

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

Judgment delivered on : December 02, 2015

+ **BAIL APPLN. 2504/2015**

NAVEEN DAGAR

..... Petitioner

Through: Mr.S.P. Kaushal, Mr.Rohit Kumar
and Mr. Dhananjai Kaushal,
Advocates.

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through: Ms.Manjeet Arya, Additional Public
Prosecutor for the State with
Inspector Manoj Kumar, Police
Station Baba Haridas Nagar, New
Delhi.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. By this application, the petitioner seeks bail under Section 439 of Code of Criminal Procedure, 1973 in a case registered vide FIR No.123/12 (SC No.85/12) registered under Section 307/120-B/34 of IPC and Sections 25/54/59 of Arms Act, at Police Station Baba Haridas Nagar, New Delhi.

2. The petitioner is aggrieved by the order dated 28.10.2015, passed by the learned Additional Sessions Judge/Special Judge (NDPS), Dwarka Courts, New Delhi, vide which the bail application

filed by the present petitioner has been rejected.

3. The prosecution case is that a PCR call regarding firing at the office of MLA Bharat Singh at Najafgarh was received on 02.06.2012 at Police Station Baba Haridas Nagar vide DD No.14A. Upon inquiry, it was revealed that armed miscreants had entered into the office of Bharat Singh and caused bullet injuries to him and his maternal uncle Dharam Pal by indiscriminate firing. The injured were taken to the hospital. Since both the injured persons were declared unfit by the doctors for statements, Krishan Kumar (brother of injured Bharat Singh) informed that the names of the assailants including the petitioner were disclosed to him by Bharat Singh while he was being taken to the hospital. Thereafter, the petitioner was arrested on 05.06.2012 and ultimately on 29.06.2012, Bharat Singh specifically named the petitioner as one of the assailants. Injured Bharat Singh and Krishan Kumar have been examined as PW4 and PW10 and they supported the case of the prosecution. However the other injured Dharampal (PW5) has corroborated the occurrence of incident but failed to identify the assailants.

4. Mr.S.P. Kaushal, counsel for the petitioner submitted that the

petitioner is in custody since 03.06.2012 and his first bail application was dismissed by the Court on 22.08.2014. In second application of the petitioner, before this court, the Trial Court was directed to complete the examination of the 'remaining public witnesses' within a period of two months, giving liberty to the applicant to revive his bail application once all the remaining 'public witnesses' are examined. Thereafter, on 14.09.2015, considering the communication received from the Trial Court, this Court was pleased to direct the Trial Court to expedite the trial so as to conclude the examination of public witnesses within one month from 22.09.2015, giving liberty to the applicant to apply for regular bail before the Trial Court, once the public witnesses are examined. Out of the remaining 2 public witnesses, three were examined and other three public witnesses were reported to be 'not traceable'. Therefore, no public witnesses are left to be examined. Therefore, the petitioner preferred a bail application before the Trial Court, which was dismissed vide order dated 28.10.2015, which is impugned herein.

5. Counsel for the petitioner contended that FIR in question does not mention the name of the petitioner and there is a delay of 9 hours

in registering the case. Despite the fact that charge sheet has been filed and both injured witnesses have been examined and even injured Dharam Pal (PW-5) did not support the prosecution case, the bail has been declined to the petitioner. It is further contended that the prosecution has not been able to conclude its evidence even after a period of three and half years.

6. Counsel for the petitioner further contended that the other two alleged co-accused Rajender Dagar and Padam Dagar were admitted to anticipatory bail and even another co-accused – Nadeem was granted bail prior to filing of the charge sheet. Thereafter, the other co-accused – Udaiveer is also ordered to be released on bail by this Court. Therefore, the petitioner is entitled to be released on bail on the ground of parity.

7. Counsel for the petitioner further contended that there is no recovery of any weapon from him or at his instance and he cannot be assumed to be one of the assailants. It is further contended that neither the MLCs nor the statement under Section 161 of Cr. P.C. and the statement made before the Court reveals that the injured has stated that the two gunshot injuries were caused by the petitioner or any

particular accused.

8. It is also contended on behalf of the petitioner that the petitioner is a young boy of 21 years with clean antecedents and he was undergoing his studies at the time of his arrest, therefore his whole future will be ruined due to his false implication in the present case. Lastly, it is stated that the petitioner is a permanent resident of Delhi and is not a previous convict, and since all the public witnesses have been examined, therefore there is no likelihood of petitioner's tampering with the evidence and the trial is not likely to be concluded for another couple of years, as out of 70 witnesses, only 29 witnesses have been examined, therefore the petitioner ought to be granted bail in the aforesaid case.

9. To oppose the contentions raised by learned counsel for the petitioner, Ms. Manjeet Arya, learned Additional Public Prosecutor for the State submitted that the injured – Bharat Singh, in his statement under Section 161 Cr. P.C. specifically named the petitioner as one of the assailants and his presence is established at the spot as his palm prints tallied with the chance prints lifted from the scene of crime. Learned Additional Public Prosecutor for the State vehemently

urged that the petitioner in this case be not granted bail as there is strong possibility of absconding and the fact that Ex.MLA has been murdered on 29.03.2015 and there is security threat to the other family members.

10. After considering the contents of the present petition as well as the rival submissions made by counsel for the petitioner and learned Additional Public Prosecutor for the State, this Court is of the opinion that the petitioner is arrested in this case on 03.06.2012 and since then he is in custody. Perusal of the order dated 12.06.2016 passed by this Court also reveals that the petitioner was granted liberty to revive his bail application once all the remaining public witnesses are examined and subsequent thereto, on 14.09.2015, considering the communication received from the Trial Court, the Bail Appl. No.1196/2015 was listed and this Court was pleased to direct the Trial Court to expedite the trial so as to conclude the examination of public witnesses within one month from 22.09.2015 and liberty was granted to the petitioner to apply for regular bail before the Trial Court, once the public witnesses are examined. It is also a fact that three public witnesses are reported to be 'not traceable'. Therefore, no public

witnesses are left to be examined.

11. Perusal of the record also reveals that the co-accused Rajender Dagar and Padam Dagar have already been admitted to anticipatory bail and even another co-accused – Nadeem has been granted bail prior to filing of the charge sheet. Thereafter, the other co-accused – Udaiveer is also ordered to be released on bail by this Court. Therefore, the petitioner is entitled to be released on bail on the ground of parity. Charge sheet in the present case has already been filed, and the petitioner is not required for further investigation and the trial is likely to take time.

12. Considering the aforesaid facts and circumstances of the present case, the petitioner – Naveen Dagar is granted bail in the present case subject to his furnishing personal bond in the sum of Rs.20,000/- with two sureties of the like amount, to the satisfaction of the Trial Court.

13. Before parting with the aforesaid observations, it is made clear that any observation made in the aforesaid order shall not affect the merits of the case.

14. With aforesaid observations, the present bail application filed by the petitioner stands disposed of.

(P.S.TEJI)
JUDGE

DECEMBER 02, 2015
pkb