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

+ CRL.A. 724/2024

CHHOTU

.....Appellant

Through: Mr. Akshay Saxena, Mr. Anurag Soan
and Mr. Rituraj, Advocates

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Sanjeev Sabharwal, APP for the
State with SI Punit Kumar, PS:
Shahbad Dairy.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

22.05.2025

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1. This hearing has been done through hybrid mode.

CRL.M.(BAIL) 1143/2025(suspension of sentence)

2. This is the second application under Section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'BNSS') read with Section 389 of the Cr.P.C. seeking suspension of sentence and release of the applicant/appellant on bail during pendency of the instant appeal.

3. The first application filed by the applicant under Section 430 of the BNSS read with Section 389 Cr.P.C was dismissed as withdrawn *vide* order dated 03.02.2025.

4. Learned counsel appearing on behalf of the appellant/applicant submits that there are discrepancies in the testimony given by the injured witness, *i.e*, Ashok Prasad who was examined as PW-12. It is submitted that it is the case of the prosecution that the injured witness, Ashok Prasad (PW-12) was



unconscious for five days, however, his statement under Section 161 of the Cr.P.C statement was recorded on the very next day of the incident. It is further submitted that the battery stand (Ex.-P1) which was allegedly used by the applicant was not stained with any blood, however, the case of the prosecution is that when the appellant/applicant had hit the injured witness, blood had oozed out and, therefore, it is submitted that the use of the alleged weapon of offence has not been proved by the prosecution.

5. It is further submitted that the alleged place of occurrence was a Friday market and the prosecution did not examine any independent witnesses. It is further submitted that PW-3, i.e., Monu @ Jitender who has given a statement stating that on the date of the incident he had taken the injured to hospital and had further stated that he did not know the appellant/applicant is also incorrect, inasmuch as he was *Pradhan* of the area and he very well knew the injured. It is further stated that it has come on record in the testimony of PW-2, who was the son of PW-12 that he had brought a plate of *Chole Bhature* from the shop of the present appellant/applicant for his grandmother, however, the grandmother of PW-2 has also not been examined.

6. Heard the learned counsel for the appellant and perused the records.

7. PW-12, the injured eye witness has categorically stated that on the date of incident, the appellant/applicant lifted the battery light stand which was kept nearby and assaulted him with the same. PW-5, Dr. Yogita Bala who examined the injured witness *vide* MLC (Ex. PW5/A) had observed “CLW on his left parietal area, with underline fracture of skull 6 cm x 2 cm and CLW on left parietal 2 cm x 0.5 cm.”

8. It is further recorded in the testimony of PW-13, Dr. P. N. Pandey that the injured witness, Ashok Prasad was operated by a team of neurosurgeons



under his supervision and in compliance of order dated 16.01.2020 passed by learned Trial Court he had issued a report of disability assessment (Ex. PW-13/B) with respect to the injured witness, Ashok Prasad, and the assessment was to the effect that the injured is having weakness of right side of body, difficulty in speaking and cognitive function and the disability of the injured was worked out to be 81.47%, which is permanent in nature.

9. The Nominal Roll dated 12.11.2024 received from the Office of the Superintendent, Central Jail No. 2, Tihar, New Delhi shows that the appellant/applicant has undergone incarceration for approximately 9 months out of the sentence of five years awarded to him. No case of suspension of sentence is made out at this stage.

10. The application is dismissed and disposed of.

11. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the present bail application.

12. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.

13. Order be uploaded on the website of this Court *forthwith*.

CRL.A. 724/2024

14. List in due course.

AMIT SHARMA, J

MAY 22, 2025/PU/sc

Click here to check corrigendum, if any