclined to grant regular bail to the accused/applicant on his furnishing personal bond in the sum of Rs. 25,000/- with one surety of the like amount, subject to the satisfaction of the learned Trial Court/Successor Court/Link Court/Duty Judge concerned on the following terms and conditions:

- i. The applicant shall not leave the country without prior permission of the concerned Court.
- ii. In case of change of residential address/contact details and



phone number, the applicant shall promptly inform the same to the concerned Court and the I.O./SHO.

- iii. The applicant/accused will not absent himself before the learned Trial Court;
 - iv. The applicant will ensure that he will move appropriate application before the learned Trial Court in case he cannot appear.
13. Accordingly, the bail application stands disposed of.
14. It is clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.
15. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 29, 2025/ns

Click here to check corrigendum, if any