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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 4753/2024**
VIKASH KUMAR @ NEPALIPetitioner
Through: Mr. R.K. Mishra and Ms. Reetu
Dubey, Advs.

versus

STATE (NCT OF DELHI)Respondent
Through: Mr. Aman Usman, APP for State with
Insp. Chetan Singh, PS. Khyala, Delhi.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN
ORDER
% **31.01.2025**

1. The present petition has been filed under Section 483 BNSS seeking regular bail in connection with FIR No.73/2022 under Sections 302/34 IPC registered at Police Station Khayala, Delhi.
2. The case of the prosecution is that the petitioner is the real brother-in-law of the deceased, namely, Ashu, who was married to the petitioner's sister, namely, Sita. On 13.01.2022, some altercation happened between the accused persons (petitioner and other co-accused) with deceased Ashu, who was in highly inebriated state. Later, the petitioner was found dead. On the complaint of other brother-in-law of the deceased namely, Veer Pal / PW-1, the FIR came to be registered.
3. The learned counsel for the petitioner submits that all the public witnesses cited by the prosecution have been examined and they have not supported the case of the prosecution.



4. He further submits that the petitioner is in custody since 14.01.2022 and has remained incarcerated for a period of 03 years and 11 days as on 24.01.2025.
5. He further submits that the petitioner has clean antecedents and in the event of he being enlarged on bail, there is no possibility of any material witnesses being influenced by him.
6. *Per contra*, the learned APP has argued on the lines of the Status Report. He submits that the death of the deceased had occurred in the house of the present petitioner, therefore, it is for him to explain the circumstances in which the death has occurred. He further submits that the prosecution is also relying on the last seen theory, since the death of the deceased has taken place at petitioner's residence.
7. I have heard the learned counsel for the petitioner, as well as, the learned APP for the State and have perused the record.
8. This Court is conscious of the fact that the credibility of the witnesses is to be considered only at the stage of trial and the same is not to be seen while deciding the bail plea.
9. The testimonies of the witnesses have shown by the learned APP at Bar and the same have examined only for the limited purpose of considering the bail application. A perusal of the testimony of the sole eye-witness as per the list of witnesses filed with the charge-sheet namely, Riya/PW-5 (daughter of deceased), has feigned ignorance about the occurrence and she stated that she was sleeping at the time when the incident occurred and she does not know how her father expired. She also stated that the accused persons had not caused any injuries to her father.
10. Witness Veer Pal/complainant, who was examined as PW-1 shows that



he was not present at the time of incident and he was called by his wife, namely, Meera by making a phone call after the incident had already happened.

11. The material witnesses i.e. Ms. Varsha/PW-2 and Ms. Gauri/PW-3 have not supported the case of the prosecution to the fullest extent. Likewise, Sita/PW-4, who was the wife of the deceased, has also not supported the case of the prosecution. Even Mohit/PW-6 has stated that at the relevant time, he was not at the place of occurrence. Rohit/PW-8 has also stated that he learnt much later about the death of the deceased.

12. The prosecution has also pressed into service an extra-judicial confession made by the accused to Meera/PW-7, who is the sister of the deceased. The contention of the learned counsel for the petitioner that extra-judicial confession is a weak type of evidence and further PW-7 is an interested witness being sister of the deceased, does not appear to be wholly without substance.

13. Though the ultimate call will be taken by the learned trial court as to the probative value of the testimonies of the witnesses. However, taking an overview of the testimonies of the prosecution witnesses, this Court finds that such testimonies tilt the balance in favour of the petitioner for grant of bail especially when at this stage there is presumption of innocence in favour of the petitioner and he has already been incarcerated for more than three years.

14. It is not in dispute that the petitioner has clean antecedents. Further, it is also not the case of the prosecution in the Status Report that the petitioner is a flight risk. The presence of the petitioner during trial can otherwise be ensured by putting appropriate conditions.

15. 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 enlarged on 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/CMM/Duty Magistrate, 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 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.
- c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

16. The petition stands disposed of.

17. 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 the merits of the case.

18. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.

19. Order *dasti* under signatures of the Court Master.

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

VIKAS MAHAJAN, J

JANUARY 31, 2025/dss