

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

+ **BAIL APPLN. 1114/2011**

Reserved on: 24.01.2012
Pronounced on: 30.01.2012

TRIVENI SHARMA @ SONU

..... PETITIONER

Through: Mr.R.M.Tufail, Mr. Anwar A.Khan,
Mr.Farooq Chaudhary, Advocates.

Versus

STATE

..... RESPONDENT

Through: Mr.M.N.Dudeja, APP with Inspector
Vinod Kumar, Inspector Randhir, SI
Afaque Ahmed.

CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. The petitioner seeks bail in case FIR No. 201/2010, registered at P.S. Adarsh Nagar under Sections 302/307/34 IPC. He along with the co-accused are facing trial in aforesaid case, which came to be registered after the incident of two persons having been injured with gun shot fires and one dying instantly.

2. The allegations against the culprits are that when victims Rahul Rathi along with his brother Anuranjan Rathi went to a Dhaba for the

dinner and were sitting in the car, Jyoti, Babla and their friends came and fired indiscriminately without provocation on their car wherein they were sitting. The incident was of 8.8.2010 at about 11.30 p.m. The complainant Rahul Rathi somehow managed to drive the car from there and reached at the police picket and then was shifted to hospital. On 11th August, 2010, he gave further statement under Section 161 CrPC that he suspected Jyoti and Babla behind the firing as they had previous enmity with him but he had not seen them. He has also stated that on the night of the incident, they were sitting in the car of his friend Mahender Pahalwan and that Bijender Yadav, his associates Triveni Sharma @ Sonu (the petitioner) and Sonu S/o Kedar Nath have attacked on them as Mahender Pahalwan and Bijender Yadav had some differences over a plot and business rivalry between them. This fact of Mahender Pahalwan and Bijender Yadav having dispute with Rahul Rathi was also stated by Mahender Pahalwan to the police. Mahender Pahalwan also stated having given his car to the complainant Rahul Rathi and suspected the hand of Bijender Yadav, Triveni Sharma (the petitioner) and Sonu S/o Kedar nath behind the incident of firing. He further stated that the accused persons might have fired on his car thinking that he was inside

his car. Later, the petitioner, disclosed that he along with Bijender Yadav, Vinod Bhagte, Vikas, Neeraj Seena, Pardeep and Sonu hatched a conspiracy in the office of Bijender Yadav for murder of Mahender Pahalwan. The petitioner further disclosed that he along with his associates went to the site of incident and fired indiscriminately thinking that Mahender Pahalwan and his friend Rahul Rathi were sitting in the car and thereafter, absconded from the spot after the firing incident. During the investigation, it was revealed that Rs. 50,000/- in cash was given to the petitioner by Bijender Yadav to purchase a second hand car for the said purpose and so, he purchased a second hand car being No. DL4CM 5464 in the name of Rajesh Kumar, a car dealer. He also disclosed having developed information of movements of Mahender Pahalwan. The documents of the aforesaid car were recovered from the house of the petitioner at his instance. Other co-accused Vikas Kataria, Pradeep Kumar, Rakesh Kumar and Vinod Bhagte were also arrested at his instance. The pistol and revolver along with the cartridges were recovered at the instance of other accused persons. The accused persons refused to participate in the TIP proceedings. Rajesh Kumar, who was the car dealer had stated about the petitioner having bought the aforesaid

second hand car through him. The mechanic Balram @ Bunty, in his statement also stated the petitioner having got repaired the car from him and taken delivery of the same. The FSL report had confirmed the empty cartridges recovered from the spot and the bullet leads recovered from the car as fired from the weapons recovered at the instances of the accused persons. The nature of injuries sustained by the complainant and his brother Anuranjan were opined as grievous. Some of the accused persons are absconding and have been declared Proclaimed Offender. The prosecution case was at the stage of trial and out of 38 witnesses, about 20 witnesses have already been examined. Out of the witnesses examined, five are the public witnesses.

3. The main submission of the learned counsel for the petitioner was that the complainant Rahul Rathi knew the petitioner but did not name him immediately after the incident and also did not name him in the statement made on 11th August, 2010. He submitted that no TIP was conducted of the petitioner and the identification of the petitioner by Rahul Rathi in the court could not be the basis of his involvement in the commission of offence. He submitted that since all the public witnesses have been examined, the petitioner was entitled to be released on bail.

4. At the outset, learned APP submitted that the petitioner was a dreaded criminal in his circle. He submitted that the main witnesses namely Anuranjan Rathi still remains to be examined. He also submitted that it was on the disclosure of the petitioner that co-accused were arrested. He further submitted that the petitioner was actively involved in conspiracy that was hatched to eliminate Mahender Yadav. He also submitted that when the matter was pending trial before the Sessions Court, it was the Trial Court which could have better appreciated the testimonies of the witnesses.

5. The principles of bail have been dealt with in various judicial pronouncements. The Hon'ble Supreme Court in **State of U.P. Vs.**

Amarmani Tripathi, (2005) 8 SCC 21, held as under:

"18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of accused absconding or fleeing if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail (see Prahlad Singh Bhati vs. NCT, Delhi 2001 (4) SCC 280 and Gurcharan Singh vs. State (Delhi Administration) AIR 1978 SC 179). While a vague allegation that accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused".

6. Further, in **Siddharam Satlingappa Mhetre Vs. State of Maharashtra**, (2011) 1 SCC 694, the Supreme Court observed thus:

“84. Just as liberty is precious to an individual, so is the society’s interest in maintenance of peace, law and order. Both are equally important”.

7. Having heard the learned counsel for the petitioner and learned APP for the State and keeping in view the facts of the incident as briefly noted above, I do not intend to admit the petitioner on bail at this stage when the case of the prosecution is at the stage of nearly completion of trial and when two main public witnesses still remains to be examined. Though the critical analysis and comments on the testimonies of the PW16 Rahul Rathi and PW13 Mahender Pahalwan, is not desired to be made at this stage but, having gone through their statements and cross examination, I do not see that they have absolved the petitioner. Reading the testimonies as a whole, the allegations against the petitioner, prima facie, seem to be well substantiated in support of the prosecution case. The evidentiary value of the identification of the petitioner by Rahul Rathi in the court cannot be rejected at this stage. It is also seen from the record that Rahul Rathi and Mahender Pahalwan, who are the star witnesses requested the Trial Court for police protection. Having

considered the request and also that there was apprehension to their lives, they were provided police protection by the Trial Court.

8. In view of the above and in entire gamut of factual matrix, I am not persuaded to enlarge the petitioner on bail.

9. The petition is accordingly dismissed.

M.L. MEHTA, J.

JANUARY 30, 2012

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