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

+ **BAIL APPLN. 2682/2018**

SUJEET GHOSH

..... Petitioner

Through Mr. Tanveer Ahmed, Mr. Faheem
Shah and Ms. Stuti Gupta, Advs.

Versus

STATE

..... Respondent

Through Ms. Neelam Sharma, APP with
Inspector Ram Kishan, DIU/Dwarka
Ms. Geeta Luthra, Sr. Advocate with
Mr. Nitin Saluja, Ms. Shivani Lohiya
Luthra and Ms. Asmita, Advs. for
complainant

AND

+ **BAIL APPLN. 2689/2018**

SHASHI GHOSH

..... Petitioner

Through Mr. Tanveer Ahmed, Mr. Faheem
Shah and Ms. Stuti Gupta, Advs.

versus

STATE

..... Respondent

Through Ms. Neelam Sharma, APP with
Inspector Ram Kishan, DIU/Dwarka
Ms. Geeta Luthra, Sr. Advocate with
Mr. Nitin Saluja, Ms. Shivani Lohiya
Luthra and Ms. Asmita, Advs. for
complainant

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CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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17.12.2018

Petitioners are husband and wife. They are aged 55 and 52 years. Their sons, namely, Abhijit @ Aman and Abhishek are co-accused. Petitioners seek bail.

Learned counsel for the petitioners submits that petitioners are in judicial custody for more than one year. Investigations are over. Charge-sheet has been filed under Section 302/34 IPC. Supplementary charge-sheet has also been filed. Whole case is based on circumstantial evidence. There is no eye-witness to the incident. It is further submitted that earlier investigation was done by the local police. Investigating Officer arrested the petitioner Sujeet Ghosh and recorded his disclosure statement. Petitioner Shashi Ghosh was also arrested and her disclosure statement was also recorded. As per the petitioner, Sujeet Ghosh, deceased Manmohan @ Don was the aggressor. He had come to the house of petitioners armed with two weapons; one was his licensed pistol, the other was a country-made pistol. Initially verbal altercations took place between the deceased and petitioner in respect of business transactions, during which the deceased pulled out his licensed pistol and fired twice, however, bullets got stuck in the chamber. A scuffle took place as efforts were made to snatch the pistol from the deceased. Co-accused Abhijit @ Aman succeeded in snatching the pistol and he hid the same under the inverter in the staircase. Deceased pulled out other pistol. Again a scuffle took place and in the melee a bullet was fired which hit the deceased, resulting in his death.

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Learned counsel for the petitioners further submit that subsequently, investigations were transferred to the DIU. Abhijit @ Aman was arrested and his disclosure statement was recorded. Submission is that there was a blackening around the wound which indicates that deceased was fired from a distance of less than 6 inches. This strengthens the defence of petitioners that deceased died in the scuffle accidentally by the firing of the country made pistol.

Learned counsel for the petitioners additionally submit that the prosecution has relied upon the audio recording taken out on the pen drive from the CCTV of the neighbour's house; the CCTV footage was not seized. There was no picture captured in the CCTV except the voices. Voice samples were taken and sent to the FSL. As per the FSL report dated 3rd July, 2018 signs of distortions in the magnetic material distribution were found which suggested possible signs of tampering. It is submitted that the voice sample report, accordingly, has no value. Learned counsel further submits that the statements of the witnesses, that is, Mala, Ravi, Murlidhar etc. were not recorded immediately after the incident. There is a delay in recording of their statements.

Learned APP, who is assisted by the learned Senior Counsel for the complainant, has opposed the grant of bail to petitioners. It is submitted that the case is based on circumstantial evidence. It is further submitted that the country made pistol was of the accused persons. Deceased was not carrying any country made pistol. Had he been having a country made pistol, he would not have fired from the licensed pistol. It is further submitted that before going to the house of petitioners, deceased met Ravi and told him that petitioner Sujeet Ghosh had called him to make payment of his outstanding

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dues. Murlidhar has stated that he heard the noise of a quarrel. He also heard petitioner Sujeet Ghosh saying that the deceased should be killed that day. It is further submitted that Mala, a neighbour of petitioners, had gone to the house of petitioner on hearing the noise of a quarrel. She knocked the door upon which Abhishek opened the door. She saw the deceased sitting on the sofa and that petitioner Shashi Ghosh had caught his right hand. Petitioner Sujeet Ghosh and co-accused Abhijit @ Aman were standing around the deceased. Deceased told Mala to go away by saying that it was a business dispute between them which was being discussed. She went out and sat on the staircase. After sometime she heard a gunshot. She also heard petitioner Shashi Ghosh saying "*Aman, ye tumne kya kiya*". It is further submitted that after the post-mortem, a second opinion was taken from the doctor, who has opined that the injury could not have been sustained in the scuffle and could not be self-inflicted. Learned APP further submits that subsequent to the incident, petitioner Shashi Ghosh rang up at Mala's phone number, which was picked up by her brother Ankur Banerjee; she told him to convey to Mala that she should give "*theek theek bayan*", all the witnesses are from the same area and not related to the deceased. All the circumstances indicate that petitioner and co-accused committed murder of deceased in a pre-planned manner.

In rejoinder it is submitted by the learned counsel for petitioners that in many statements even dates have not been given by the Investigating Officer. What happened inside the room is not known. As per the prosecution itself, it has not been explained in the charge-sheet as to from where the second country made pistol surfaced. It is the defence of the petitioners that the deceased had brought the country made pistol. It is

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further submitted that the country made pistol was not even recovered from the spot. It was handed over to the Investigating Officer by one Vishal by saying that he had picked up the same from the spot. Vishal is nephew of deceased. Learned counsel for the petitioners has further contended that finger prints of the petitioners were not taken nor the same were sent to FSL to show that bullet was fired from the country made pistol by any of the accused persons.

For the foregoing reasons, it is apparent that the whole case is based on the circumstantial evidence. There is no eye-witness to the murder. Nobody had seen any of the petitioners firing at the deceased. Mala had gone in the room on hearing the noise. She saw the petitioners and the deceased together in the room. Deceased himself told Mala to go out as they were discussing business matter. She only heard the gunshot. As per the prosecution itself, it is the co-accused Abhijit @ Aman, who had fired at the deceased. It is not the case of prosecution that any of the petitioners had fired. It has not been disputed by the prosecution that two bullets were found stuck in the chamber of licensed pistol of the deceased.

Keeping in mind the totality of the facts and circumstances of this case, petitioners are admitted to bail, subject to their furnishing a personal bond in the sum of ₹25,000/- (Rupees Twenty Five Thousand Only) each with one surety each in the like amount to the satisfaction of trial court.

Both the bail applications are disposed of in the above terms.

Dasti.


A.K. PATHAK, J.

DECEMBER 17, 2018/r.bararia