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

+ BAIL APPLN. 2628/2023

PANKAJ

..... Petitioner

Through: Mr. S. K. Nanda and Mr. Arman
Bhardwaj, Advocates

versus

STATE OF DELHI (N C T)

..... Respondent

Through: Mr. Mukesh Kumar, APP for State
with SI Ashutosh, PS Ranjit Nagar

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

12.10.2023

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[The proceeding has been conducted through Hybrid mode]

1. This is the bail application under Section 439 of the Code of Criminal Procedure, 1973 filed on behalf of the applicant seeking regular bail in FIR No.443/2022 dated 21.05.2022 under Section 307 and 34 of Indian Penal Code, 1860 registered at Police Station Ranjit Nagar, Delhi and pending proceedings in SC No.565/2022.

2. Case of the prosecution as narrated in the status report /reply of the bail application are as under:-

“Most respectfully, it is submitted that brief facts of the case are that on 20.5.22, when the complainant Shekhar S/o Lt. Balbir Singh Rio 2246-A, Shadipur, Delhi was coming back to his house in his car and was near Satyam Cinema T Point, four persons allegedly stopped him and scolded him for not driving the car properly. They asked him to come out of the car and when the complainant came out, the accused

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persons caught hold of him and the applicant/accused Deepak @ Arjun took out a knife and stabbed the complainant in his stomach, hand and thigh and fled from the spot. The injured was treated at Gangaram Hospital vide MLC No 5015/22, wherein stab wounds were mentioned in upper abdomen, right arm and left thigh. The statement of the complainant/injured was recorded and the above case was registered and investigation was taken up.

During the course of investigation, the accused/applicant Deepak @ Arjun and Pankaj S/o Lt Sanjay Rio E-207, DDA Flats, New Ranj it Nagar were arrested in the case. A knife with button allegedly used in the incident was also recovered from his possession. Section u/s 25/27 Arms Act were also added in the case. The opinion on the nature of injuries was obtained which was opined as ' Grievous' by the Medical Expert. During the course of investigation, TIP proceedings were conducted where in the accused persons had re fused to participate in the TIP proceedings. After completion of investigation, Charge sheet u/s has been filed before the Hon' ble court. The exhibits in the case had been deposited in FSL. The FSL report was obtained which had also been submitted before the Hon' ble court. The case is at prosecution evidence stage, charges have been framed u/s 307/34 IPC against both the accused and 25/27 Arms Act against Deepak. The next date of hearing is 13.10.2023.

3. Learned counsel appearing for the applicant submits that the applicant has been incarcerated in judicial custody since 24.05.2022 and without having been released on bail in the interregnum. He submits that even as per the allegations in the FIR, there is no active role attributed to the applicant. In fact in the chargesheet no particular role has been attributed to the applicant. Even the knife, which is alleged to have been used in the incident, was recovered from the co-



accused and not from the applicant.

4. Learned counsel submits that having regard to the fact that the chargesheet has been filed and charges framed under section 307/34 IPC, 1860 and the fact that the case is at the stage of prosecution evidence, there is no requirement for keeping the petitioner in judicial custody.

5. Learned counsel submits that there are 10 witnesses in all. He further submits that the evidence of only one public witness that is the complainant himself has so far been recorded and evidence of the remaining nine witnesses is yet to be recorded. Learned counsel submits that the applicant is a young man of 21 years and it may not be conducive to detain him in judicial custody.

6. Learned counsel submits that he has no other previous involvements and has clear antecedents.

7. *Per contra*, Mr. Kumar, learned APP for the State vehemently opposes the bail application and opposes the submissions made by learned counsel appearing for the applicant to submit that the applicant was an active participant in the assault upon the victim. He also submits that the specific role of catching hold of the victim upon whom the co-accused had given knife blows is attributed to the applicant in the chargesheet.

8. Learned APP also submits that the victim has correctly identified the applicant in the court proceedings during the testimony.

9. Learned APP also submits that recording of the evidence of the complainant is already over.

10. Learned APP also brings attention of this Court to the nominal



roll and the punishment imposed upon the applicant while he was in judicial custody. In particular, learned APP brings attention of this Court to the punishment ticket which was imposed upon the applicant to submit that even in the jail, the applicant was in possession of handmade poker (*sua*) and as such the release of the applicant may not be conducive to the victim or even the society. Learned APP also refers to the nominal roll to submit that even the jail conduct of the applicant is unsatisfactory.

11. This Court has heard the submission of learned counsel appearing for the applicant as also the learned APP for the State.

12. At the outset, this Court has considered the nominal roll, according to which the applicant has spent as on 02.10.2023 incarceration for 1 year, 4 months and 9 days. That apart, it is noted that the overall jail conduct is unsatisfactory and a jail punishment imposed on the applicant twice.

13. This Court has also considered the reply filed on record by the prosecution, according to which, a knife with button was recovered from the co-accused namely Deepak and nothing was recovered from the applicant and accordingly charges against both were framed under Section 307/347 IPC, 1860. However, as against the co-accused, additional charges under Section 25/27 of the Amt Act, 1959 were framed.

14. It is also not disputed that recording of the evidence of the complainant has already been concluded and only formal witnesses remain to be examined. As such, the impediment of the applicant threatening or intimidating the witness also does not arise in this case.



That apart, the applicant is stated to have been 20 years of age on the date of offence and is a young person who ordinarily should not be kept in judicial custody in the company of hardened criminals. The basis of this theory is to ensure that young persons are afforded an opportunity to undergo some kind of reformation, which may not be possible so long as they are incarcerated in judicial custody along with other hardened criminals.

15. It is directed that, the applicant be released on bail on his furnishing personal bond in the sum of Rs25,000/- with one surety of like amount to the satisfaction of the learned Trial Court, subject to the following conditions:-

- 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 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 visit the locality where the victim/complainant and his/her family reside;
- f) 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.



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

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

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

19. *Dasti.*

TUSHAR RAO GEDELA, J

OCTOBER 12, 2023/ms