



2024:DHC:7612



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

% ***Date of Decision: October 03, 2024***

+ **BAIL APPLN. 1376/2024**

SHANKAR

.....Petitioner

Through: Mr.Kanhaiya Singhal, Mr.Ujwal
Ghai, Mrs.Vani Singhal,
Mr.Prasanna, Ms.Deepali Pawar,
Mr.Udit Bakshi and Mr.Aditya Saraf,
Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr.Manoj Pant, APP for State with
Insp./SHO Arvind Pratap, P.S. Vasant
Kunj and Insp. Abhishek Verma, P.S.
I.P. Estate.
Mr.Aman Usman and Ms.Aradhya
Malik, Advocates for Complainant.

+ **BAIL APPLN. 1798/2024**

MOHD.ARIF ALIAS KALE

.....Petitioner

Through: Mr.Prahar Sharma, Mr.Kapil
Chaudhary and Ms.Piya Uppal,
Advocates.

versus

STATE OF N.C.T. OF DELHI

.....Respondent

Through: Mr.Manoj Pant, APP for State with
Insp./SHO Arvind Pratap, P.S. Vasant
Kunj and Insp. Abhishek Verma, P.S.
I.P. Estate.
Mr.Aman Usman and Ms.Aradhya
Malik, Advocates for Complainant.



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+ BAIL APPLN. 2305/2024
ANWAR HUSSAIN @ KASIM @ RAJU BECHAIN Petitioner
Through: Mr.Vineet Jain, Advocate.

versus
STATE NCT OF DELHI Respondent
Through: Mr.Manoj Pant, APP for State with
Insp./SHO Arvind Pratap, P.S. Vasant
Kunj and Insp. Abhishek Verma, P.S.
I.P. Estate.
Mr.Aman Usman and Ms.Aradhya
Malik, Advocates for Complainant.

CORAM:
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

% **ORDER**

BAIL APPLN. 1376/2024
BAIL APPLN. 1798/2024
BAIL APPLN. 2305/2024

1. Three separate bail applications under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') have been preferred on behalf of Shankar, Mohd. Arif @ Kale and Anwar Hussain @ Kasim @ Raju Bechain in FIR No. 0077/2019 under Sections 302/307/34 IPC & Sections 27/54/59 of Arms Act registered at P.S. I.P. Estate. Chargesheet has been filed under Sections 302/307/120B/34 IPC & Sections 25/27/54/59 of Arms Act.
2. In brief, as per the case of prosecution, ASI Narender from LNJP Hospital, Delhi got lodged DD No.85A at 08:07 pm on 20.04.2019 in P.S. IP Estate as to admission of Pinki (transgender), Gangesh Jha and Deepak in hospital with gunshot injuries suffered near Mehdiyan Kabristhan Maulana



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Azad Medical College, Delhi. Further, Gangesh Jha was declared brought dead by doctor, while Pinki (transgender) was found to have sustained bullet injuries on her right thigh and Gangesh Jha sustained bullet injuries on his left elbow. Statement of Pinki (transgender) was recorded who stated that on 20.04.2019 after she alongwith her *chelas* namely Gangesh Jha and Deepak, offered prayers on the grave of their Guru on occasion of *Shab-e-Barat* at Mehdiyan Graveyard at Maulana Azad Medical College Campus, Delhi, they were shot at about 5.45 pm, by two persons on a motorcycle, who fled after firing. Consequently, Gangesh Jha expired while Pinki (transgender) and Deepak suffered bullet injuries. She casted her suspicion on Shalu (transgender), Shankar, Mohd. Arif Khan @ Kale and Aliya, since they had enmity with the victims. FIR was accordingly registered.

3. During the course of investigation, accused Ankit @ Paul and Ashu @ Vishal were arrested on 21.04.2019. Accused Ankit @ Paul made disclosure statement regarding carrying of attack along with Ashu @ Vishal on Pinki (transgender), Gangesh Jha and Deepak. The conspiracy is stated to have been hatched by Mohd. Arif Khan @ Kale with Shalu and Shankar at residence of Shalu on 15.04.2019 and 18.04.2019. Further, a contract of Rs.5,00,000/- for killing was agreed with Ankit @ Paul.

Thereafter, on 09.05.2019, Shalu was arrested and made disclosure statement about the conspiracy. Accused Mohd. Arif Khan @ Kale is stated to have conducted recce of Mehdiyan Graveyard at Maulana Azad Medical College Campus, Delhi with co-accused Ankit @ Paul on 19.04.2019 and he also showed the photographs of Gangesh Jha and Pinki. Shalu also disclosed that they had enmity over collection in the territorial area in which the



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transgenders operated. Disclosure was also made with reference to earlier attack on 29.11.2018 on Gangesh Jha and his *Chelas*.

4. It is further the case of prosecution that on 26.04.2019 statement of one Anjali (transgender) was recorded who stated that she had visited Shalu's home at A-394, Durga Vihar to meet her friend on 12.04.2019. When she entered in the house, she saw that Mohd. Arif Khan @ Kale, Shalu (transgender) and Shankar were conversing in a room and she overheard that Shalu (transgender) saying to Mohd. Arif Khan @ Kale that he would make an attack on Pinki (transgender) and Gangesh Jha on occasion of *Shab-e-Barat*. Further, Shankar asked Mohd. Arif Khan @ Kale to hire new shooters/criminals so that they would not be recognized. After hearing conversation, Anjali (transgender) left the spot.

5. Prosecution case is further based upon statement of Ramesh Chand Sharma who disclosed that on 22.04.2019 accused Shankar and Shalu threatened him to withdraw the complaint made against them, failing which he would face consequences like Pinki (transgender), Gangesh Jha and Deepak who were shot.

6. During the course of investigation, it was also revealed that accused Mohd. Arif Khan @ Kale and accused Shalu (transgender) were in constant touch on their mobile phones since 06.04.2019 to 19.04.2019 and 54 calls were made from their mobile phones. The location of mobile phone of Shalu was found at A-394, Durga Vihar at about 10 am on 12.04.2019, 15.04.2019 and evening of 18.04.2019 when the alleged conspiracy was hatched with Mohd. Arif Khan @ Kale, Shankar and Ankit @ Paul. The SIM in mobile phone being used by Shalu (transgender) is further stated to be in the name



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of one Aslam and he had shared his ID with Mohd. Arif Khan @ Kale at his request for purpose of purchase of said SIM card.

7. It is also the case of prosecution that Gangesh Jha (deceased) and injured Pinki (transgender) had made complaint against Mohd. Arif Khan @ Kale, Shankar and Shalu on 22.03.2019 and again on 30.03.2019 at P.S. Neb Sarai apprehending to be killed by Shanker, Shalu and their henchmen. Further, FIR No.772/2018 under Sections 308/304/34 IPC was registered at P.S. Mehrauli against Shankar, Shalu and their associates in context of attack on Gangesh Jha and his associates on 29.11.2018 near Modern Public School, Chhattarpur, Delhi. The offence under Section 308 IPC was converted to Section 307 IPC during the course of investigation. Gangesh Jha is stated to have earlier been shot on 21.03.2019 in respect of which, FIR No.112/2019 under Sections 307/34 IPC & Sections 27/54/59 of Arms Act was registered at P.S. Neb Sarai and suspicion was cast by complainant on Shankar and Shalu.

8. Accused Mohd. Arif Khan @ Kale was arrested on 07.08.2019 after proceedings under Section 82 Cr.P.C. were initiated against him. He also made disclosure statement on similar lines and further disclosed that he had provided pistol to accused Ankit @ Paul with cartridges to carry out attack and further the same was returned after the incident was over. The said pistol is stated to have been further handed over by Mohd. Arif Khan @ Kale to petitioner Anwar Hussain @ Kasim @ Raju Bechain from whom he had bought the pistol.

9. Apart from above, it is also the case of prosecution that accused Shanker is involved in 04 cases, accused Mohd. Arif Khan @ Kale is



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involved in 03 cases and Anwar Hussain @ Kasim @ Raju Bechain is involved in 17 cases and is also bad character of the area.

SUBMISSIONS ON BEHALF OF ACCUSED SHANKAR IN BAIL APPLICATION 1376/2024

10. (i) Learned counsel for accused/Shankar submits that despite order dated 13.04.2022 passed in BAIL APPLN. 3056/2021 and BAIL APPLN. 2365/2024, preferred on behalf of Mohd. Arif Khan @ Kale and Shalu, for examination of material witnesses, there does not appear to be any substantial progress in this regard. He further points out that an application for determining age of one of the accused, as a juvenile is pending consideration and statements of other material witnesses namely Deepak, Ramesh Chand Sharma and Anjali (transgender) are yet to be recorded.

(ii) Learned counsel for petitioner further submits that accused Shalu was released on bail vide order dated 22.02.2024 in SLP (CRL.) No.16516/2023, whereby conditions were directed to be imposed by learned trial court. However, since one of the conditions regarding contacting of the witnesses was alleged to be violated, an application for cancellation of bail has been preferred by said witness Anjali (transgender), which is pending consideration before learned trial court on 21.09.2024. The allegations levelled in application for cancellation of bail are denied and application is stated to be filed on frivolous grounds. He emphasises that no opportunity had been granted by the Hon'ble Apex Court to witness Anjali (transgender) to approach the learned trial court, as per order dated 29.07.2024 passed by Hon'ble Supreme Court in Misc. Application No.1237/2024 in CRL. A. 1045/2024.



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(iii) Learned counsel further submits that alleged statement of Anjali (transgender) under Section 161 Cr.P.C. whereby she claimed to have overheard the conversation of conspiracy between accused, was revealed to the police only after a gap of about 14 days and is of little value. He contends that it was observed in orders dated 13.12.2018 and 23.01.2019 passed in BAIL APPLN. 2929/2018, in earlier case lodged against Shalu and Shankar at behest of Anjali (transgender), that allegations were not substantiated. As such, it is urged that there is no possibility of Anjali (transgender) having visited the premises of Shalu prior to alleged incident. He further submits that evidence against petitioner Shankar is of similar nature as Shalu and is entitled to bail, on parity.

(iv) Learned counsel further urges that so far as pending cases against petitioner- Shankar are concerned, in FIR No.772/2018 under Sections 307/324/34 IPC, P.S. Mehrauli, petitioner has not been chargesheeted; in FIR No.420/2018 under Sections 377/506 IPC, P.S. Sarita Vihar, petitioner has been acquitted while he is unaware of status in FIR No.154/2002 under Sections 279/337 IPC, P.S. Lodhi Colony and FIR No.140/2010 under Sections 489B/489C/120B IPC, P.S. Lodhi Colony. It is also pointed out that petitioner-Shankar is in custody for about 05 years 02 months and conclusion of trial is likely to take some time.

SUBMISSIONS ON BEHALF OF ACCUSED MOHD. ARIF KHAN @ KALE IN BAIL APPLICATION 1798/2024

11. Learned counsel for petitioner- Mohd. Arif Khan @ Kale submits that as per the case of prosecution, he had allegedly procured and provided weapon for commission of offence by Ankit @ Paul and Ashu @ Vishal but



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the weapon could not be connected, as per FSL report. He further submits that petitioner Mohd. Arif Khan @ Kale is not concerned with the disputes between both the factions and intimation prior to commission of offence had been given to the police that petitioner apprehends false implication.

SUBMISSIONS ON BEHALF OF ACCUSED ANWAR HUSSAIN @ KASIM @ RAJU BECHAIN IN BAIL APPLICATION. 2305/2024

12. Learned counsel for petitioner- Anwar Hussain @ Kasim @ Raju Bechain submits that there is no evidence to infer that petitioner was a part of the conspiracy as alleged by the prosecution. He further submits that none of the disclosure statements of co-accused incriminate the petitioner and the only allegation against petitioner is that he had received the weapon of offence from Mohd. Arif Khan @ Kale after the same was returned by Ankit @ Paul on execution of shooting to Mohd. Arif Khan @ Kale.

SUBMISSIONS ON BEHALF OF LEARNED ASC FOR STATE

13. On the other hand, applications are vehemently opposed by learned APP for State alongwith learned counsel for complainant. It is urged on behalf of prosecution that there is sufficient evidence to link Shankar, Mohd. Arif Khan @ Kale, Shalu with Anwar Hussain @ Kasim @ Raju Bechain in the conspiracy which was hatched by the accused. Accused Ankit @ Paul alongwith Ashu @ Vishal are stated to have been hired as contract killers for purpose of shooting.

So far as accused Shankar and Mohd. Arif Khan @ Kale are concerned, evidence against the accused is stated to be supported by statements of Ramesh Chand Sharma and Anjali (transgender). Anjali is



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alleged to have over-heard the plan of conspiracy on visiting the premises of Shalu on 12.04.2019. He further submits that Ramesh Chand Sharma during the course of investigation had also given the statement under Section 161 Cr.P.C. that on 22.04.2019, Shalu and Shankar had visited his premises and threatened him to withdraw the complaint, failing which he would meet the same fate Gangesh Jha and Pinki (transgender) alongwith their other associates, who had been shot. He further submits that as per CDR details of co-accused, Shankar, Shalu and Mohd. Arif Khan @ Kale reflect that they had been in touch with each other during the relevant period. Further, Mohd. Arif Khan @ Kale had done the recce prior to execution of plan and provided the weapon of offence after procuring from Anwar Hussain @ Kasim @ Raju Bechain which was used by Ankit @ Paul. Further, the same was returned to Anwar Hussain @ Kasim @ Raju Bechain after commission of offence. It is also pointed out that accused Anwar Hussain @ Kasim @ Raju Bechain is a Bad Character of the area and is involved in 17 cases.

14. I have given considered thought to the contentions raised.

It is pertinent to note that while granting bail to co-accused Shalu (transgender) vide order dated 20.02.2024, Hon'ble Apex Court directed that appellant shall not misuse her liberty in any manner and any infraction of the conditions shall entail cancellation of bail granted to the appellant. The application for cancellation of bail of Shalu has been preferred on behalf of witness Anjali on account of infraction of conditions imposed by the learned Trial Court and the said application is pending consideration before the Trial Court.

In view of above, this Court is of the considered opinion that if co-



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accused Shankar and Mohd. Arif Khan @ Kale are released on bail at this stage, it cannot be ruled out that the witnesses may be influenced.

15. It has also been contended on behalf of accused that there is no connecting evidence, since the weapon of offence alleged to be recovered at instance of Anwar Hussain @ Kasim @ Raju Bechain could not be connected with commission of offence, as the individual characteristics of firing pin marks and breech face marks present on evidence bullets and test fired bullets were not found identical. It is urged on behalf of the petitioner that hence it was concluded by FSL that the evidence bullets were not discharged from the improvised pistol 7.65 mm, recovered at instance of petitioner Anwar Hussain @ Kasim @ Raju Bechain.

At the first blush, the argument made by learned counsel for the petitioner appears to be convincing but a deeper scrutiny reveals that incident of shooting was allegedly carried after the weapon was procured by co-accused Mohd. Arif Khan @ Kale from Anwar Hussain @ Kasim @ Raju Bechain, who is a Bad Character of the area and accused in about 17 offences. Investigation proceeded on the lines of disclosure made on behalf of co-accused regarding supply of weapon by petitioner Anwar Hussain @ Kasim @ Raju Bechain, who could only be arrested after a considerable period on 01.09.2021 and thereafter got the weapon recovered along with two live cartridges, which were tested in FSL. It may be noticed that the said weapon was recovered with only two live cartridges and four cartridges are alleged to have been fired during the incident. It cannot be ruled out that petitioner Anwar Hussain @ Kasim @ Raju Bechain in order to conceal/destroy the evidence, got a different weapon of offence recovered,



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fully knowing that recovery of actual weapon would nail him. There is nothing in the FSL report to show that the live cartridges which were recovered along with the weapon and were test fired, if could be distinguished from the fired bullet/cartridge which was recovered by the prosecution. The said aspect needs further clarification during the course of trial by summoning the FSL expert. Also, it needs to be clarified as to the number of cartridges which could be loaded and fired at a time from the recovered weapon. There is nothing on record to assume that the name of petitioner Anwar Hussain @ Kasim @ Raju Bechain had been falsely disclosed by co-accused or there was any other reason for his false implication in the present case.

Considering the evidence on record and the facts and circumstances of the case, no grounds for bail are made out. All the applications are accordingly dismissed. Pending applications, if any, also stand disposed of.

A copy of this order be forwarded to the learned Trial Court for information.

A copy of this order be kept in connected applications.

(ANOOP KUMAR MENDIRATTA)
JUDGE

OCTOBER 03, 2024/v/sd