

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

Judgment delivered on : February 04, 2016

+ BAIL APPLN. 2430/2015

WASIM

..... Petitioner

Through: Mr.B.S.Chowdhary, Advocate.

versus

STATE (NCT) OF DELHI

..... Respondent

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

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. The present application has been filed by the petitioner under Section 439 of the Code of Criminal Procedure, 1973 for the grant of regular bail in FIR No.531/2012, Police Station Narela, under Sections 302/34 of the Indian Penal Code.

2. The prosecution case is that on 27.09.2012 a PCR call was received vide DD No.57-A, Police Station Narela intimating that one person has been shot dead in Keshav Bhawan building. Sub-Inspector

Deepak Sangwan was deputed for necessary action. When he reached

the spot, the injured was removed to SRHC Hospital where he was declared 'brought dead'. Statement of one Sanjay, s/o Ram Gopal was recorded. He informed that Wasim s/o Rashid and Wasim s/o Sherdeen came to Keshav Bhawan alongwith Riyasuddin and Wasim s/o Sherdeen fired on Riyasuddin. Thereafter both Wasim s/o Sherdeen and Wasim s/o Rashid fled away from the spot. Crime team was called, photographs of the crime scene were taken, exhibits were lifted from the spot and the body of the deceased was sent to BJRM Hospital for Autopsy.

3. During the course of investigation, statement of Shahid (PW-7) was got recorded, who informed that Wasim s/o Sherdeen wanted to purchase one plot which was in the name of his father Riyasuddin but his father refused to sell the same. He also informed that Wasim s/o Sherdin had threatened his father with dire consequences. He further informed that his father had given his mobile phone and Rs.4500/- to Wasim s/o Sherdin. Though Wasim had returned the mobile phone but did not return Rs.4,500/-. He further informed that at about 8 PM on 27.09.2012, Wasim s/o Sherdin and Wasim s/o Rashid came to his house and took his father with them stating that they will settle all the

money matter. At about 9.15 PM, he went searching for his father and found that his father alongwith the accused persons was consuming liquor in Keshav Bhawan, Kureni. At about 10.30 PM, he received a phone call regarding a fire shot injury to his father. On 30.09.2012 the petitioner – Wasim s/o Sherdin was arrested by the Crime Branch and since then he is in judicial custody. During investigation, disclosure statement of the petitioner was recorded and one pistol, used in commission of crime, was also recovered at the instance of the petitioner from the Beriwalla Bagh. Exhibits and pistol were sent to FSL for expert opinion. After completion of the investigation, charge sheet was filed in Court on 22.12.2012.

4. Mr. B.S. Chowdhary, Advocate argued the case of the petitioner. The main crux of the argument raised by counsel for the petitioner is that the prosecution has to lead 22 witnesses in its support, out of which 19 witnesses have already been examined including all the public witnesses and Investigating Officer and the other co-accused - Wasim s/o Rashid has already been admitted to bail vide order dated 11.11.2013. Counsel for the petitioner also relied upon a judgment of the Hon'ble Supreme Court reported in **Gokal**

Bhagaji Patil vs. State of Maharashtra, (2007) 2 SCC 475. Counsel for the petitioner further contended that the alleged eye witness Sanjay Kumar (PW-1) has categorically stated in his deposition that the police has obtained his signatures on blank papers and he has not seen any incident of the crime. Therefore”, the eye witness of the case has not supported the case of the prosecution and the statement of Shahid (PW-7) s/o the deceased is a hearsay witness and Ms. Shahnaj, wife of Riyasuddin (PW-11) is produced as last seen witness in the present case and even she has not stated anything incriminating against the petitioner. Lastly, it is contended on behalf of the petitioner that the petitioner is in custody for the last about 4 years and the conclusion of trial may take considerable time. Therefore, counsel for the petitioner contented that the petitioner ought to be granted bail in the present case.

5. Mr. Amit Chadha, Additional Public Prosecutor appearing on behalf of the State vehemently opposed the aforesaid contentions raised by counsel for the petitioner and submitted that there is a recovery of one pistol used in the commission of crime and that too at the instance of the petitioner. It is further submitted that the petitioner

is involved in 8 criminal cases and there is a strong possibility that he could again commit the crime in case he is released on bail. At this stage, counsel for the petitioner contended that the petitioner has been falsely implicated by the local police with Police Station Narela and he has been discharged or acquitted in all the alleged seven criminal cases.

6. I have heard learned counsel for the petitioner as well as the submissions made by learned Additional Public Prosecutor for the State.

7. After careful scrutiny of the case and the facts and circumstances of the present case, so far as the contention raised by counsel for the petitioner that the co-accused Wasim, s/o Rashid has already been granted bail in the present case, this Court is of the opinion that the petitioner cannot claim parity as there is recovery of pistol used in the commission of crime at the instance of the petitioner himself. In any case, the charge sheet in the present case has been filed and 19 out of 22 witnesses have already been examined. The order dated 13.10.2015 passed by learned Additional Sessions Judge, while rejecting the bail application of the petitioner records that the

remaining prosecution witnesses are likely to be examined on the next date i.e. 3.11.2015.

8. In view of the aforesaid, this Court is not inclined to grant bail to the petitioner at this stage. Accordingly, the bail application filed by the petitioner is dismissed at this stage.

9. However, it is made clear that the observations made above shall not affect the merits of the case.

10. In view of the aforesaid directions, the present bail application is disposed of.

(P.S.TEJI)
JUDGE

FEBRUARY 04, 2016
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