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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of hearing and order: August 3, 2016

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BAIL APPLN. 1173/2016
FURKAN @ FURKI

..... Petitioner

Through: Mr. S.A. Rajput, Advocate

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Amit Chadha, Additional Public
Prosecutor for the State with Sub-
Inspector Amit Verma, Police Station
Gokalpuri, Delhi

CORAM:

HON'BLE MR. JUSTICE P.S. TEJI

ORDER

03.08.2016

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P.S. Teji, J. (Oral)

1. By this petition filed under Section 439 read with Section 482 of Cr. P.C., the petitioner is seeking bail in a case registered vide FIR No.154/12 under Section 307/34/120-B of IPC and Section 25/27 of Arms Act, at Police Station Gokal Puri, Delhi.

2. The present case was registered on the statement of one Asif, who stated that there was a dispute between his elder brother and the petitioner and that his elder brother Nazim was booked by the police station Khajuri Khas in a case under Section 307 IPC on 06.04.2012 at the instance of the petitioner. It is further stated by the complainant

that his younger brother Kasim @ Khassi was also apprehended in a case FIR No. 86/11 Police Station Gokalpuri and is in custody since September 2011. It is further stated that the complainant went to Karkardooma court for meeting his brothers, and when he reached behind the court, the petitioner herein threatened him to leave himself from the parokari of his brothers and further extended threats that if he does not leave the parokari, then he shall face the dire consequences. It is further stated that on 30.04.2012 at about 11.30 PM in the night when he tried to walk in the street, the petitioner alongwith his associates Guddu, Kasim and Jibbo, the petitioner asked him as to why he did not leave the parokari of his brothers to which he ignored and reached to his room. It is further stated that at about 12.30 AM in the same night, Guddu called him using abusive language and kicked the door and thereafter he opened the window by using force and following which, the petitioner demanded the katta from Jibbo and fired at the complainant. Although the gun shot missed the complainant but it hit the sister of the complainant on her hands. Neighbour called at 100 and the petitioner fled away from the spot. The case was registered against the petitioner as well as other co-accused persons. Petitioner was arrested on 11.05.2012 and since then he is in judicial custody. Though the petitioner applied for his bail before the learned Additional Sessions Judge but the same has been declined vide order dated 22.12.2015. Now the petitioner has approached this court for seeking bail.

3. Mr. S.A. Rajput, learned counsel for the petitioner contended that the petitioner is in custody since 11.12.2015 and the charge sheet in this case has already been filed. It is further contended that only 3 out of 20 witnesses have been examined. It is further contended on behalf of the petitioner that the other co-accused namely Sagir @ Jibbu has already been released on bail vide order dated 14.12.2013 passed by the learned Additional Sessions Judge. Likewise, the other co-accused Kasim has also been admitted to bail vide order dated 03.10.2012 and Guddu @ Shane Alam has also been granted bail vide order dated 17.07.2012. The petitioner claimed parity for grant of bail. According to the petitioner the charge sheet has been filed and nothing incriminating has been found against him. It is further contended that the wife of petitioner is also suffering as the petitioner was sent to judicial custody just after three-four months after solemnization of his marriage. Therefore, the petitioner ought to be granted bail in this case.

4. Mr. Amit Chadha, Additional Public Prosecutor for the State submitted that the petitioner has been charged with the heinous offence and the role attributed to him was of gunshot due to which the sister of the complainant got injured. Charge sheet has been filed and the public witnesses are yet to be examined. In addition, the petitioner is a bad character of Police Station Gokalpuri and as per record 15 criminal cases are found to be registered against him. Lastly, the State has raised apprehension of prosecution witnesses being threatened, in

case the petitioner is released on bail. Therefore, the petitioner ought not be granted bail in this case.

5. I have heard the submissions of both the sides and in the facts and circumstances of the case, this Court observes that the petitioner has caused the gun shot injury to the victim, therefore he cannot claim parity with the other co-accused persons in the case, who have already been granted bail. This court has also perused the status report filed on behalf of the State, in which it is informed that the petitioner is involved in 15 other criminal cases and he is a bad character of the Police Station Gokalpuri. It is further stated that if the petitioner is granted bail, he may threaten the witnesses and may tamper with the evidence.

6. In ***Prasanta Kumar Sarkar v. Ashis Chatterjee*** (2010) 14 SCC 496, the Hon'ble Supreme Court dealt with the basic principles laid down in catena of judgments on the point of granting bail. The Court proceeded to enumerate the factors:

9. ... among other circumstances, the factors [which are] to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*

- (iv) *danger of the accused absconding or fleeing, if released on bail;*
- (v) *character, behaviour, means, position and standing of the accused;*
- (vi) *likelihood of the offence being repeated;*
- (vii) *reasonable apprehension of the witnesses being influenced; and*
- (viii) *danger, of course, of justice being thwarted by grant of bail.*

7. Considering the facts and circumstances of the present case and the fact that the trial is at the initial stage and the public witnesses are yet to be examined and the fact that the petitioner is charged with the offence punishable under Section 307 of IPC, therefore, looking at the gravity of offence and the nature and manner in which the petitioner has committed the crime, this Court is not inclined to grant bail to the petitioner at this stage.

8. Resultantly, in the considered opinion of this Court, the facts emerging from the record culminate into dismissal of the present bail application. Accordingly, the present bail application filed by the petitioner is dismissed at this stage. However, considering the fact that the petitioner has been in custody since the date of his arrest, i.e., 11.05.2012, the Trial Court is directed to conclude the trial of this case as expeditiously as possible.

9. Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated

hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

10. With aforesaid direction, the present bail application, filed by the petitioner stand disposed of.

AUGUST 03, 2016
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P.S.TEJI, J

