

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

Judgment delivered on : December 22, 2015

+ **BAIL APPLN. 2368/2015**
MUZAMMIL QURESHI

..... Petitioner

Through: Mr. J.S. Kushwaha, Advocate

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through: Mr. G.M. Farooqui, Additional
Public Prosecutor for the State with
ASI Kanshi Ram, Police Station
G.T.B. Enclave, Delhi

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

JUDGMENT

P.S.TEJI, J.

1. To impugn the order dated 08.10.2015, whereby the application of the petitioner seeking regular bail was rejected by learned District & Sessions Judge, the petitioner has preferred the present petition under Section 439 of Code of Criminal Procedure, 1973 (hereinafter referred to as Cr. P.C.), and seeks bail in case registered as FIR No. 444/14 under Section 307/34 of IPC at Police Station GTB Enclave, Delhi.

2. The prosecution case, which was registered on the complaint of one Sushilan Vasudevan. The allegations levelled against the petitioner are that he had fired a gun shot on the waist of the complainant on 17.07.2014. Thereafter, he was taken to GTB Hospital and in the night after receiving DD No.30A ASI – Kashni Ram alongwith Constable Sumit Kumar reached the hospital and obtained MLC of the injured, where doctor confirmed A/H/O gunshot and stated that Sushilan is fit for statement and nature of injury as fire arm injury. Thereafter, it came to the notice that the injured was taken to Max Hospital and due to shortage of bed, his relatives took him to Pushpanjali Hospital. After reaching the Pushpanjali Hospital, he came to know that injured had been taken to O/T. The eye witness to the incident could not be found by the ASI and after getting copy of report and MLC, he registered FIR under Section 307 of IPC and sent the report to Police Station through constable Sumit Kumar. Four live cartridges of the pistol and car of the injured were seized and the injured was declared fit for statement on 20.07.2014. The injured narrated the whole episode stating that at about 9.20 PM, in front of F Pocket Market two boys placed their bike in front of his car and told

that he had struck against the bike and one boy tried to enter his car from left side, who was pushed by the complainant but another boy from the right side, put his hand in the glass window and fired with a pistol on the right side of his back. Thereafter, both the boys ran away on their bike. Injured also informed that during this incident no robbery or snatching was committed. During investigation, ASI seized bullet extracted from the body of injured and sample seal and blood stain shirt and vest and hand wash and Maruti Zen No. DL-2CS-0898 were also seized.

3. Accused was searched and the petitioner – Muzammil and Pappu were arrested in FIR No. 1086/14 under Sections 186/353/332/224/307/34 of IPC and under Sections 25/27/57/59 of Arms Act, Police Station Nand Nagri, where they confessed that they committed the present offence and after producing the said accused in Court they were arrested and TIP was fixed after producing them in Court in muffled face and on 09.12.14 in Jail No.8/9 the TIP was conducted in which accused Pappu was not identified but the petitioner was identified. During investigation, the petitioner confessed and disclosed that he threw the pistol in a drain.

4. Mr. J.S. Kushwaha, counsel for the petitioner contended that the petitioner has nothing to do with the commission of the alleged offence and has been falsely implicated in this case. It is further submitted that the petitioner is in custody since 17.11.2014. It is further contended on behalf of the petitioner that the investigation of this case has been completed and the police has filed the charge sheet, the case has already been committed and now fixed for cross-examination of the complainant. It is further contended that the complainant was totally in a drunken condition and he was not in his proper sense but due to false implication by the police, he was got identified in TIP and that too after 4 months and 22 days.

5. Counsel for the petitioner vehemently argued that in the offences like the present one, there must be motive for committing such offence and in the whole prosecution version, no motive has been attributed. It is further submitted that the petitioner is a young boy of 27 years, only bread earner of his family, permanent resident of Delhi, and that there is no chance of his absconding or fleeing from justice. It is further contended that the charge sheet in this case has been filed and the trial may take considerable time to conclude,

therefore, the petitioner ought to be granted bail in this case.

6. Mr. G.M. Farooqui, Additional Public Prosecutor appearing on behalf of the State vehemently opposed the contentions raised by counsel for the petitioner. It is submitted that the examination of the injured is completed and he has fully supported the prosecution case and the cross-examination is still in progress. Since the charges framed against the petitioner are of grievous nature and he has also been charged with the same offence in another FIR, therefore, the bail application of the petitioner be rejected.

7. I have heard the submissions made by learned counsel for the petitioner and have gone through the impugned order and the material placed on record.

8. Upon careful scrutiny of the case what this Court observes is that the petitioner is also arrested in another FIR No. 1086/2014 under Section 307 IPC, the cross-examination of the complainant is under process and that the complainant has supported the prosecution case. This Court also observes that counsel for the petitioner also narrated some discrepancies in the prosecution case, which however, are not

the subject matter of the present bail application and the same can be adjudged during trial by leading cogent evidence. At this stage, what this Court is required to see, is the fact that whether a prima facie case has been made out by the petitioner for grant of bail in this case or not and after going through the contents of the FIR and the examination and part cross examination of the complainant, this Court does not think it fit to grant bail in the present case, at this stage.

9. In view of the aforesaid, the present bail application filed by the petitioner lacks merit and the same is hereby dismissed. However, it goes without saying that anything observed in this petition, shall not have any bearing on the merit of the case during trial.

10. With aforesaid directions, both the bail applications stand disposed of.

(P.S.TEJI)
JUDGE

DECEMBER 22, 2015
pkb