

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on : 29th February 2016

+ BAIL APPLN. 2658/2015
JAFFAR Petitioner
Through: Mr.Dwarka Sawale, Advocate

versus

STATE Respondent
Through: Mr. Amit Chadha, Additional Public
Prosecutor for the State with Inspector
Pravin Kumar, Police Station Dabri,
Delhi
Mr.Anil K. Aggarwal, Advocate with
Mr.Vivek, Advocate for the
complainant.

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

JUDGMENT

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P.S. TEJI, J.

1. By this petition filed under Section 439 of Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr. P.C.), the petitioner seeks bail in a case registered as FIR No. 544/2015 under Sections 307/429 of Indian Penal Code read with Section 27 of the Arms Act, at Police Station Dabri, Delhi.

2. It is the case of the prosecution that on 24.4.2015, Complainant - Constable Rakesh, who was the PSO of one Chetan Parkash Sharma, informed the Duty Officer Police Station Dabri, Delhi that Chetan

Parkash Sharma has sustained gunshot injury. The said information was lodged vide DD No.34B and the same was entrusted to Sub-Inspector Ajay Kumar. On receiving the information, Sub-Inspector Ajay Kumar reached the spot near G-248, Vishwas Park, Raja Puri, New Delhi where he found a dog was lying dead in front of the house of Chetan Prakash Sharma, and blood was coming from lower portion of his body. Sub-Inspector Ajay Kumar reached DDU Hospital and Chetan Parkash Sharma found to be under treatment and MLC No.3550/15 was received by him. Accordingly statement of Constable Rakesh was recorded and the case was registered and transferred to DIU/SWD.

3. Investigation was conducted by the Crime Branch, Prashant Vihar, and on 02.10.2015, accused Naveen Kumar@ Bablu Dagar was arrested under Section 41(1) of Cr.P.C. During investigation Naveen Kumar @ Bablu disclosed that in the year 2014, Chetan Prakash (injured herein) had attacked on him and a case vide FIR No.79/2014 under Section 307 of IPC was registered against Chetan Prakash Sharma at Police Station Dabri and he was also arrested. For taking revenge, he met co-accused - Arun Kumar @ Goldy and asked him to kill Chetan Prakash for which he would pay Rs.20 lacs. It is further disclosed that he gave Rs.5 lacs to Arun Kumar in advance, who in turn arranged two shooters i.e. Rahul and Mohd. Jaffar. Pistol and a stolen motorcycle were also provided by Arun Kumar to the shooters and he directed them to kill Chetan Prakash.

4. Mr. Dwarka Sawale, learned counsel for the petitioner

contended that the present petitioner has been falsely implicated in the present case and in fact on 02.10.2015, at 5.20 p.m., the petitioner was not present at the place of arrest. However, he was present at IGL Indraprastha CNG Station in Sarita Vihar, Kalindi Kunj Road, from 5.09 to 5.20 p.m. which is about 35 Kms away from the said place of arrest and his presence was recorded in CCTV footage and mobile location which was preserved by the learned CMM, Tis Hazari Court, Delhi vide order dated 23.10.2015. It is contended on behalf of the petitioner that the petitioner has been arrested on 03.10.2015 on the disclosure statement of the co-accused and since then he is in custody. It is further contention by the counsel for the petitioner that nothing has been recovered from the applicant. Regarding refusal to the TIP, it is contended that the petitioner has deliberately refused the TIP as the complainant had seen the petitioner on the first day of arrest on 02.10.2015 and on 03.11.2015, when he appeared before Tis Hazari Court and Dwarka Court, respectively. It is submitted that the petitioner has no connection with the co-accused as well as the complainant of the FIR in question.

5. Mr. Amit Chadha, learned Additional Public Prosecutor for the State vehemently opposed the aforesaid contentions of the petitioner and it is urged that the MLC of the injured Chetan Prakash clearly mentions that the injured received a gunshot injury. Post Mortem of the dog was also conducted and bullet lead was also recovered from his body and during the investigation, one bullet lead was also recovered near the spot lying inside the property No.G-280, Ground

floor, Vishwas Park, Rajapuri. The Crime Team seized the bullet lead, which made a hole in the shutter.

6. The State has also filed a status report on record intimating the during the investigation, on 02.10.2015, Special Team, Crime Branch Prashant Vihar received an information that criminals involved in the present case are coming near Uttam Nagar West Metro station. The raid was conducted and the petitioner and Rahul were apprehended. Weapons of offence i.e. two pistols and one stolen motor cycle were also recovered from the possession of the petitioner and Rahul respectively. It is further submitted on behalf of the State that the petitioner had refused to participate in TIP and the petitioner was identified by the injured Chetan Prakash in Dwarka Court. Lastly, it is submitted that the charge sheet in this case has been filed and the matter is pending adjudication before the Trial Court.

7. I have heard the submissions of counsel appearing on behalf of both the sides and gone through the material placed on record.

8. After careful scrutiny of the case, this Court observes that the name of the petitioner was disclosed by the co-accused – Naveen Kumar and on information a raid was conducted by the Special Team, Crime Branch, Prashant Vihar and the petitioner was apprehended. Weapons of offence i.e. two Pistols and one stolen motorcycle were also recovered from the possession of Mohd. Jaffar and Rahul respectively. This Court further observes that the petitioner is in custody since 03.10.2015, and the petitioner had also refused to

participate in the TIP proceedings. However, the petitioner was identified by the injured Chetan Prakash. Post mortem was also conducted on the body of the Dog and bullet lead was recovered. Apart from the above, one bullet lead was also recovered near the spot lying inside the property No. G-280, Ground Floor, Vishvas Park, Rajapuri and the same was seized.

9. This Court also observes that the petitioner was arrested after a raid conducted by the Special Team, Crime Branch on 02.10.2015 on an information that criminals involved in the present case are coming near Uttam Nagar West Metro Station. However, the contention on behalf of the petitioner is that the petitioner was present at IGL Indraprastha CNG Station in Sarita Vihar, Kalindi Kunj Road, from 5.09 to 5.20 p.m. which is about 35 Kms away from the place of arrest and his presence was recorded in CCTV footage as well as the mobile location preserved by the Trial Court, is a matter of trial and can be proved by leading evidence on behalf of the petitioner.

10. After considering the prosecution case, coupled with the disclosure statement of co-accused in which he has disclosed the name of the petitioner in commission of the crime in present case, which is duly corroborated by the recovery of pistols effected from the present petitioner and considering the fact that medical report positively indicates of gunshot injury, may be simple, and it is due to that reason that the police has added the offences under Section 307 Indian Penal Code as well as Section 27 of the Arms Act, this Court is not inclined to grant bail to the petitioner at this stage.

11. In view of the aforesaid observations and the facts and circumstances of the present case, the bail application filed by the petitioner is dismissed at this stage.

12. It is made clear that any observations made hereinabove, shall not have any bearing on the merits of the case.

P.S.TEJI, J

FEBRUARY 29, 2016

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