

FIR No. 99/2019
PS: Timarpur
State Vs. Jishan
U/s 302/307/34 IPC

17.08.2020

ORDER

This is an application under Section 439 CrPC for grant of bail on behalf of accused Mohd. Jishan in case FIR No. 99/2019.

Ld. counsel for the accused-applicant contended that the applicant-accused has nothing to do with the present case and is falsely implicated. That the allegations are totally false and baseless, and is a desperate attempt to work out an old case of blind murder in order to show the efficiency of police by falsely implicating the accused. That on the day of alleged incident the applicant was not present even in the vicinity of the alleged place of incident, thus he could not have committed the alleged incident in any manner of what so ever nature. That the police after having implicated the accused and Co- Accused Sharukh S/o Lt.Naeem Ahmad, in the present case, gave third degree torture to them and made them to sign on several blanks papers at different places. That the applicant being a semi-literate person and Co Accused Sharukh could not understand the implication of signatures taken by the police on blank papers. That the applicant could understand the implication in the present case only when he was produced before Ld MM Kashmere Gate that he has been roped in a serious offense alongwith Co- accused Sharukh in another case as well that is in the present case. That the accused-applicant used to work as a

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cleaner/Khallasi in Old Delhi who unloads the material from different vehicles in all Delhi on daily wages and earns his livelihood from this. That the applicant is about 28 years, and has his wife alongwith four minor children, Ayan, Zaid, Shahvez and the youngest one, female child name Iqra, born on 6th March 2020. That the family of the accused-applicant is on the verge of starvation and they are suffering for their day to day needs in the absence of the applicant. That the applicant-accused has not committed any offence in any manner of whatsoever nature as alleged in the F.I.R. in question or alleged during the investigation of the present case. Ostensibly there is no allegation against the applicant that he has committed murder. That a bare perusal of the statement of complainant Akib Javed makes it abundantly clear that the complainant and his friend namely Irsad and Azim are hiding the real fact. That these three persons, in order to save themselves have fabricated a story and implicated the applicant along with co-accused Shahrukh on the instance of Police. That the alleged disclosure statement is not a disclosure statement in the eyes of law, nothing has been recovered consequent upon the same, moreover, same is a result of torture and pressure being put/caused on accused persons by the Police. There is no evidence available on record on the basis of which it can be said the alleged crime was committed by the applicant and co-Accused as well. That nothing was recovered on the instance of either of the accused persons there is no materiel available on record on the basis of which either of the accused persons can be connected with the present case. That the story as put forward by the

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prosecution is palpably unbelievable, and inconsistent as the injured victim and the alleged eye witness have made contradictory statements setting up inconsistent cases. That accused-applicant has not been identified as one of the accused by the eye witness. That the Applicant/Accused is not a previous convict, his antecedents are clean, he belongs to a respectable family with deep roots in society. That the investigation already has been completed, therefore, there is no chance of tampering with any evidence in any manner by the applicant-accused.

Ld. Addl. PP, on the other hand submits that accused-applicant does not have clean antecedents and is directly involved in this case of. That besides having caused the death of Suraj, the accused also injured another with sharp edged weapon which weapon has now been recovered at the instance of the co-accused. that accused-applicant was duly identified as one of the assailants by the complainant in the course of TIP. That the case of the prosecution lies upon strong footing as besides the most injured there are other public witnesses including eye witnesses and prosecution also relies upon scientific evidence and discoveries made on the disclosures recorded of the accused in this case.

Heard.

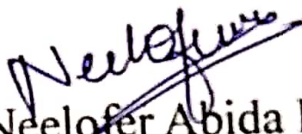
The present case FIR is registered on the statement of Akib Javed alleging that he along with his friends Suraj, Irshad and Azim were drinking beer at Ganda Nala Timar Pur, when two unknown boys came on motorcycle there and asked them why they were drinking at that place and started to quarrel and attacked them with knives and ran away from the

[Signature]

spot. In the quarrel, Suraj and one Irshad sustained injuries. As per the prosecution PCR call in respect of the incident is received on 17.06.19, at 11:50PM a vide DD No. 59A that one person has been injured by knife and is lying near Ganda Nala and when the police reached at the spot, the injured had already been removed to Hindu Rao Hospital. At the hospital, injured Suraj S/o Anil Singh was found under treatment vide MLC No. 2886/19, the complainant friend of the injured met the police and the MLC of the second injured Irshad was also collected from the hospital. Case was initially registered under section 307/34 IPC. During treatment injured Suraj expired and sec. 302 IPC was added subsequently. Accused-applicant Md Jishan was arrested in case FIR No. 198/19 Dated:- 21.07.19 U/5-307/392/397/411/34 IPC PS Kashmere Gate, Delhi and it is the case of the prosecution that the accused disclosed his involvement in the present case with co-accused Shahrukh. His TIP was also conducted at Tihar Jail and complainant correctly identified accused Md Jishan. Later on the co-accused Shahrukh also came to be arrested who was also identified by the witnesses in his TIP. In pursuance to the disclosures made by the accused the weapon of offence as well as the blood stained clothes of the accused were also recovered. The injured and the complainant are alleged to have made inconsistent statement. It would be somewhat premature to observe for the court that the complainant and the injured have given dissimilar, inconsistent or contradictory versions and to assess whether the inconsistencies /contradictions are irreconcilable and have gone unexplained, go to the root of the matter and in the totality of the facts and

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circumstances of the present case create any manner of doubt in the case of the prosecution against the accused-applicant as the prosecution evidence is yet to commence and the complainant and the injured yet to step into the witness box. Meaningful conclusions are based only upon an appreciation of the entire evidence lead. At this stage it is pertinent that charges are already framed against the accused, the complainant and injured are yet to be examined, case pertains to commission of offence under section 302 and 307, there being two victims one having succumbed to the injuries, the complainant also an eye witness has duly identified the accused-applicant as one of the assailants. In such facts and circumstances at this stage no ground is made out to grant regular bail to accused Jishan in the present case FIR. The application at hand is therefore dismissed.


(Neelofer Abida Perveen)
ASJ (Central)THC/Delhi
17.08.2020