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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ BAIL APPLN. 398/2016
MUZAMMIL QURESHI Petitioner
Through Mr J.S. Kushwaha, Adv.

versus

THE STATE (GOVT OF NCT OF DELHI) Respondent
Through Mr Akshai Malik, APP for the State along
with Sub Inspector Narender Pal Singh, PS
GTB Enclave, Delhi

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

% 25.04.2016

1. This is an application u/s 439 Cr.P.C. moved by the petitioner seeking regular bail in case FIR No.444/2014 u/s 307/34 IPC registered with Police Station GTB Enclave, Delhi.
2. Learned counsel for the petitioner submits that the complainant was in a drunken condition and was not in his proper senses and due to this reason, he could not identify one of the accused in the Test Identification Proceedings. The petitioner is in custody since 19th April, 2014 and is the only bread earner of the family. As such, he be released on bail.
3. The application is opposed by the learned APP for the State on the ground that the petitioner fired on the lower portion of the back of the complainant by a pistol then ran away along with his associates on their bike. The petitioner was arrested in another case. Thereafter during interrogation pursuant to the disclosure statement made by him, he was arrested in this case. He was duly identified by the complainant during the Test Identification Proceedings as well as in the Court. Further the petitioner is involved in more than 16 cases, as such, he is not entitled to be released on bail.

4. As per the prosecution case, on 17th July, 2014, after closing his jewellery shop, the complainant was returning to his house in his car. At about 9:20 pm, when he reached near his house in front of the gate of Pocket F, Dilshad Garden, Delhi, two boys on their motor cycle stopped his car by getting their bike in front of the car. They started quarrelling with the complainant alleging that the complainant has hit their motorcycle by his car and asked him to come out of the car. In the meantime, one boy started to enter from left side in the car of the complainant to whom he pushed out and closed the door and during this time another boy put his hand in the window from right side and fired on the lower portion of his back by a pistol and the boys ran away on their bike.

5. Counsel for the petitioner himself has placed on record certified copy of the statement of the complainant recorded by the learned District and Sessions Judge wherein the complainant has duly identified the petitioner. The witness has further deposed that initially he was taken to GTB Hospital from where he was shifted to Pushpanjali Hospital, Vaishali where his surgery was conducted. After the operation, he was not conscious for about 3 days. After about a week, police came in the hospital and recorded his statement. He went to Tihar Jail for the purpose of his test identification proceedings on 9th December, 2014 and duly identified the petitioner.

6. Counsel for the petitioner submits that the test identification proceedings were conducted after more than four months of the alleged incident. In this regard, learned APP has brought to my notice that after the incident, the petitioner along with his associate were not available, however, the petitioner was arrested in another incident by the staff of Police Station Nand Nagri in case FIR 1086/14 u/s 186/353/332/224/307/34 IPC. During the course of investigation, he made a disclosure about his involvement in the present case and thereafter he was arrested and then the test identification proceedings were conducted.

7. Learned APP further submits that there was no reason for the complainant to falsely implicate the accused in this case as the complainant did not identify the co-accused Pappu and, therefore, he was released due to insufficient evidence but since the petitioner was duly identified by the complainant, he was charged sheeted in this case.

8. Keeping in view the totality of the facts and circumstances coupled with the antecedents of the petitioner, I do not deem it fit to release the petitioner on bail. As such, the application is dismissed.

SUNITA GUPTA, J

APRIL 25, 2016/rs