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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 10th May, 2023

+ BAIL APPLN. 131/2023

SHAUKAT

..... Petitioner

Through: Mr. Neeraj Dev Gaur, Mr.
Sanjeev Kumar, Mr. Deepak,
Advocates.

versus

STATE, NCT OF DELHI

..... Respondent

Through: Mr. Aman Usman, APP for the
State with Insp. Vinit Kumar,
P.S. Harsh Vihar.

**CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA**

JUDGMENT

AMIT SHARMA, J.

1. The present application under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeks regular bail in case FIR No. 341/2016, under Sections 302/394/120B of the Indian Penal Code, 1860 ('IPC') and Sections 25/27 of the Arms Act, 1959 registered at P.S. Harsh Vihar.
2. The case of the prosecution, as per the status report dated 16.02.2023, authored by Inspector Balram Singh Beniwal, SHO, P.S. Harsh Vihar, is as under:

"Briefly stated the facts of the case are that on 27.10.2016 an information was received at PS Harsh Vihar, Delhi to the effect that dead body of a male person was lying near A-3 Block, Harsh Vihar, Delhi. Pursuant to the receipt of the said information, Inspector Sanjeev Kumar along with

the staff reached the spot and found the dead body of a male person having gunshot injury. At the spot one Hakim s/o Fazru upon enquiry identified the deceased as Shakir s/o Dinu and told that deceased and he both resident of village DausRas, PS Gowardhan, District Mathura UP. In this regard case FIR No. 341/2016 under section 302 IPC was registered at Police Station Harsh Vihar Delhi.

2. That after the registration of FIR investigation was carried out. During the course of investigation statements of witnesses were recorded, evidences were collected and it was revealed that the deceased was murdered due to gang/group rivalry. That deceased belonged to the group/gang of Faku. Faku gang is rival group/gang of the petitioner herein. That petitioner belongs to one gang of Jafu. During the course of investigation it was found that the petitioner had given the contract/Supari of Rs. 5 lakhs to co-accused Banne Singh for the murder of the deceased Shakir. During the further course of investigation accused persons, including the petitioner herein, were arrested and after the completion of investigation charge sheet under section 302/394/34 IPC and 25/27/54/59 Arms Act was filed against them before the concerned court. Presently the case is pending trial before the Ld. Trial court.”

3. Learned counsel appearing on behalf of the applicant submitted that the present applicant was arrested on 20.09.2017. The case of the prosecution *qua* the present applicant is as under:

- i. A rivalry existed between two groups in the village. The victim/deceased was a member of the Fakrudin group and the applicant was a member of the rival group.
- ii. Iqbal Hussain, in his statement under Section 161 of the CrPC alleged that “*Shakir ki hatya se lagbagh dedh mahina pehle jab main khet par jaa raha tha toh maine Shaukat weh Zafu ko Baniya ko yeh kehte suna tha jis din tu Teetar ka kaam kar dega usi din tujhe paanch lakh rupye mil jayenge. Maine dar ki wajah se yeh baat kisi ko nahin batlayi thi*”.
- iii. After the alleged offence was committed, accused no. 1 in the present case, i.e., Banne Singh allegedly called the applicant to the spot.

- iv. Asif and Hariom Sharma, in their statements recorded under Section 161 of the CrPC, allegedly stated that they spoke with the applicant on his mobile number.

It was submitted that the prosecution has relied upon the statements of Iqbal Hussain, Asif and Hariom Sharma to link the present applicant with the aforesaid murder. It was case of the prosecution that Iqbal Hussain had overheard the present applicant speaking with co-accused Jafru regarding contract killing. It was the case of prosecution that accused no.1, i.e., Banne Singh, after killing the deceased, had called the present applicant on a mobile number, on which Hariom Sharma and Asif had spoken with the applicant. It is submitted on behalf of the applicant that the aforesaid witnesses namely PW-2/Iqbal Hussain, PW-6/Asif and PW-7/Hariom Sharma have not supported the case of the prosecution as mentioned hereinabove. It was submitted that there is nothing on record to connect the alleged mobile number, on which the said accused had allegedly called and spoken with the applicant. It was further submitted that the applicant had given the mobile number, which he used to the Investigating Officer and the latter chose not to place the CDRs of the said number on record. It is further pointed out that the mobile number allegedly belonging to the present applicant is in the name of one Smt. Nisha Devi, who has not been made a witness by the prosecution in the present case. It was further submitted that the present applicant has been granted interim bail twice and has not misused the liberty granted to him and duly surrendered on time.

4. Learned counsel appearing on behalf of the applicant further submitted that co-accused Hanif, who is similarly placed with the present applicant, has also be granted bail by the learned Trial Court *vide* order dated 20.10.2020.

5. *Per contra*, learned APP for the State submitted that the said murder was committed on account of a gang rivalry between two groups. The present applicant is a part of one group and the deceased was the member of another group. It was further urged that PW-2/Iqbal Hussain and PW-3/Dinu have also deposed with regard to the aforesaid gang rivalry. It is further submitted that the applicant is involved in numerous other cases, as reflected in the nominal roll dated 16.02.2023.

6. Heard the learned counsel for the parties and perused the record.

7. It is an admitted case of the prosecution that the primary evidence against the present applicant, linking him to the aforesaid murder was the testimony of PW-2/Iqbal Hussain, who, during the course of the investigation, had stated that he had overheard the present applicant's conversation with co-accused Jafu regarding the contract killing. The other incriminating evidence sought to be produced against the present applicant was the testimony of PW-6/Asif and PW-7/Hariom Sharma to the effect that they had earlier spoken with the applicant on the mobile number on which accused, Banne Singh called after committing the murder indicating that the same belonged to the present applicant. As stated above, both these witnesses have not supported the case of the prosecution.

8. Learned APP for the State has stressed upon the fact that the present applicant is involved in numerous other cases, which is reflected in the nominal roll and is part of one of the groups which is involved in gang rivalry. A perusal of the nominal roll reflects that in cases in which the present applicant is involved, he has already been granted bail. It is also an admitted case of the prosecution that no other witnesses have to be examined *qua* the present applicant. It is also a fact that co-accused Hanif, who was also an

alleged member of the rival group has already been granted bail by the learned Trial Court.

9. Although, the present applicant is involved in other cases, as reflected in the nominal roll, this Court cannot lose sight of the fact that the evidence recorded before the learned Trial Court does not support the prosecution case *qua* the present applicant. Ordinarily, previous involvements of such a nature would be a factor to be considered while declining bail to the accused but in the given situation where the prosecution has not been able to support its case against the accused, the right of such a person to be released on bail cannot be denied. The Hon'ble Supreme Court, in **Prabhakar Tewari v. State of Uttar Pradesh & Anr., (2020) 11 SCC 648**, while upholding the order of the Hon'ble High Court of Allahabad granting bail observed that pendency of criminal cases against the accused would not, by itself be a factor for refusal of bail, if material available on record justifies the discretion exercised by the High Court while granting bail. It is also pertinent to note that this is not a matter of preventive detention. It is noted that as per the nominal roll dated 16.02.2023, the applicant has been released on bail in the cases mentioned therein.

10. As far as the contention with respect to gang rivalry is concerned, it is pertinent to note that in many instances persons who are alleged to be a part of a rival group are often named as accused, in order to falsely implicate as many members of the other rival group as possible. The Hon'ble Supreme Court, in **Pandurang Chandrakant Mhatre and Ors. v. State of Maharashtra, (2009) 10 SCC 773**, held as under:

“60. In cases involving rival political factions or group enmities, it is not unusual to rope in persons other than those who were actually involved. In such a case, court should guard against the danger of convicting

innocent persons and scrutinise evidence carefully and, if doubt arises, benefit should be given to the accused.”

11. It is a matter of record that the present applicant was released on interim bail thrice by the learned Trial Court and after the expiry of the said period, he had duly surrendered. Nothing has been brought on record to demonstrate that the liberty granted to the present applicant was misused by him in any manner. A perusal of the nominal roll dated 16.02.2023 reflects that the applicant has been in judicial custody for 05 years, 03 months and 27 days. The chargesheet in the present case stands filed and the trial is underway. Out of the 56 witnesses cited by the prosecution, 13 have been examined. No useful purpose will be served by keeping the applicant in judicial custody any further.

12. In view of the facts and circumstances of the present case, the applicant is admitted to bail upon his furnishing a personal bond in the sum of Rs. 50,000/- alongwith two sureties of the like amount, one of which should be a relative of the applicant, to the satisfaction of the learned Trial Court/Link Court, further subject to the following conditions:

- i. The memo of parties shows that the applicant resides at H-59, Sainik Vihar, Phase 3, Mohan Garden, Delhi - 110059. In case of any change of address, the applicant is directed to inform the same to the Investigating Officer and the concerned learned Trial Court.
- ii. The applicant shall report at P.S. Harsh Vihar twice in a week, i.e., on every Tuesday and Friday at 10:30 AM and the concerned officer is directed to release him by 11:00 AM after recording his presence and completion of all the necessary formalities.

- iii. The applicant is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
 - iv. He shall drop a pin on the Google map to ensure that his location is available to the Investigating Officer.
 - v. The applicant shall not leave India without prior permission of the Trial Court.
 - vi. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
 - vii. In case it is established that the applicant has indulged in similar kind of offences or tried to tamper with the evidence, the bail granted to the applicant shall stand cancelled *forthwith*.
- 13.** Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case pending before the learned Trial Court.
- 14.** The application stands disposed of along with all the pending application(s), if any.
- 15.** Let a copy of this judgment be communicated to the concerned Jail Superintendent.
- 16.** Order be uploaded on the website of this Court *forthwith*.

AMIT SHARMA
JUDGE

MAY 10, 2023/bsr