

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

+ **BAIL APPLICATION NO. 288/2009**

Reserved on : 16.09.2009
Date of Decision : 25.09.2009

Gulshan

.....Petitioner

Through: Mr. Vikas Jain, Adv.

Versus

The State (NCT of Delhi)

..... Respondent

Through: Mr. Jaideep Malik, APP

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | NO |
| 2. | To be referred to the Reporter or not ? | NO |
| 3. | Whether the judgment should be reported in the Digest ? | NO |

V.K. SHALI, J.

1. This is an application u/s 439 Cr.P.C. for grant of bail filed by the petitioner in FIR No. 220/2008 under Section 323/341/304/34 IPC registered at P.S. Ambedkar Nagar, Delhi.
2. The learned counsel for the petitioner has prayed for grant of bail on the ground that the petitioner was originally granted bail on 15th May, 2008 as the case was registered under Sections 323/341/34 IPC which were bailable offences, however, later on, on account of death of the injured in hospital on 25th May, 2008, Section 304 IPC was added and petitioner was again arrested on the same date i.e. 25th May, 2008. It is alleged that the accused is

languishing in jail since 2008. It is urged that there is a delay of 2 ½ days in lodging the FIR. There is no recovery of bat with which the petitioner is alleged to have hit the injured/deceased. It is alleged that the MLC which was originally recorded did not bear the name of the petitioner as the assailant. The learned counsel for the petitioner has relied upon the case titled **Ashu Kumar Vs. State** 2009 (2) JCC 1445 to contend that the petitioner may be granted bail.

3. The prosecution has contested the bail application of the petitioner on the ground that the mother and the sister of the deceased have supported the prosecution case. It is stated that merely on account of the fact that the bat is not recovered is not a ground for granting the benefit of bail to the petitioner.
4. I have considered the submissions made by the respective sides and have also perused the record. Merely on account of the fact that the bat with which the injuries were caused has not been recovered or that there was a delay of 2 ½ days in lodging the FIR would not in itself constitute a ground for grant of bail. The delay in lodging the FIR is on account of the fact that initially the deceased had suffered injuries and he was taken to hospital. Apparently, the injuries seemed to be simple in nature and this is the reason why the petitioner was also released on bail. However, later on the injured died after a couple of

days because of which the FIR got converted to Section 304 IPC. The mother and the sister of the deceased who have been examined as a prosecution witnesses have supported the prosecution case. The gravity of charges against the petitioner are very serious which does not warrant the release of the petitioner on bail.

5. I accordingly feel that the petitioner does not deserve to be granted the benefit of being released on bail. The application for grant of bail is disallowed.

SEPTEMBER 25, 2009
KP

V.K. SHALI, J.