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

+ **BAIL APPLN. 1583/2020**

KRISHAN

..... Petitioner

Through Mr Thejessh Jeyanth, Advocate.

versus

STATE OF NCT OF DELHI

..... Respondent

Through Mr Ravi Nayak, Advocate with Insp.
Lokendra Chauhan, SIU, Crime Branch.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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27.07.2020

[Hearing held through video conferencing]

1. The petitioner has filed the present petition seeking bail in FIR No. 48/2015 under Section 186/353/333/307/20/75/34 IPC registered with PS Nabi Karim.
2. It is the prosecution's case that on 31.01.2015 Ct. Ravi Kant along with HC Sanjay (both posted at PS Sadar Bazar) were on their patrolling duty. While they were on patrolling, they were informed by a passerby that some criminals were present at Foota Road for commission of robbery. Ct. Ravi Kant shared this information with other police officials and four police officials including HC Surender and Ct. Baljeet, reached the spot (Foota Road). They found Ajay @ Nathu who could not give any satisfactory explanation for his presence at the spot. Ajay @ Nathu had a prior history of

being arrested in a robbery case. Ct Ravi Kant caught hold of Ajay @ Nathu but he started shouting and called his associates.

3. It is alleged that responding to the call of Ajay @ Nathu four of his associates armed with knives in their hands rushed towards Ct. Ravi Kant. Ajay @ Nathu also assaulted Ct. Ravi Kant by giving him a blow in his abdomen due to which he fell down on the ground. The PCR received a call reporting that some persons having knives in their hands were running behind a police official. In view of this incident, FIR No. 63/2015 under Section 186/353/332/34 IPC was registered at PS Sadar Bazar.

4. It is alleged that on the basis of secret information received a team of police officials raided house No. 5927, Gali No.15, Sikligaran, Nabi Karim, Delhi to apprehend the accused. It is stated that on seeing the police party one boy immediately ran upstairs alerting others by shouting '*Police Aa Gai, Police Aa Gai*'. However, he was chased and caught on the second floor of the said house. It is alleged that Ajay @ Nathu including the petitioner (Krishan), Sunil @ Vikas and Dharmender @ Montu had taken positions on the fourth floor of the house and when the police party reached the third floor, the petitioner (Krishan) exhorted other co-accused Ajay @ Nathu, Sunil @ Vikas and Dharmender @ Montu to attack the police officials by stating '*Khatam Kardoo Saale Ko*'. It is alleged that Ajay @ Nathu @ Sunny gave a blow to SI Nisar on his head by a *Chuura* (a big knife) due to which he started bleeding profusely and collapsed on the stairs. Accused Sunil @ Vikas also exhorted co-accused Dharmender @ Monu to attack the police officials by shouting "*Maar Goli Saalon Ko*". On hearing this accused Dharmender @ Montu started firing indiscriminately from his pistol with the intention to kill the policemen who were conducting the raid.

5. It is alleged that SI Nisar Ahmed sustained grievous injuries on his head. It is stated that the police party also fired in self defence and in cross firing one boy (who was later identified as Deepak aged 17 years) was injured. He later on succumbed to his injuries. The investigation in this regard is currently pending. It is stated that the accused escaped the premises by climbing on the roof top of the residence and locking the stairs from inside.

6. The learned counsel appearing for the petitioner relies on the provisions of Section 436-A of Cr.PC. He submits that the petitioner has already served more than half of the maximum sentence that can be imposed on the petitioner if he was found guilty for the offence allegedly committed by him. He also submits that the alleged role of the petitioner in the alleged incident is not as grave as the role of other co-accused since he had not fired on the policemen or delivered any blow to any police officials.

7. He submits that according to the charge sheet the petitioner merely shouted *Khatam Karo Saale Ko*. He further submits that another co-accused has been granted bail and the petitioner ought to be released on the principle of parity. He referred to the order dated 15.10.2018 passed by the learned ASJ whereby co-accused Vikas @ Sunil was admitted to bail. He also pointed out that one of the reasons that prompted the learned Court to grant bail to the accused was that the role of Vikas @ Sunil was not as grave as that of the other co-accused.

8. As far the question of the petitioner being involved in several other cases is concerned, the learned counsel for the petitioner submitted that co-accused Vikas @ Sunil was also involved in larger number of cases and therefore, no distinction can be drawn between the petitioner and accused

Vikas @ Sunil on the said basis.

9. Mr Nayak, learned APP submits that Section 436-A Cr.PC is not applicable in this case since the sentenced for committing of an offence punishable under Section 307 IPC carries a maximum sentence of life imprisonment. He also submits that the petitioner is involved in twelve other cases is not entitled for bail.

10. Insofar as the issue of deceased Deepak having lost his life in the cross fire is concerned, this court is informed that the investigation in this regard is pending. It is not asserted that he had been injured by any of the bullets fired by the accused Dharmendar @ Montu. Insofar as the injury caused to SI Nasir is concerned, the allegation is that the same was delivered by accused Ajay @ Nathu and not by the petitioner.

11. It is also important to note that the petitioner has already undergone five years, five months and twenty days of custody as on 24.07.2020. It is seen that although his conduct is stated to be unsatisfactory, the incidents reported pertain to the years 2015 to 2017. The last incident reported is stated to have been committed by the petitioner on 09.06.2017 and the allegation is that during the production in the Trial Court the relative/friends of the petitioner were talking with him and he started mingling with them. The ASI on duty advised him not to do so but he did not follow the directions and misbehaved with him by threatening that he would make a complaint against him if he did not allow him to meet with his relatives. Clearly, the said incident cannot be considered to be serious. More importantly, more than three years have since passed and there is no allegation that the petitioner's conduct has been less than satisfactory during this period.

12. Considering the above, this Court considers it apposite to allow the present petition. The petitioner shall be released on bail on his furnishing a personal bond in the sum of ₹50,000/- with one surety of the equivalent amount to the satisfaction of the Jail Superintendent/Duty Magistrate.

13. This is also subject to the following further conditions:-

- (a) that the petitioner shall provide a contact number and ensure that he is reachable at all times;
- (b) that the petitioner shall report to the SHO of the concerned police station on first Monday of each month;
- (c) that the petitioner shall not leave the National Capital Territory of Delhi.

14. The petition is allowed in the aforesaid terms.

15. A copy of this order be communicated to the concerned Jail Superintendent electronically.

VIBHU BAKHRU, J

JULY 27, 2020

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