

\$~46

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

+ BAIL APPLN. 990/2017

SAJID KHAN @ BABLAPetitioner

Through: Mr. Ravi Tikania, Advocate.

Versus

THE STATERespondent

Through: Mr.Akshai Malik, APP for the State.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

% **15.09.2017**

1. By way of the present petition filed under Section 439 of Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') the petitioner seeks grant of regular bail in FIR No. 813/2015 under Sections 307/324/341/34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC'), and Sections 25/27/54/59 of the Arms Act 1959 registered at P.S Amar Colony, Delhi. The petitioner is stated to be in judicial custody since 04.08.2015. Status report is on record.
2. The present case is registered on the complaint of one Vicky, who informed that, on 12.07.2015, a quarrel had taken place between one Sonu and one Sajid Khan/petitioner/accused and during a scuffle between the two, Sonu sustained multiple injuries on his face. On being informed about the same, the complainant went for Sonu's help and while he was sitting in his car with Sonu, the

petitioner/accused alongwith his two associates, riding a white TVS apache motorcycle approached the complainant's car from the side of the driver seat. Thereafter the petitioner fired upon the complainant due to which he sustained injuries on his back.

3. Case was registered under Section 307/323/341/34 of IPC, petitioner was arrested and after completion of the investigation charge sheet was filed before the court of Additional Sessions Judge (hereinafter referred to as 'ASJ'). The petitioner has previously filed three applications before this Court for seeking bail, however the same have been dismissed as withdrawn vide orders dated 08.12.2016, 15.03.2017 and 13.04.2017.
4. Learned counsel for the petitioner contended that the petitioner has been falsely implicated in the case and is in judicial custody since 04.08.2015; that none of the prosecution witnesses have deposed against the petitioner and that they have also failed to identify the accused during TIP proceedings conducted on 25.08.2015; that the complainant had also clearly submitted before the ASJ that petitioner was not one of the persons who fired at him in the alleged incident and that his testimony stood unshaken even after cross-examination; that there is no independent public witness to corroborate the recovery of arms and motorcycle used in the alleged incident; that as per the FSL report the bullet recovered from the body of victim was not fired from the alleged weapon of offence.
5. Per contra, Mr. Akshai Malik, learned APP appearing for the State contested the bail application and submitted that the petitioner has

been charged with a serious and grave offence that is punishable with imprisonment which may extend to ten years; that the petitioner has played an active role in the commission of the alleged offence, wherein the complainant sustained serious injuries; that the weapon of offence was recovered from the petitioner's house and the motorcycle used in the crime was also recovered from his possession; that the petitioner is a habitual offender and was previously involved in 15 different cases; that the trial is at the stage of prosecution evidence and hence, the present bail application cannot be allowed.

6. I have heard the arguments advanced by learned counsel for the parties and perused the material available on record.
7. At the outset, it is observed that there are vital omissions and contradictions in the testimony of prosecution witnesses. Both the prosecution witnesses (complainant/PW-3 & other victim/PW-5) who were alleged to have received injuries in the said incident, did not attribute any overt acts to the petitioner in their respective testimonies under Section 164 Cr.P.C. As the complainant (PW-3) did not support the case of prosecution regarding the identity of the accused person, he was cross-examined by the learned APP and in cross-examination also he denied the role of petitioner/accused in the alleged incident.
8. Moreover in the FSL report, the bullet recovered from the body of is not connected with the alleged weapon of offence which was recovered from the petitioner. Also the doctor (PW-8) conducting the MLC has opined the nature of injuries sustained by the

complainant as simple. Hence there is lack of any objective support, in the form of scientific or medical evidence, in the case of prosecution.

9. Under these circumstances, this Court is of the opinion that the petitioner be released on bail, subject to the following conditions:
 - i) That the petitioner shall furnish a personal bond in the sum of **Rs.25,000/-** with one surety of the like amount subject to the satisfaction of Trial Court concerned;
 - ii) that the petitioner shall cooperate with the investigation and make herself available for interrogation by police officer as and when required;
10. Before parting with the above order, it is made clear that anything observed in the present petition shall not have any bearing on the merits of the case during trial.
11. Accordingly, the petition stands disposed of.

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 15, 2017

//gr