

Bail Matters No. 2968/2021
STATE versus [REDACTED]
FIR No. 482/2021
PS Dwarka North
U/s 304/34 IPC

03.08.2021

Hearing conducted through Video Conferencing CISCO WebEx Meetings.

All matters are taken up in terms of the order No. 438/RG/DHC/2021 dated 22.07.2021 of the Hon'ble High Court of Delhi.

Present: Sh. Yogendra Adari, Ld. APP for the State.
Sh. Dinesh Mudgil, Sh. N. C. Sharma, Sh. Rajesh
Kaushik, Ld. Counsels for applicant/accused [REDACTED]
[REDACTED]
IO/SI Deepak Shiwatch is present.

Submissions heard on the present bail application under Section 439 Cr.PC.

The applicant is in custody since 26.06.2021.

The allegations relate to the demise of an old person, aged 75 years, upon the alleged quarrel between him and the present accused as well as his friend over the purchase of cigarettes. The deceased was running a small road side tobacco shop. It is alleged that upon being pushed by the accused persons the victim collapsed and expired.

The ld. counsels for the applicant/accused have pressed for his release on bail on the submission that the post mortem report clearly establishes the cause of death as coronary artery disease with blockages in the arteries to the extent of 90%. Further, that the advanced age of the victim was also the cause of his demise. The counsels further submitted that the statement of the eye-witness suggests that the victim

and the two accused persons had amicably settled their arguments even if the allegations are taken on face value. It is also stated that the present applicant is a young lawyer with barely one year of practice and has presently secured a seat in the LLM course at [REDACTED]. It has thus been asserted by the counsels for the accused that he will not flee from investigation/trial.

The Ld. APP for the State has opposed the application and submitted that the statement of the eye-witness specifically states that the victim was pushed and that even if his demise was due to coronary ailment, the same was precipitated upon the victim being pushed by the accused persons. The prosecutor pointed out that the co-accused has still not been apprehended.

The court has considered the allegations.

While the question of applicability of the appropriate penal provision, if any, would be a subject of the finalisation of the charge sheet by the IO and subsequent consideration by the court, it does weigh with the court in favourably considering the prayer for release of the applicant on bail that –

- (i) Apparently taking note of the nature of the altercation and the advanced age of the victim as well as the act of pushing (distinct from physical blows), a FIR has been registered under Section 304 IPC and not under Section 302 IPC.
- (ii) The prima facie cause of death, opined by the competent doctor, is coronary artery disease (with arterial blockages to the extent of 80-90%).
- (iii) The applicant is evidently a person with societal roots and educational commitment, as reflected from his continued legal education.
- (iv) The co-accused remaining to be arrested does not have any

bearing on the question of liberty to the present applicant.

- (v) Police custody of the present applicant having initially been obtained by the IO for one day, the applicant is since in judicial custody and evidently not required for purpose of investigation.

Thus, upon a composite reflection upon the nature of the incident, the more than reasonable probability of the applicant not absconding and the cause of death reflected in the medical documents, the court deems it fit that the presumption of innocence is better served by admitting the applicant to liberty.

Accused XXXXXXXXXX is admitted to bail on furnishing of PB & SB in the sum of Rs. 50,000/- each. The surety shall be a local resident of Delhi. The accused shall inform the SHO/IO regarding any change in his present residential address and mobile phone number.

The accused shall not contact, influence or coerce any witness in the present case.

Let a copy of this order be given dasti/sent by email to the counsel for the accused and be also sent to Superintendent, Central Jail, Tihar.

VISHAL
GOGNE

Digitally signed by
VISHAL GOGNE
Date: 2021.08.03
19:11:34 +05'30'

(Vishal Gogne)
ASJ-04 (SW)/ Dwarka Courts
03.08.2021