

SC No. 279/2023  
State Vs. Ashique @ Ashif  
FIR No. 187/2023  
P.S. Anand Vihar  
u/s 302/34 IPC.

18.10.2024

Present : Sh. Parmod Kumar, Ld. Addl. PP for State.

None for applicant/accused.

This application u/s 439 Cr. PC on behalf of applicant/accused is fixed for clarification, if any / order.

No clarification is required.

### **ORDER**

1. By virtue of this order, application u/s 439 Cr. PC on behalf of applicant/accused seeking regular bail shall be disposed of, which has emanated out of pending trial before the court of undersigned.
2. Ld. Counsel for applicant/accused has submitted that applicant/accused has been falsely implicated in the present case; that applicant/accused is in JC since 24.07.2023; that applicant/accused has clean antecedents; that applicant/accused is a permanent resident of Delhi and there is no chance of his absconding from justice. It has been further submitted that applicant/accused is ready to abide by all the conditions imposed by the court, if he is released on bail. Thus, Ld. Counsel has prayed for grant of bail to the applicant/accused.
3. Per contra, Ld. Addl. PP for State has opposed the present application by referring to the serious nature of

allegations against applicant in the present case. It has also been contended that there are reasonable grounds to believe that applicant/accused has committed the offence. It has thus been prayed that bail application may be dismissed.

4. I have heard respective submissions on behalf of both the sides and perused the material available on record.

5. In brief, the prosecution case is that on 04.06.2023, vide DD No. 36 A, ASI Rajender from P.S. Vivek Vihar had telephonically informed at P.S. Anand Vihar that an injured in a road accident at Anand Vihar flyover, was admitted at GTB hospital; that on receipt of said DD, ASI Kailash along with HC Rajeev reached at GTB hospital and obtained MLC of injured; thereafter IO reached at the place of incident and during investigation and upon local enquiry, name of injured came to be known as Sakir s/o Sabir; that no eye witness was found at the spot; that on the basis of above circumstances in view of MLC of injured, FIR was registered u/s 307 IPC; that during investigation, statements of father and cousin of injured were recorded, who stated that on 04.03.2023 at about 3.00 am, one Rahisuddin had informed the father of injured that Sakir had some quarrel at Anand Vihar railway station; that thereafter both of them reached at the spot and found that Saurabh, Ashiq @ Asif, Banti, Sunny and Javed were beating Sakir with fists and leg blows after laying him down on the ground; that Saurabh was holding the feet of Shakir and Ashiq was severaly beating Sakir with a wooden plank; that father and cousin of injured Sakir had tried to save him from the clutches of all accused persons, thereafter

all above said persons fled away from the spot; that thereafter injured was taken to GTB hospital in an ambulance; that father of injured further stated that some days before the incident, injured Sakir had told him that earlier also, a quarrel had taken place between injured Shakir and all above said accused persons; that during investigation, accused Saurabh was arrested on 05.06.2023; that thereafter statement of other witnesses Rahisuddin, Bona @ Baba were recorded; that Bona @ Baba stated that he was working as taxi driver; that on 03.06.2023 at about 6.00 pm, he reached at Anand Vihar railway station in his taxi and thereafter at about 2.00 am, Sakir also came there; that on seeing Sakir, accused persons Saurabh, Sunny, Asif @ Ashique, Javed @ Banta and Banti came to Sakir and started threatening him by saying आज बता उस दिन तू क्या कह रहा था आज बोल कर दिखा आज तेरा काम ही खतम कर देते हैं आज हमारी पूरी टीम है; that on this, upon intervention by other auto drivers present there, accused persons went away and started consuming liquor in the van of accused Saurabh; that after some time, injured Sakir went from the spot and all accused persons also chased him; that thereafter IO had recorded statement of one eye witness namely Shivkant, who stated that on 3/4.06.2023 at about 2.00 am, he noticed that all accused persons Saurabh, Sunny, Asif @ Ashique, Javed @ Banta and Banti were consuming liquor in their van and on seeking Shakir, all of them started abusing and quarreling with him, however upon intervention by other auto drivers they went away and started consuming liquor again in the

said van; that eye witness Shivkant was also standing near their van in his auto and he heard all accused persons were planning to kill Sakir; that at about 3.30 am, Sakir went away from the place in his auto and all accused persons followed him; that upon getting suspicious, witness Shivkant also followed them and saw that all above accused persons were severely beating Sakir; that Shivkant tried to intervene, but all accused persons threatened him and pushed him away; that accused Javed had threatened this witness by saying तू संगम विहार का हमारा साथी है इसका साथ मत दे नहीं तो हम तुझे भी नहीं छोड़ेंगे; that thereafter upon arrival of father and cousin of injured, all accused persons fled away from the spot; that after some time of the incident, applicant/accused threatened witness Shivkant on his mobile not to tell about the incident to anybody, else he would be killed; that thereafter, even accused Saurabh threatened the witness Shivkant in the same manner; that after this, witness upon being scared of the threats extended to him, went to his native village and only returned when he came to know that accused persons have been arrested in the present case; that during the course of investigation statement of this eye witness was also recorded u/s 164 Cr. PC; that on 08.06.2023 injured Sakir had succumbed to his injuries; that all accused persons were arrested in the present case and after completion of investigation, charge-sheet u/s 302/34 IPC was filed before the concerned court.

6. At the outset, it is worthwhile to refer to the case of **State of U.P. vs. Amarmani Tripathi 2005 SCC Online SC**

1383, wherein the Hon'ble Supreme Court while discussing the factors, which ought to be taken into consideration for grant or refusal of bail, has held as under:

*".....18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [Prahlaad Singh Bhati v. State (NCT of Delhi) (2001) 4 SCC 280) and Gurcharan Singh v. State (NCT of Delhi) (1978) 1 SCC 118]......"*

7. Now advertent to the facts of the case in hand, the offence alleged against the applicant/accused is grave and serious in nature, which entails the most severe punishment in the event of conviction. Upon completion of investigation, charge-sheet has been filed. As per prosecution case, the specific role of the applicant/accused is that he had severely beaten deceased Sakir with wooden plank.
8. Ld. counsel for applicant/accused, during the course of arguments, has pointed towards some irregularities in the investigation and also raised questions regarding the probability of sequence of events shown in the prosecution case, which are stated to have taken place at the time of alleged incident. Ld. counsel argued at length w.r.t. veracity of statements of eye witnesses on record and also went about analyzing the evidence otherwise placed in the file in great

detail. However, it is settled law that at the stage of bail, the credibility and evidentiary value of witnesses should not be gone into. Reliance can be placed upon the case of **Satish Jaggi vs State Of Chattisgarh & Ors. Appeal (crl.) 651 of 2007** wherein it has been held by Hon'ble Supreme Court as under:

*“At the stage of granting of bail, the Court can only go into the question of the prima facie case established for granting bail. It cannot go into the question of credibility and reliability of the witnesses put up by the prosecution. The question of credibility and reliability of prosecution witnesses can only be tested during the trial.”*

9. Applying the aforesaid legal proposition to the facts of the case in hand, it would be inappropriate to discuss evidence in depth at the stage of bail as the same is likely to influence the trial. Otherwise, statement/testimony of eye witness is there on record, who has attributed specific role to the applicant/accused. The allegations levelled against the applicant/accused along with other co-accused persons w.r.t. manner in which injury was inflicted, seems to be in line from the cause of death given in the post-mortem report. In addition to this, CDR/location report seems to indicate the presence of applicant/accused near the spot at the relevant time.
10. Moreover, the present matter is fixed for evidence and out of three eye witnesses, two eye witnesses i.e. PW2 Shivkant and PW3 Sabir Ahmad have been examined partly and their further examination has been deferred. Although PW2 has not supported the prosecution case, however, PW3 has supported the prosecution case in his examination-in-

chief recorded so far and has also correctly identified the applicant/accused. Moreover, considering the fact that evidence of two eye witnesses is yet to be completed and this fact when seen in the light of the audacity of the act committed, the possibility of threatening and intimidating the remaining eye/public witnesses by the applicant cannot be ruled out, in case bail is granted at this crucial stage of the case. Therefore, at this stage, this Court is not inclined to grant bail to the applicant/accused.

Accordingly, present bail application under Section 439 Cr. PC seeking regular bail stands dismissed.

**(Vineet Kumar)**  
ASJ-02/E-Court/Shahdara  
KKD/Delhi/18.10.2024