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

+ **BAIL APPLN. 1195/2024 & CRL.M.A. 10499/2024**

CHANDAN RAI

.....Petitioner

Through: Ms. Nandita Rao, Sr. Adv., Mr. Akhand Pratap Singh, Mr. Varun Singh, Mr. Ankur Raghav, Mr. Paritosh Awasthi, Mr. Himanshu Yadav, Ms. Ashrika Mehra, Mr. Amit Peswani, Mr. Abhinandan Gautam, Mr. Samridhi Dobhal, Mr. Krishna Mohan Chandel, Mr. Hritwik Maurya, Adv.

versus

STATE (N.C.T. OF DELHI)

.....Respondent

Through: Mr. Pradeep Gahalot, APP for the State.
Insp. Bikramjeet and SI Dharmveer, PS Chhawla.
Ms. Aditi Shivadhatri, Ms. Jagrati Singh, Mr. Rajpal, Mr. Rahul, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

16.05.2025

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1. This hearing has been done through hybrid mode.
2. The present application under Section 439 of the CrPC seeks regular bail in case FIR No. 469/2022 under Sections 302/307/323/324/34 of the IPC, registered at PS Chhawla.

3. The case of the prosecution as per the status report dated 19.05.2024 is as under: -

“1. Brief facts of the case are that on 23.10.2022, a PCR call, vide D.D No. DD No. 47 A was received at PS. On receipt of the same, police staff reached at G- 55, Qutub Vihar Phase 1 Goyala Dairy New Delhi where lot of blood was plattered in front of main gate of G55 with one blood-stained T shirt. Blood was also found between street and G- 61 gate. On inquiry, it disclosed that injured was taken to hospital. Subsequently , vide D.D No. 61A, an information was received from Venkateshwar Hospital that patient Vishal who was admitted vide MLC No. 6484/ 22 is declared dead and another information, vide DD No. 67 was received that Patient Vivek Tiwari is admitted vide MLC No. 6485/ 22. During this process, mobile Crime Team reached, they took photographs of the site and inspected the site also. Evidence were collected from the spot and taken into police possession through the seizure memo. Thereafter, police staff reached at Venkateshwar Hospital where it was found that injured was went to police station. After that on the statement of Vivek Tiwari S/o Sh. Santosh TiwariR/o G-55, Qutub Vihar Phase-1, Goyala Dairy, New Delhi a case vide FIR No.469/22 U/s 302/307 /323/324/34 IPC was registered and taken up for investigation.

2. In the statement, the complainant alleged that on 23.10.2022 at about 2 PM, he was present in his house with family when he heard some noise of quarrel going on the street. Hearing the noise, his elder brother Vishal saw from Balcony and he was saying that move away from here. Thereafter his brother went downstairs. Thereafter,hearing the noise, he went to Balcony to see that one person Chandan Rai who lives in the same street was having altercation with another boy from my neighborHari Om Kumar and he was abusing his brother also. His brother Vishal was asking him to go away from there. On seeing all this, he too went downstairs. Chandan Rai was speaking foul language with abusive. On this issue, they had scuffle with him. Thereafter, Chandan Rai left on his scooty. While going, he threatened and said stop as he is coming shortly to see all of them. Hari Om told that at tha ttime he was cleaning his motor cycle when Chandan Rai came on his scooty and collided with him. On this issue,altercation took place. After about 10 minutes, ChandanRai took his father Brij Bihari Rai and came to our house and asked to come down. His brother Vishal first

saw from balcony. Thereafter he went downstairs. He too went below with Vishal and opened the door. Just then Chandan Rai was seen with brick in his hand. His brother Brij Bihari Rai * started indulging in attack. Scuffle took place from both sides. During this scuffle, Brij Bihar fell down. On this, he whipped out a sharp-edged knife from right side of his lower waist and attacked with knife. He hit on the chest of my brother Vishal and also on him resulting in injuries on my both arms and left foot. After getting injuries, his brother Vishal sat down. Neighbors too came to intervene and sort out the matter. He saw that Vishal was bleeding excessively. He immediately went inside my house and brought key of my Swift car No. UP 32 HM 2034 and with help of neighbors took Vishal to Venkatshwar Hospital, Sector 18 Dwarka with Hariom and our Tenant Serves. Doctor declared his brother as dead. Then he and Hariom got ourselves treated in hospital.

3. During the investigation, statement of the witness were recorded, site plan of the spot was prepared all biological evidences were collected, DVR of spot was seized and placed on record.

4. Further, accused Chandan Rai and Brij Bihari were arrested and weapon of offence i.e knife was recovered on their instance and the same was seized through the seizure memo and taken into police possession. Further, Cctv footage of incident was taken and statement of the complainant was corroborated with the cctv footage.”

(*Brij Bihari Rai is the father of the applicant)

4. Learned senior counsel appearing on behalf of the applicant submits that on the date of the incident the applicant was on his way to the market and while crossing the house of the complainant, their neighbour was cleaning his bike on the roadside. It is submitted that since there was some civil work going on in the neighbourhood, the centre of the lane was dug up and while crossing the same a tractor suddenly entered the lane because of which the scooter of the applicant brushed with Hariom (neighbor of the complainant) and on account of which some arguments took place. It is submitted that during the course of the arguments, the deceased i.e. Vishal Tiwari who was standing in

his balcony interjected and started abusing the applicant. It is further submitted that, thereafter the deceased i.e. Vishal Tiwari along with his brother Vivek Tiwari mercilessly beat the applicant who had to run for safety. It is further submitted that the case of the prosecution is that when the applicant returned with his father there was a scuffle between the deceased and his brother with them and during that scuffle his father fell down and after getting up took out a knife from his waist and attacked the deceased. It is submitted that there is no evidence on record to suggest that the applicant was aware or had knowledge that his father was carrying a knife when he reached the house of the deceased. It is further submitted that during the course of cross-examination of PW-1, it has come on record that when the applicant and his father had come to the spot none of them was carrying a knife in their hands. It is submitted at that stage that PW-1 Vivek Tiwari volunteered a statement saying that the present applicant had instigated his father to hit the deceased with the knife. The said statement, it is pointed out, was not there in his statement recorded under Section 161 of the CrPC or in the statements of any other witness as recorded by the Investigating Officer. This statement is an improvement in the prosecution case introduced by the said PW-1. It is pointed out that after the said cross-examination the subsequent eye-witnesses who were examined by the prosecution, gave the same statement which otherwise was not there in the statements under Section 161 of the CrPC.

5. It is submitted that all the eye-witnesses have been examined. The applicant at the relevant point of time was a teacher running a coaching institute and has no other previous involvements. The prosecution has cited 50 witnesses out of which 13 have been examined. The applicant has been in

custody since 24.10.2022.

6. *Per contra*, learned APP appearing on behalf of the State assisted by learned counsel for the complainant submits that, it is the case of the prosecution that the present applicant had come alongwith his father and at that point of time he was carrying a brick in his hand and had assaulted the deceased with the said brick. The said allegation is supported by the MLC and the CCTV footage which has been brought on record as well as by the statement of Hariom, PW-6. It is further submitted by learned counsel for the complainant that from the timeline of the CCTV footage an inference can be drawn that the applicant was aware of the fact that the father was carrying a knife at the time when they both reached the house of the deceased. It is further submitted that other prosecution witnesses have been examined and they have clearly stated that the present applicant instigated his father to hit the deceased with the knife. It is also pointed out that in the CCTV footage it is seen that the applicant had taken the knife from his father and thrown it on the spot.

7. Heard the learned counsel for the parties and perused the records.

8. The case of the prosecution as per the statement given by the PW-1 i.e. Vivek Tiwari is that there was a quarrel between the applicant and his deceased brother Vishal Tiwari and PW-6 Hariom. He further states that thereafter the present applicant had come back with his father and the applicant was holding a brick in his hand. It is further stated that there was a scuffle between them and during that scuffle father of the applicant fell down and after standing up he took out a knife from the waist and with an intention to kill his brother, started giving him knife blows. It is further stated that the applicant's father had also given knife blows on his hands and left leg. This

witness does not say that the deceased was hit with a brick by the present applicant.

9. During his cross-examination, the aforesaid witness has stated that the present applicant was not carrying any knife in his hands and he had taken the knife from the hands of his father after the incident and thrown it at the spot. He also states that when the applicant and his father had come to his house none of them was carrying any knife in their hands, but subsequently, he volunteered and said that at the instigation of the present applicant his father had taken out the knife to attack the deceased. It is recorded that the witness was confronted with his statement under Section 161 of the CrPC as well as his examination-in-chief where he had not stated the aforesaid fact that at the instigation of the present applicant, father had taken out the knife. It is further noted that subsequently, the other witnesses examined by the prosecution have also given the statements that the applicant instigated his father to attack the deceased.

10. On a pointed query learned APP appearing on behalf of the State, on instructions of the Investigating Officer, submits that in none of the statements under Section 161 of the CrPC, this allegation was made. In these circumstances, it is seen that even as per the case of the prosecution the knife which was being carried by the father was not visible to anyone and was taken out by him from his waist after being pushed down to the ground at the spot. All the eye-witnesses in the present case have been examined. The nominal roll dated 02.05.2024 reflects that applicant has been in custody since 24.10.2022 and has spent 1 year 6 months and 9 days in custody as on 02.05.2024.

11. In the totality of facts and circumstances of the case, the present

application is allowed. The applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 50,000/- with one surety of like amount, to the satisfaction of the learned Trial Court/Link Court, further subject to following conditions:

- i. The applicant shall not leave India without prior permission of the learned Trial Court.
 - ii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
 - iii. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
 - iv. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times.
 - v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
12. The application is allowed and disposed of accordingly.
13. Pending applications, if any, also stand disposed of.
14. 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.
15. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
16. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

MAY 16, 2025/kr/pr *Click here to check corrigendum, if any*