

\$~6

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

+ **BAIL APPLN. 1796/2019**

NITIN SEHRAWAT

..... Petitioner

Through: Mr.Mohit Mathur, Sr. Adv. with
Mr.Khowaja Siddiqui, Mr.Ashwini
Kumar & Mr.Abhinav Dang, Advs.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr.Tarang Shrivastava, APP for
State.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

18.09.2019

%

Vide the present application, the petitioner seeks bail in pursuance to FIR No.200/2015 registered at Police Station Baba Haridas Nagar for the offences punishable under sections 302/307/395/174A/120B/34 IPC and 25/27 Arms Act.

The case of the applicant is that he is 22 year old and was taken into custody by the investigating agency on 08.04.2015 in the aforesaid case whereas alleged incident took place on 29.03.2015 in Abhinanda Vatika, Najafgarh where a Kuan Pujan function was going on. Several persons got injured in firing and one Sh.Bharat Singh died in the incident.

Learned Trial Court framed charges on 24.12.2016 and thereafter two prosecution witnesses were examined out of 102 witnesses and the petitioner is in jail since 08.04.2015.

The present petition is filed on the ground that the eye witnesses as well as the complainant in the present case, namely, Sh. Sandeep Kumar (examined as PW-1), who was the organizer of the function where the alleged place of incident had, have not mentioned the name of the petitioner in the FIR. Thus, other eye witness Sh. Daljeet Singh (examined as PW-2) who was the PSO of the deceased and was present at the spot also did not mention anywhere in his testimony recorded by the Ld. Trial Court that the applicant/accused was present at the spot or he did any act of violence there.

The testimonies given before the Ld. Trial Court by these two eye witnesses of the prosecution failed to prove that the applicant was present at the spot of incident or his involvement in the alleged incident as alleged by the prosecution.

Mr. Mohit Mathur, learned senior counsel appearing on behalf of the petitioner submits that the police has filed the chargesheet for the offence under Section 120 B IPC without any evidence of conspiracy against the applicant on record. There is no legally admissible evidence to show that the applicant was in any manner found to be connected or in conspiracy with any of the co-accused.

On the contrary, the offence of conspiracy is invoked against the applicant/accused solely on the basis of the disclosure statement of other co-accused persons, which is an inadmissible piece of evidence. In order to establish the alleged conspiracy, the prosecution is relying upon the call detail records of various phones and on the basis of these CDRs the prosecution has selected a number by saying that this number belongs to the co-accused namely Hemant. There is nothing on record to show that this alleged phone number belonged to co-accused Hemant. The prosecution also

did not bring any evidence on record to reflect the applicant/accused was seen in the company of the said Hemant or any other co-accused.

Learned senior counsel further submits that the CDR of mobile phone alleged to be that of the applicant i.e. 9716123912 reveals that two alleged calls have been exchanged between the applicant's phone and another phone no. i.e. 9990030092 on the day of incident, but by this fact no inference of conspiracy can be drawn. This mobile number was also not found in touch with mobile phone numbers of any other co-accused and the prosecution has not brought on record any evidence to link this phone with any other co-accused named in the chargesheet. Presence of the applicant at the place of incident was incidental and was not at all related to the prosecution's case that transpired on the very day of 29.03.2019. The reason for presence of the applicant was that he was invited as guest in the program of Kaun Pujan where the alleged incident of firing took place.

On the other hand, learned APP appearing on behalf of the State, on instructions from Insp. Shilvant Singh, IO of the case, submits that the applicant was arrested pursuant to the statement of Vipin Kumar recorded under section 161 Cr.P.C. on 03.04.2015 whereby he mentioned the name of the petitioner by stating that he was with other persons and fired upon the deceased. The statement of victim was recorded under section 164 Cr.P.C. on 06.05.2015 whereby he has supported the statement made under section 161 Cr.P.C. Thereafter the applicant was arrested on 08.04.2015 and on his disclosure statement, one illegal countrymade pistol was recovered from the *nala* which was sent to FSL. As per the opinion of FSL, the pistol is not in a working condition.

Learned APP further submits that one magazine was found from the crime spot having four live cartridges and case of the prosecution is that the applicant fired from his recovered pistol and he left this magazine at the spot. Thus, the applicant is connected with the crime by statement under section 164 Cr.P.C. of Vipin and the magazine recovered from the spot.

On the last date of hearing, the submission of learned APP was that the applicant is present in the video recording of the function where the deceased was murdered. Pursuant thereto, the said video was played on the desktop of the court and on perusal, his presence is there and after entering the function, he returned back while speaking to someone over the mobile phone and thereafter again returned to the function, but it is not seen that he entered the main place where the incident had taken place. Moreover, PW-Vipin mentioned the name of the applicant along with other accused on 03.04.2015 whereas incident has taken place on 29.03.2015 and his statement under section 164 Cr.P.C. was recorded on 06.05.2015. Had he actually seen the petitioner at the spot, firing upon the deceased, then what prevented him for not mentioning the name of the petitioner in the accident and why the police was kept for 4-5 days in dark.

Without commenting upon the merits and demerits of the case which is pending before the Trial Court, I am of view that the applicant is entitled for bail.

Accordingly, he shall be released on bail on his furnishing a personal bond in the sum of Rs.50,000/- with two sureties of the like amount to the satisfaction of the Trial Court.

The applicant shall not involve himself in any other case and not contact to any of the prosecution witnesses, during bail period. In the event

of any report against him, this Court would consider the desirability of cancelling the suspension of sentence. The applicant/appellant shall also ensure his presence before the Trial Court on the date fixed.

The application is allowed and disposed of.

Order *dasti* under the signatures of Court Master.

Copy of this order be transmitted to the Jail Superintendent and the Trial Court concerned for compliance.

SURESH KUMAR KAIT, J

SEPTEMBER 18, 2019

ab