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

+ BAIL APPLN. 1301/2023

ZAKIR HUSSAIN

..... Petitioner

Through: Mr. Devjyoti Dey, Advocate

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Mukesh Kumar, APP for State
with Insp. Rajiv, P.S. Mangolpuri

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

03.10.2023

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[The proceeding has been conducted through Hybrid mode]

1. This is an application under Section 439 Cr.P.C., 1973 seeking regular bail in FIR No. 1044/2022 dated 09.09.2022 under Sections 302/307/34 IPC, 1860 and subsequently added Sections 147/148/149/120-B IPC, 1860 and Sections 25/27 of Indian Arms Act, 1959.

2. Learned counsel appearing for the applicant submits that the only role attributed to the applicant in the present case is that of purportedly having blocked or prevented one witness Naveen from saving the deceased while he was being assaulted by the other co-accused persons.

3. According to the prosecution story, one of the co-accused persons had made a call to the applicant at 4:12 PM, whereafter the



applicant was seen in the CCTV footage obtained from the alleged place of incident. According to the prosecution, the incident took place between 4:12 PM and 4:30 PM (approx.) on the date of incident i.e. on 09.09.2022. It is further the case of the prosecution that the applicant had reached the spot pursuant to the said call made by the co-accused person and even subsequent to the incident at 4:36 PM, he yet again received a phone call from the same co-accused person.

4. According to the prosecution theory, the applicant was a part of the entire transaction and his role would be specified and cleared once the witnesses are examined in the present case.

5. Learned counsel appearing for the applicant submits that even if one were to go by the CCTV footage and even if it is assumed that the applicant was present at the spot, however, the applicant appears as a mere bystander without any participation and clearly cannot be stated to be a part of the unlawful assembly to come within the ambit of Section 149 of IPC, 1860.

6. Moreover, learned counsel for the applicant submits that the reading of the chargesheet would show that it was the deceased and the complainant party, who had infact approached and gone to the house of the co-accused persons and not the other way round.

7. Learned counsel submits that there is nothing on record as of today to show the complicity of the applicant in any of the offences, as alleged, much less the theory of conspiracy.

8. Insofar as the allegation that the witness Naveen was prevented by the applicant from saving the deceased, is concerned, learned counsel vehemently opposed the same on the ground that even the



CCTV footage is bereft of any such indication.

9. *Per Contra*, Mr. Mukesh Kumar, learned APP for State vehemently opposes the submissions made by learned counsel for the applicant.

10. According to learned APP, the call which was made at 4:12 PM was in furtherance of the common intention which was fructified by the unlawful assembly which attacked and assaulted the deceased, which included the applicant, who was without any doubt even as per the CCTV footage was present at the place of the incident.

11. Learned APP further submits that apart from the fact that the applicant was present at the place of incident, one of the witnesses namely PW Naveen, in his statement under Section 161 Cr.P.C., 1973, categorically stated that when he was trying to save the deceased, one person in *Neela* (blue) *kurta* was preventing him from doing the same, however, he managed to move from the side and tried to save the deceased. According to learned APP, this statement is enough to show the common intention of the applicant to incriminate him under the aforesaid offences.

12. Learned APP further submits that the evidence of witness Naveen is going to be recorded in the month of November, 2023 and submits that the present application be considered thereafter.

13. In any case, learned APP vehemently opposes the said bail application.

14. This Court has considered the arguments of learned counsel for the applicant as also Mr. Mukesh Kumar, learned APP for State.

15. This Court has also perused the statement under Section 161



Cr.P.C., 1973 as also the chargesheet and had an opportunity to view the CCTV footage presented by the IO, who is present in person.

16. The general reading of this Court, in respect of the applicant and his behaviour as captured in the CCTV footage, does not inspire or instill any confidence in this Court as to the allegations regarding his active participation in the assault.

17. The other allegations and the statement of the witnesses is not being considered by this Court, lest it affects or prejudice the case of either of the party before the learned Trial Court.

18. Suffice it to say that as of now there is nothing on record to show the complicity or culpability of the applicant in the assault upon the deceased alongwith the other co-accused persons. So far as the allegation of preventing witness from saving the deceased and conspiracy is concerned, the same would be subject matter of the trial.

19. In view thereof, this Court is of the considered opinion that the applicant can and is entitled to be released on bail.

20. Accordingly, it is directed that, the applicant be released on bail on his furnishing personal bond in the sum of Rs. 1 Lac with one surety of like amount to the satisfaction of the Trial Court, subject to the conditions as follows:-

- a) He shall surrender his passport, if any, to the Court concerned and shall under no circumstances leave Delhi without prior permission of the Court concerned;
- b) He shall cooperate in the trial and shall appear before the Court as and when required;
- c) He shall provide his mobile number(s) to the



Investigating Officer and keep it operational on his person at all times;

d) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;

e) He shall not indulge himself in any criminal activity of any nature whatsoever.

f) He shall not visit the locality where the victim/complainant and his/her family reside; and

g) In case of change of residential address and/or mobile number, the same shall be intimated to the Investigating Officer/Court concerned by way of an affidavit.

21. Any infraction of the abovesaid conditions shall make the applicant liable for revocation of the present bail so granted.

22. Nothing in this Order shall be construed as an expression of opinion on the merits of the pending matter.

23. With the aforesaid conditions, the bail application stands disposed of.

24. *Dasti.*

TUSHAR RAO GEDELA, J

OCTOBER 3, 2023

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