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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 27/2025**

VISHNU

.....Petitioner

Through: Mr. Anuj Garg, Mr. Vipin Kumar,
Mr. Vashu Gupta, Mr. Vishu Raj and
Ms. Kashish, Advs.

versus

STATE GNCT OF DELHI

.....Respondent

Through: Mr. Aman Usman, APP for State with
Insp. Sahil Sharma PS Vijay Vihar

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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06.03.2025

1. The present petition has been filed under Section 483 BNSS, 2023 seeking regular bail in connection with FIR No. 21/2023 under Sections 302/34 IPC registered at PS Vijay Vihar.
2. The case of the prosecution is that in the intervening night of 10/11.01.2023 deceased Deepu alongwith his associate Naveen @ *Tamatar* went to N-21, Shyam Colony, Bugh Vihar, Phase-II for committing theft, which was a shop/godown of a scrap dealer namely, Sudeep Gupta, where co-accused Rajeev Gupta, Kaushal and Vishnu (petitioner herein, aged about 18 years at the time of arrest) were sleeping.
3. Deceased Deepu entered the premises by jumping the boundary wall and Naveen @ *Tamatar* waited outside. At about 06.00 A.M., one Shiva



Kant Gupta knocked at the main door of the shop and on seeing the deceased shouted '*chor-chor*'. Accused persons including Vishnu i.e. the petitioner herein, sleeping in the shop woke up and caught hold of the deceased Deepu and gave beatings to him. In the meanwhile, the owner of the shop Sudeep was called who also gave beatings to the deceased.

4. Later on, the deceased was found in unconscious condition away from the place of incident wherefrom the police had taken him to the hospital, where he was declared brought dead.

5. The learned counsel for the petitioner invites attention of the Court to the status report dated 30.01.2025 to contend that as per the prosecution version the offence weapons which were used for giving beatings to the deceased person are PVC pipes and belt. He submits that no specific role is attributed to the present petitioner. However, the medical evidence shows that the injuries could be caused by plastic pipes.

6. He also refers to the testimony of PW8 Naveen @ *Tamatar* to contend that in his examination-in-chief he has stated that he ran away from the place of incident after hearing people shout as well as the cries of deceased Deepu. He thus contends that PW-8 is not an eyewitness.

7. Referring to the statement of PW4 Babar, he submits that said witness has been examined by the prosecution to prove the CCTV footage on record. The said witness has stated that he cannot identify the accused from the CCTV footage. He further submits that the said witness has also stated that there were more than 10–15 persons who had given beatings to the deceased and the four accused persons were amongst them.

8. He further draws attention of the Court to the Post Mortem Examination Report (shown in the Court), to submit that the deceased



Deepu had received injuries all over his body and such injuries do not indicate that there was deliberate hitting on any vital or particular part of the body, which itself shows that there was no intention to kill the deceased, therefore, it is not a case attracting Section 302 IPC but only attracts Section 304 Part II of IPC. He submits that this contention gains further strength from the very fact that no dangerous or deadly weapon was used for giving beatings to the deceased. He also relies upon the decision of the Division Bench of this Court in **Rajaram vs. State of NCT of Delhi**¹, the relevant part of which reads as under:

*30. In the present case, the post-mortem report Ex. PW 22/A1 reveals that the injuries have been inflicted both in the head area and in the back area as also on the hand and the neck area. **The post-mortem report does not show that there was deliberate hitting only in one area of the body of the deceased to cause death. The Appellants seem to have hit the deceased in a fit of anger or rage and did not intend to cause death of the deceased.** The injury Nos. 12,13,14,15 and 16 are all injuries on the back, though the post-mortem report reveals that the injury No. 13 is indicative of repeated strikes with a linear blunt object like a danda, rod etc. Moreover, it is also noticed that out of the seventeen injuries which have been caused, eight injuries have been caused with the pipe and remaining are blunt injuries which may have been caused by the Matka.*

31. In view of the nature of the injuries and the fact that there was no premeditation to cause death, this Court is of the opinion that the present case is one where Appellants' conviction deserve to be converted into Section 304 Part II.

(emphasis supplied)

9. He further submits that even if the prosecution version is taken on its

¹ CRL.A.482/2024 & CRL.M.(BAIL) 872/2024, decided on 20.09.2024



face value, the incident does not appear to be a pre-planned or pre-meditated and the incident had occurred at the spur of moment when it was realized that the deceased was a thief who had entered into the scrap godown of the accused Sudeep Gupta.

10. He submits that as per the prosecution version, after leaving the place of incident the deceased was lying in the open in the month of January and the possibility of death of the deceased having occurred on account of extreme cold cannot be ruled out.

11. Referring to the nominal roll the learned counsel contends that the petitioner has been incarcerated for a period of 02 years and 19 days as on 02.02.2025 and at the best it is an offence under Section 304 Part II of the IPC for which the maximum sentence prescribed is 10 years and there is no minimum sentence prescribed for the same.

12. He further submits that almost all material witnesses have been examined and in the event the bail is granted to the petitioner, there is no possibility of petitioner influencing any witnesses.

13. Lastly, it is submitted that the petitioner has clean antecedents and there is no other involvement of the petitioner. He, therefore, urges the Court that bail be granted to the petitioner.

14. *Per contra*, learned APP for the State has argued on the lines of the status report. He submits that the charge has already been framed under Section 302 read with Section 34 IPC. The said charge has not been challenged, therefore, the same has attained finality.

15. He further submits that it is evident from the Charge-sheet that deceased Deepu was given beatings for 5 hours, therefore, it cannot be said that the incident had happened at the spur of moment. Referring to the



testimony of PW4 Babar, the learned APP submits that the said witness has not only proved the CCTV footage but has also stated 4-5 persons are seen beating one person and then he identified the four accused persons present in court, whom, he said, are seen in the CCTV footage. He further contends that PW8 namely Naveen @ *Tamatar* has also identified the accused Sudeep, Vishnu and Kaushal as the persons who were taken by the police officials to police station.

16. He further submits that the deceased was firstly beaten brutally and then water was poured on him in the month of January when it is extremely cold in Delhi.

17. I have heard the learned counsel for the petitioner, as well as, the learned APP for the State and have perused the material on record.

18. It is the case of the prosecution that the deceased had entered into the shop/godown of accused Sudeep Gupta, who is a scrap dealer with an intention to commit theft. At the relevant time, co-accused Rajiv Gupta, Kaushal and petitioner Vishnu were sleeping in the said shop/godown. One person namely Shiva Kant Gupta upon seeing the deceased had raised an alarm by shouting '*chor-chor*'. Hearing the said shouting, the accused persons sleeping in the shop woke up, caught hold of Deepu and gave beatings to him. Co-accused Sudeep Gupta was called, who also gave beatings to the deceased. It is further the case of the prosecution that the said beatings had caused the death of the deceased.

19. The learned APP has though argued that the beatings were given to the deceased for a period of 05 hours, however, no material on record has been pointed out which would indicate that the beatings were given to the accused continuously for a period of 05 hours. In the absence of such



evidence, merely because the deceased was kept in godown for few hours, it cannot be inferred that he was being given beatings for all that while. However, the ultimate call on this factual aspect will be taken by the learned Trial Court at an appropriate stage on the basis of material proved on record.

20. At this stage, suffice it to note that as per prosecution version the incident had happened when deceased entered the shop/godown of accused Sudeep Gupta with an intention to commit theft where he was caught hold by the accused persons and given beatings. In the facts and circumstances of the case, there seems to be some substance in the submission of the learned counsel for the petitioner that such beatings were given in a heat of passion on the spur of the moment when it was realised that the petitioner was a thief and incident does not appear to be pre-planned and pre-mediated.

21. Accordingly, the incidental submission of the learned counsel for the petitioner that even the weapons used viz., pvc pipe and belt are not dangerous or deadly weapons and for this reason as well, there does not seem to be an intention on part of the petitioner and other co-accused to either cause death or cause such bodily injury which is likely to cause death, cannot be negated altogether at this stage.

22. The learned APP has stated that water was poured on the deceased in the month of January when it was extremely cold which shows the brutal approach. However, reading of charge-sheet gives an impression that water was poured probably to enable the accused to gain consciousness as his condition had worsened with beatings, but it is for the learned Trial Court to form an opinion as to whether the act of the petitioner and other co-accused in the facts and circumstances of the case, was brutal or not.

23. Suffice it to note that the case of prosecution is that beatings were



given to the deceased with PUC pipe and belt but there is no specific allegation that the petitioner has given beatings with PUC pipe or belt. A perusal of the post-mortem report shows that the injuries inflicted to the deceased were on different parts of his body, therefore, the submission of learned counsel for the petitioner relying upon the decision in **Rajaram** (supra) that there was no deliberate hitting only on one area of the body of the deceased to cause death, is not wholly without merit.

24. Having regard to the above noted circumstances, the submission of the learned counsel for the petitioner that the present case is one under Section 304 Part II of IPC and does not attract the offence under Section 302 IPC cannot be brushed aside at this stage. Merely because the charge has been framed under Section 302 IPC and the same has attained finality, does not operate as a bar on the power of the learned trial court to alter the charge at any time before judgment is pronounced under section 216 CrPC (akin to section 239 of BNSS) or to convict the accused for a minor offence on the basis of facts that are proved, in view of the provisions of section 222 CrPC (akin to 245 BNSS).

25. Notably, an offence under Section 304 Part II is punishable with maximum imprisonment of 10 years and there is no minimum punishment provided. The petitioner has already been incarcerated for a period of 02 years, and 19 days as on 02.02.2025, it would indeed a travesty of justice to keep a person in jail for an indefinite period for an offence which is ultimately found not to have been committed by him or for which the learned Trial Court may propose to award punishment with an imprisonment which is lesser than the period for which he has been incarcerated.

26. Undisputedly, the petitioner does not have any criminal record. His



presence during trial can also be ensured by putting appropriate conditions. The prosecution has cited as many as 34 witnesses, of which only 06 witnesses have been examined till date, therefore, the conclusion of trial is likely to take long time. Therefore, keeping him in custody for an indefinite period to await the outcome of the trial in the facts and circumstances of the present case is not warranted.

27. That apart, most of the material witnesses have been examined, therefore, there is no possibility of petitioner influencing any witness in the event he is enlarged on bail.

28. Having regard to the aforesaid circumstances, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is admitted 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/CJM/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 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.

29. The petition stands disposed of.

30. 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.

31. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.
32. Order *dasti* under signatures of the Court Master.
33. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

MARCH 6, 2025
N.S. ASWAL/dss