



2024:DHC:1199



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

% Judgment delivered on: 15.02.2024

+ **BAIL APPLN. 2407/2023**

ABHIJEET GHOSH Petitioner

Through: Mr. Tanveer Ahmed Mir, Adv.

Versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr. Aashneet Singh, APP for
State Mr. Nitin Saluja, Ms. Asmita
Narula and Mr. Saahil Mongia, Advs.
For complainant**CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J.**

1. The present petition has been filed under Section 439 CrPC seeking grant of regular bail in connection with FIR No. 717/2017 under Section 302 IPC and Sections 25/27/54/59 Arms Act registered at P.S. Dabri (Subsequently charge sheet was filed under Sections 302/34 IPC and Sections 25/27/54/59 Arms Act).

2. The case of the prosecution is that on 15.11.2017 information was received that gun shots have been fired. When the police reached the spot they found that the blood was scattered in the drawing room with broken



household articles. At the place of occurrence, the sofa had blood on it, the single sofa on the site had one empty cartridge and in front of the sofa on a rack there was a pistol in whose chamber two rounds were stuck, and the glass of the table was broken and there was blood on it.

3. One of the eyewitnesses namely Vikas Chandra Kundu, who resides on the second floor of the same building, got his statement recorded. In his statement, he stated that he heard some noises from the flat of Sujeet Ghosh as if some fight was going on. The eyewitness also stated that he recognized the voice of one of the deceased Manmohan who is also resident of their colony.

4. The deceased was taken to the hospital where he was declared brought dead and medical examination was conducted and MLC No. 384 of 2017 was made. In the MLC wound of entry was the right temporal region and wound of exit was left temporal region.

5. Following this the FIR No. 717/2017 under Section 302 IPC and 25/27/54/59 Arms Act was registered against the petitioner and other co accused.

6. During the course of investigation, it was revealed that deceased Manmohan @ Don was a big builder of the area and used to carry a licensed pistol with him. In 2009 Manmohan constructed Sujeet Ghosh @ Bhola's house No. H-2/36 in collaboration after which Bhola got one flat on the Ground Floor's half portion, First Floor and Top Floor. The two floors in the middle belonged to Manmohan who sold them further. This is how Sujeet Ghosh and Manmohan became friends. Sujeet Ghosh was keen to take VRS (voluntary retirement) from the Bank and wanted to do something on his own. This desire was told by Sujeet Ghosh to Manmohan, who also



told him about his intention to open a Non-Veg shop. Accordingly, Manmohan suggested opening a partnership with each other. After 5-6 months the deceased Manmohan raised allegations of financial irregularities against accused Sujeet Ghosh and ended the partnership.

7. Apart from this, Manmohan gave a loan of Rs. 20 Lakhs to one builder Sonu Gupta on the recommendation of Sujeet Ghosh @ Bhola. Sonu Gupta didn't repay the loan and disappeared. Hence, Manmohan was demanding Rs. 40 Lakhs (with Rs. 20 Lakhs interest) from Sujeet @ Bhola. On 15.11.2017 he came to Sujeet Ghosh's house to collect this money. This fact was told by him to witnesses Ravi Kumar and Anil Kumar that he was going to Bhola's house to collect money as he had called him.

8. Mr. Mir, the learned counsel for the petitioner submits that it is the case of the prosecution itself that deceased was having one licensed pistol bearing no.614693 of point 32 bore made in Czechoslovakia. The second pistol was improvised country-made pistol which was also identified to be belonging to the deceased by his nephew Vishal.

9. He submits that the case of the prosecution in the charge-sheet is that the deceased and petitioner's family were earlier running a Non-Veg shop in the name of Bengal Fish Hub in partnership at Mahavir Enclave, Bengali Colony area but suddenly deceased Manmohan dissolved the partnership of the shop and removed the Ghosh family from the shop and a flat was given to the family of the petitioner in place of the partnership share in the shop. The cost of the flat was kept Rs.5 lakhs higher than the partnership share, hence, the petitioner's family had to pay Rs.5 lakhs to the deceased. He submits that additionally the allegation is that the deceased had also provided a loan of Rs.20 lakhs to one Sonu Gupta on the assurance of



petitioner's father and that Sonu Gupta had run away with the said money. He submits that there is no document placed on record with the charge-sheet to substantiate the allegation relating to the financial transactions which are sought to be made basis of motive to kill the deceased.

10. He further contends that it is also the case of the prosecution that the sister-in-law of deceased Manmohan was a two-time MCD Councillor of the area and since the petitioner's family had grudges against the deceased for annulling their partnership in the shop, the petitioner's father being a member of the RWA, used his connections to make the opposite candidate win the MCD elections. He submits that evidently the case of the prosecution is that the deceased was annoyed with the family of the petitioner especially his father, therefore, he had come to the residence of the petitioner to settle the scores with the family.

11. The learned counsel for the petitioner submits that the deceased entered the house of the petitioner and demanded money from the co-accused / father of petitioner and when co-accused/Sujeet Ghosh refused, then the deceased first hurled abuses and then pulled out his gun, and had placed the same on the stomach of the Petitioner's father and tried to fire the same twice but both the times, fortunately, the bullet got stuck in the gun and the pistol didn't fire. And when the gun didn't fire, he hit the co-accused/Sujeet Ghosh with the butt of the gun. Thereafter, he pulled out another pistol and when the petitioner and his mother attempted to control the deceased, a scuffle ensued in which the second pistol fired and the deceased got shot by sheer accident and died.

12. Mr. Mir submits that the petitioner is in custody since 31.01.2018 and was granted benefit of interim bail on 08.05.2020 and it was extended on



07.07.2020, 01.04.2021 and 05.04.2021. Thereafter the petitioner surrendered on 13.04.2021. Further, on 13.05.2021 the petitioner was released on interim bail as per the HPC guidelines, as well as, in terms of the orders of the Supreme Court, and he surrendered on 07.04.2023. The said concession was not misused by the petitioner.

13. He submits that it is the admitted case of the prosecution in its ballistic report filed with the supplementary charge sheet that the unlicensed country made pistol was capable of firing and chambering standard 7.65mm ammunition, which is used in the licensed pistol of the deceased.

14. Mr. Mir refer to the testimony of nephew of the deceased's, namely, Vishal, who was examined as PW5, to submit that when the said witness was confronted with his statement under section 161 CrPC given to the police, he testified that - *"It is correct that I had told the police officials in my aforesaid statement that 'ek pistol padi thi to meine usse fufaji ki pistol samajhkar utha liya'. It is correct that I had told the police officials in my aforesaid statement that 'tabhi waha SHO shaab bhi aa gai to meine pistol unko de di or bataya ki ye pistol meine fufaji ki samajhkar kamre se utha li thi"*. According to Mr. Mir, from the testimony of Vishal/PW5, it is evident that the unlicensed gun also belonged to the deceased.

15. He submits that the present petitioner and his family are the victims whereas the deceased himself was the aggressor, who being the muscleman of the area where the petitioner also resided, barged into their home armed with two pistols with a clear intention to hurt them or possibly kill them. He submits that the deceased was an aggressor is also evident from the fact that petitioner's younger brother Abhishek had dialled 100 number at 11:23 PM informing the police that his family was under attack from Manmohan @



Don (deceased). In support of his contention, he has invited the attention of the Court to Annexure P-7 which is DD No.62A recorded in this regard. Further, it can be seen from the MLC of the father of the petitioner that there were “abrasion and swelling below the eye” which shows that the deceased had also inflicted injury to him.

16. He submits that it is also an admitted case of the prosecution that upon hand-wash of all three accused persons “no gunshot residue” was found from the hands or clothes of any of the accused persons. Further, none of the two pistols bore the finger prints of any of the accused persons including the petitioner.

17. Referring to the testimony of Ms. Mala Benerji, who was examined as PW2, he submits that the said testimony reveals that deceased Manmohan was sitting on a sofa and had snatched the mobile phone of petitioner’s mother and the mother of the petitioner was pleading before him to return her mobile, which shows that the petitioner’s family had been terrorised by the deceased with the weapons in his possession. The relevant part of the testimony of PW2, to which attention of the Court is drawn, reads as under:

*“At about 11 p.m, I heard a loud noise of quarrel and I could identify that the quarrel might was coming from the house of my landlord Sh. Sujeet Ghosh. Initially, I ignored but since the quarrel was increasing, I came out of my house and went down stair towards the house of my landlord. When I reached there, I called for Shashi (wife of my landlord) 2-3 times}. On hearing my voice, all of sudden, there was a pin drop silence in the house of my landlord. After sometime, the younger son of my landlord namely Abhishek, opened the door and I peeped inside the house, initially I thought that it was family quarrel but when I saw inside the house, **I found deceased Manmohan Das was sitting on sofa and just in front of him/ Shashi was standing holding his hands and was saying that***



“mobile kyun le liya, mobile to de de bhai” and at the same moment, I reached to the conclusion that it was not a family dispute.

18. He submits that all the key material witnesses have been examined therefore there is no possibility of the petitioner influencing any witness. He further contends that the parents and brother of the petitioner are already out on bail.

19. He further submits that the prosecution has sought to examine 61 witnesses and there are 73 documents to be proved, therefore, the trial will take long time to conclude.

20. Lastly, it is submitted that all public witnesses have been examined by the prosecution and only official/police witnesses are left to be examined, thus, there can be no apprehension on part of the prosecution that the petitioner may influence witnesses.

21. Mr. Mir submits that the antecedents of the petitioner are clean in as much as no other case except the present case is pending against him.

22. In the backdrop of aforesaid facts and circumstances, it has been urged by the learned counsel that the petitioner be enlarged on bail.

23. *Per contra*, the learned APP appearing on behalf of the State, supported by the learned counsel for the complainant has argued on the lines of the Status Report.

24. The learned APP submits that the petitioner has been accused of grave and serious offence, therefore, he may not be enlarged on bail. He submits that there were some dispute between the deceased and the father of accused related to a partnership started by them and the deceased had raised allegations of some financial irregularities done by the father of the



petitioner, and when the deceased came to the house of the petitioner asking for his money, he was killed by the petitioner.

25. I have heard the learned Counsel for the petitioner, as well as, the learned APP for the State and have given my thoughtful consideration to the material on record.

26. It is trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.¹ Further, detailed and elaborate appreciation of evidence cannot be undertaken at the stage of considering a bail application. However, for the limited purpose of seeing whether there exists a *prima facie* case in favour of the accused warranting grant of bail, the evidence can be looked into for indicating reasons thereof.

27. Reference may be had to the observations of the Supreme Court in **Lt. Col. Prasad Shrikant Purohit v. State of Maharashtra, (2018) 11 SCC 458**, which read as under :-

“29. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non application of mind. It is also necessary for the court granting bail to consider, among other

¹ Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra : (2005) 5 SCC 294



circumstances, the following factors also before granting bail; they are:

- a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.*
- b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.*
- c) Prima facie satisfaction of the court in support of the charge.”*

28. The case at hand is based on circumstantial evidence. There is no eye-witness to tell the tale as to what happened at the residence of the petitioner. Mala Benerji who has been examined as PW2 only stated about the presence of the deceased at the residence of the petitioner and that she had heard loud noise of quarrel. Thereafter she only heard the gunshot. She is not witness to the firing of gunshot and the circumstances under which such gunshot got fired. What actually transpired at the residence of the petitioner will be decided by the learned Trial Court upon detailed sifting of evidence, which cannot be done at this stage.

29. However, it is relevant to note that it is the case of the prosecution itself that the deceased had gone to the residence of the petitioner with his licensed pistol. It is also the admitted case of the prosecution that no bullet could be fired from the licensed pistol as two bullets had got stuck. This *prima facie* shows that twice attempts were made to fire a gunshot from the licensed pistol.

30. In so far as the question whether the improvised country made pistol from which fatal gunshot was fired belonged to the deceased Manmohan or to the petitioner's family, it is for the Trial Court to take a final call in this



regard at the stage of trial, but intriguingly the nephew of the deceased namely, Vishal, who was examined as PW5, admitted in his testimony that he had stated in his statement recorded under section 161 CrPC that he had identified the improvised country made pistol as belonging to his deceased uncle, which he had picked up from the site of incident and later handed over to the police. Therefore, *prima facie*, the possibility that the country made pistol also belonged to the deceased cannot be negated all together.

31. At the same time, there is no material on record to suggest that country-made pistol had been procured by the petitioner or his family nor the source of such country-made pistol has been ascertained or investigated.

32. There is also a DD entry to show that the petitioner's younger brother had dialled 100 number informing the police that his family was under attack from Manmohan @ Don (deceased).

33. The witness Mala Benerji/PW2 has also stated that when she peeped into the house of the petitioner she found deceased Manmohan was sitting on a sofa and just in front of him, mother of the petitioner was standing holding his hands and was pleading that "*mobile kyun le liya, mobile to de de bhai*". *Prima facie*, there appears to be some substance in the submission of the learned counsel for the petitioner that the deceased had terrorised the petitioner's family.

34. It is also not in dispute that the MLC of the father of the petitioner shows there were "abrasion and swelling below the eye", which also *prima facie* suggests that petitioner's father was assaulted by the deceased.

35. Further, as per the case of the prosecution upon hand-wash of the accused persons "no gunshot residue" was found from the hands or clothes of any of the accused persons. It is also not the case of the prosecution that



the two pistols bore the finger prints of any of the accused persons including the petitioner.

36. The recovery of the country made pistol was also not made from the site of incident but the same was handed over to the police later on by Vishal/PW5.

37. In the given circumstances it is for the trial court to take an ultimate call at the stage of trial, *inter alia*, on the factual aspects like, whether it was an accident which happened during scuffle; whether the deceased was an aggressor; whether there was an act of commission on part of the deceased which caused reasonable apprehension in the mind of the accused persons that there was imminent danger to their body, of either death or grievous hurt being caused to them; whether the petitioner and his family had the right of private defence, if yes, whether or not the petitioner and other co-accused exceeded their right to private defence. However, the circumstances that the deceased had gone to the residence of the petitioner armed with the pistol(s) and two bullets were found stuck in the licensed pistol; a phone call was made by the petitioner's younger brother to the police at 100 number informing that they are under attack by the deceased; the father of the petitioner suffered "abrasion and swelling below the eye"; coupled with the fact that no finger prints were lifted from the two pistols and the "gunshot residue" was not found from the hands or clothes of the petitioner or other co-accused, *prima facie*, have the potential of probalizing the defence of the petitioner to an extent, which furnishes a justifiable reason to grant bail to the petitioner.

38. That apart, it is a matter of record that the petitioner was granted interim bail on different occasions as well as he was released on interim bail



as per the guidelines issued by the High-Powered Committee, but it is not the case of the prosecution that the petitioner misused the liberty so granted to him. Even otherwise, the petitioner is a permanent resident of Delhi, therefore, there is no reason to believe that the petitioner will flee from administration of justice in case enlarged on bail.

39. As all the public witnesses stand examined, there cannot be any apprehension that the petitioner may influence material witnesses, in case he is enlarged on bail.

40. Further, it cannot be overlooked that the prosecution has cited as many as 61 witnesses, out of which 7 witnesses have been examined in the last 7 years. Needless to say, that it is going to be a protracted trial. The circumstances of the case do not warrant keeping the petitioner in custody to await the outcome of trial. It would indeed be a travesty of justice to keep the petitioner in jail for an indefinite period for an offence which may ultimately be found not to have been committed by him.

41. At the stage of trial there is presumption of innocence in favour of the petitioner. One of the purpose of keeping the petitioner in custody is to ensure that he is available to stand the trial and to receive the punishment in the event he is eventually found to be guilty. That can be ensured even by imposing strict conditions.

42. Considering the above discussed circumstances in entirety, I am of the view that the petitioner is entitled to grant of regular bail pending trial. Accordingly, the petitioner is admitted to bail subject to his furnishing a personal bond in the sum of Rs. 50,000/- with two sureties of like amount, subject to the satisfaction of the Trial Court/Duty Magistrate/CMM, further subject to the following conditions:



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- a) Petitioner shall not leave limits of Delhi/NCR.
 - b) Petitioner shall surrender his Passport, if any, before the Trial Court at the time furnishing bail bond/surety bond.
 - c) Petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing.
 - d) Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the Investigating officer concerned.
 - e) Petitioner shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the present case.
43. It is made clear that the observations made herein are only for the purpose of considering the bail application and the same shall not be deemed to be an expression of opinion on the merits of the case.
44. The petition stands disposed of.
45. Copy of the order be forwarded to the concerned Jail Superintendent for necessary information and compliance.
46. Order dasti under the signatures of the Court Master.
47. Order be uploaded on the website of the Court.

VIKAS MAHAJAN, J.

FEBRUARY 15, 2024

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