

**Bail Application in
SC No.717/23
State Vs. Abhishek Sharma
FIR No.310/23
PS : Ashok Vihar
u/s.307/34 IPC**

10.04.2024

Present: Sh. Sanjay Jindal, Ld. Addl. PP for State.
Sh. M.P. Sinha, Ld. Counsel for applicant/accused.
SI Satender, on behalf of IO.

- 1. This application U/s.439 Cr.P.C. has been moved seeking regular bail for applicant / accused Abhishek Sharma.**
2. Ld. counsel for the applicant / accused has submitted that no similar application is pending before any other Court.
3. Reply filed. Copy supplied.
4. During the course of arguments, Ld. Counsel for the applicant / accused has submitted that the present case FIR relates to the injury caused to injured Sohail @ Sunny. His statement has already been recorded and as per his statement, besides accused Irfan @ Ballu, he did not identify any other assailant. Ld. Counsel has further submitted that even if the Court goes by the earlier statement of Sohail @ Sunny, applicant / accused is not the person, who had caused injury to him. The injuries were actually caused by accused Irfan @ Ballu. Ld. Counsel has further submitted that the applicant / accused is in JC for the last about 11 months now. The only material witness remains to be examined is Rohtash, whose statement was recorded after two months of the incident. The point sought to be raised by

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Ld. Counsel for the applicant is that possibility cannot be ruled out that this witness was planted subsequently. Ld. Counsel has concluded his arguments by submitting that since the main witness has already been examined in the present case, no purpose would be served by keeping the applicant / accused further in custody.

5. On the other hand, Ld. Addl. PP for the State has submitted that another eye witness Rohtash still remains to be examined. If the applicant / accused is released on bail, he can either influence the witness, or can advance threat to him. Ld. Addl. PP has also submitted that in addition to the statement of eye witness, the prosecution has also proposed to produce a CCTV footage, wherein all the four assailants are seen running away after commission of crime.
6. In rebuttal to the above argument relating to the CCTV footage, Ld. Counsel for the applicant has submitted that the injured himself has stated that injuries were caused by accused Irfan @ Ballu only. Moreover, the CCTV footage does not contain the actual incident, it just shows that four persons are running away. It nowhere proves that the persons seen running had committed the offence.
7. Arguments heard. Record perused.

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8. As per the case of prosecution, all the four assailants, including the applicant, had caused injuries to Sohail @ Sunny, who has already been examined as PW1. In his Court statement, besides accused Irfan @ Ballu, he has not identified any other assailant. Even if, this Court accepts the CCTV footage, the fact shall remain that the applicant was not the actual assailant. Moreover, the CCTV footage doesn't contain the actual incident.
9. As far as examination of PW Rohtash is concerned, this Court is conscious of the legal position that bail is not a stage where evidence is to be evaluated, but nothing prevents a Court to take overview of the evidence, which is proposed to be adduced by the prosecution. This Court, therefore, cannot overlook the fact that no explanation has been given in the charge-sheet for recording the statement of PW Rohtash after a delay of two months.
10. In view of the above circumstances and considering the custody already undergone by the applicant / accused Abhishek Sharma, **the present application is allowed.** Applicant / accused Abhishek Sharma is admitted to bail on furnishing personal bond in the sum of Rs.25,000/- with one surety of like amount. The applicant shall not approach the witnesses of this case in any manner.

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11. The applicants stands disposed of accordingly.

**(BABRU BHAN)
ASJ-03 (NORTH-WEST)
ROHINI COURTS
DELHI/10.04.2024**