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

+ **BAIL APPLN. 1296/2020**

SURESH KUMAR SHARMA @ CAPTAIN Petitioner
Represented by: **Mr.Sanjeev Kumar, Advocate.**

versus

THE STATE Respondent
Represented by: **Mr.Rahul Mehra, Standing Counsel**
with **Mr.G.M.Farooqui, APP &**
Mr.Chaitanya Gosain, Advocate for
the State with IO Inspector Virendra
Singh.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **06.07.2020**

1. The hearing has been conducted through Video Conferencing.
2. By this petition, the petitioner seeks bail in case FIR No.266/2019 under Sections 302/307/120B/34 IPC and 25/27 of the Arms Act registered at P.S. Seelampur.
3. The above-noted FIR was registered after a PCR call was received on 7th July, 2019 at P.S. Seelampur which was recorded vide DD No. 37A at 9.16 pm wherein the caller stated that his brother had been shot. The caller's name was revealed as Wazir Mohammad, brother of Noor Mohammad, the injured.
4. When SI Ashwani reached the spot at DDA Market, G-Block, Gurdwara Road, New Seelampur, Delhi, he found lot of blood and three fired bullets lying on the road. No eye witness was found at the spot and the

police officer reached the hospital along with the SHO, P.S. Seelampur where the injured Noor Mohammad had been admitted with the alleged incident at 8.45 pm with history of gun shot, however, the patient was declared unfit for statement. Thereafter, the patient was shifted from JPC Hospital to GTB Hospital on being referred. The police collected the parcels of blood stained clothes, inspected the spot, took photographs and lifted the exhibits.

5. On 8th July, 2019, another information was received at 3.55 am recorded as DD No. 11A informing admission of Smt. Suman, wife of Rakesh at GTB Hospital with gun shot injury. Statement of Suman was recorded on 9th July, 2019 who stated that on 7th July, 2019 at around 9 pm, she was talking to Noor Mohammad, the deceased in Sarfaraz Wali Gali when she saw Faizan @ Faizi standing on the corner of that Gali. She also saw the younger brother of Noor Mohammad, Wazir putting carbide power in the mango boxes. Suddenly Paramjeet @ Ballu came with a weapon in his hand and fired at Noor Mohammad and when Suman cried, he fired a shot at her also. As per Suman, servant of Paramjeet namely Bablu was also present with him and both of them fled away after the incident. Since Noor Mohammad died on 8th July, 2019 at 4.03 am, Section 302 IPC was also added. The investigating agency collected the DVRs of the CCTV installed at the shop of one Bharat Arora and it was revealed from Camera No. 4 that Paramjeet @ Ballu and Bablu were committing the crime, a red colour Breeza car was seen in Camera No. 3 at 9:11:50 pm and the injured was brought by some persons on the road to be taken to hospital at 9:12:19 pm. It is thus evident that from the statement of the injured eye witness as also the CCTV footage, two persons were involved in the commission of the

offence i.e. Paramjeet @ Ballu and his servant namely Bablu and as per the eye witness, Faizan was standing near the place of incident.

6. Subsequently, statements of Danish, Wazir Mohd. and Anis were also recorded who claimed themselves to be the eye witnesses and stated about the earlier quarrel that took place between Paramjeet and Noor Mohammad when both were arrested under Section 107/151 CrPC. They also stated that on 5th July, 2019, younger brother of Faizan namely Aman had stolen the purse of a relative of deceased Noor Mohammad in a function and Noor Mohammad had slapped Aman, when Faizan had threatened Noor Mohammad of dire consequences. They also saw Danish on 7th July, 2019 at 8.30 pm at the office of Paramjeet. They further claimed that they had seen one more person in the office of Paramjeet whom they could identify.

7. The petitioner was arrested on 10th July, 2019 and sent to judicial custody. On 12th July, 2019, an application for Test Identification Parade was filed and the Test Identification Parade was listed on 17th July, 2019 when the petitioner refused to undergo TIP on the count that he had been shown to the witnesses. The prosecution has also filed the call detail records of the accused including the petitioner, from which, it is evident that the last calls between Paramjeet and the petitioner were on 27th April, 2019, 28th April, 2019 and 5th May, 2019. As per the petitioner's call detail records, the last call made from his number i.e. 8744849502 was at 12.37 pm on 7th July, 2019 when he was in Seelampur area and thereafter the next call was on 8th July, 2019 at 5:54:28 am from Sant Nagar, Burari which is his residence.

8. Case of the petitioner is that the petitioner is in possession of a video showing that he had entered his residence at 9.20 pm and hence, he was not

present at the spot. Investigating agency till date has not collected the said CCTV footage and it would be in the interest of justice that they collect the said CCTV footage and analyze the same.

9. Besides the injured eye witness Suman, the best evidence available today with the prosecution is the CCTV footage. In the CCTV footage, both in Camera Nos. 3 and 4, the petitioner's presence is not seen at the spot. Thus, apparently the petitioner has not committed any overt act at the time when the offence of murder took place attracting Section 34 IPC against the petitioner. As regards the allegations of conspiracy, no motive has been attributed to the petitioner and the motive, if any, is to Faizan who had a quarrel two days ago with the deceased and had threatened him. The petitioner's last contact with Paramjeet @ Ballu was on 27th April, 2019, 28th April, 2019 and 5th May, 2019.

10. Considering that apparently, at this stage, the statements of the eye witnesses are not substantiated by other evidence and the presence of the said eye witnesses except Wazir has also to be analyzed during the course of trial for the reason, they were not seen in the CCTV nor were they seen picking up the injured to the hospital nor was their presence stated to be by the injured and considering the facts noted above as also that the charge sheet after investigation has already been filed, this Court deems it fit to grant bail to the petitioner. It is therefore directed that the petitioner be released on bail on his furnishing a personal bond in the sum of ₹50,000/- with one surety bond of the like amount to the satisfaction of the learned Trial Court/CMM/Duty Magistrate, further subject to the condition that the petitioner will not leave the country without prior permission of the trial

Court and in case of change of his residential and official addresses, the same will be intimated to the learned Trial Court by way of an affidavit.

11. Petition is disposed of.
12. Order be uploaded on the website of this Court.

MUKTA GUPTA, J.

JULY 06, 2020

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