

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1427/2015**

Date of Decision: October 20th, 2015

ABID Petitioner

Through Mr.Shivam Chowdhry and Mr.S.K.
Chowdhry, Advs.

versus

STATE (NCT OF DELHI) Respondent
Through Mr.Vinod Diwakar, APP with SI
Gaurav Kumar, PS Nand Nagri.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S. TEJI, J

1. The present bail application has been filed under Section 439 of the Code of Criminal Procedure, 1973 seeking grant of regular bail in the case arising out of FIR No.589/2013 registered at Police Station Nand Nagri, Delhi under Section 307 IPC and Section 25 of Arms Act.

2. The allegations, as per the FIR, are that on 20th October, 2013 at 10:50 p.m., an intimation was given by Duty Constable Mahesh from Guru Teg Bahadur Hospital to the effect that a patient namely Mr.Manoj Kumar with gun shot injury on his back, was admitted by his brother Mr.Sunil Kumar. The MLC of the injured was collected on which it was mentioned that the patient was brought with the alleged history of gun shot and the patient

was fit for statement. As the complainant Mr. Manoj suffered excessive pain, therefore his statement could not be recorded. Since no eye witness was found, keeping in view the injuries sustained by the injured, FIR was registered under Section 307 IPC and Section 25 of the Arms Act. During the course of investigation, T-shirt of injured and fired bullet taken out from his body, were seized.

3. Statement of the injured Manoj was recorded in which he stated that on 20th October, 2013, his friend Abid (petitioner herein) came to his house in a drunken state and asked him to visit Gagan Cinema. Both Manoj and Abid went to Gagan Cinema where one of their friends Pradeep also met them. When they were returning home, petitioner-Abid took out a country made pistol and pointed towards ground. The complainant Manoj asked the petitioner as to when he brought the pistol, then he fired a shot at the waist of the complainant due to which he fell down. Thereafter, the accused took the injured to his brother Sunil who was standing at a nearby place. The petitioner then left Manoj there and fled away. It is stated that their friend Pradeep had already left the place after complainant received gun shot. Thereafter, the brother of Manoj along with another person, brought him to GTB Hospital.

4. The petitioner/accused surrendered before the Court on 25th November, 2013 and he was formally arrested. Accused disclosed that while going to his paternal village, he threw the country made pistol from the running train. It is stated that, thereafter, final opinion regarding nature of injuries of the doctor was received from the GTB Hospital which were opined as 'Grievous'.

5. During the course of trial, charges under Section 307 of the Indian Penal Code and Sections 25/27 of Arms Act were framed against the petitioner. Trial of the case is stated to be under progress and so far five, out of eleven prosecution witnesses have been examined by the court. Eye witness Pradeep has identified the accused Abid during his examination.

6. Arguments advanced by the counsel for the petitioner submits are that the police did not seize any article within twenty four hours of police custody. He further submits that Sunil Kumar deposed that the complainant Manoj Kumar never informed him about the assailant who had attacked him while he was in the Hospital for two weeks. It is further argued that the prosecution has to prove mens rea, intention and motive to commit an offence which is not present in the instant case. It is stated that when these conditions are not fulfilled, then the allegations levelled will become irrefutably falsified. It is further argued that the time of

alleged incident has wrongly been described in the charge sheet. He further stated that it has not been explained by Sunil Kumar as to why he did not take the injured to a nearby clinic. No eye witness was joined in the investigation. The investigating agency failed to seize the country made pistol which is alleged to be used by the petitioner and not even the left over cartridge of the bullet were found from the place, thus the chain of events in the instant case is broken. It is further alleged that the person who took Manoj Kumar and Sunil Kumar to the Hospital was not made eye witness nor his name and number were disclosed.

7. The bail application is vehemently opposed by learned Additional Public Prosecutor. It is stated that the petitioner can threaten the witnesses of the case and can commit similar offence again and there is also a possibility of jumping the bail by the petitioner. It is further argued that due to the acts of the petitioner, the complainant received grievous injuries. The learned APP has shown the apprehension that if the petitioner is released on bail, he may also abscond.

8. Perusal of record reveals that there are specific allegations against the petitioner/accused that he has given gun shot injury on the back of the complainant and the injuries sustained by him were grievous in nature. The petitioner/accused was apprehended at the

spot and was duly identified by the complainant.

9. The trial of the case is at the initial stage and in the considered opinion of this Court, it is not a fit case to enlarge the petitioner/accused on bail at this stage, as the possibility of tampering with the evidence and influencing the prosecution witnesses cannot be ruled out. Even, there is likelihood of fleeing of the petitioner/accused, if released on bail. The contentions made by the accused regarding deposition of witnesses and absence of mens rea and intention of the accused to commit the crime in the present case, are a matter of trial and no observation can be made on the same at this stage.

10. In the facts and circumstances, no ground is made out to release the petitioner/accused on bail at this stage. The bail application is accordingly dismissed. However, it is made clear that the observations made above shall not affect the merits of the case.

(P.S.TEJI)
JUDGE

OCTOBER 20, 2015
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