

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

Date of decision: 28th APRIL, 2021

IN THE MATTER OF:

+ **BAIL APPLN. 278/2021**
ZAHID@ MOHD JAHID

..... Petitioner

Through Mr. Firoz Iqbal Khan, Advocate

versus

STATE OF NCT OF DELHI

..... Respondent

Through Ms. Meenakshi Chauhan, APP along
with ASI Pawan Kumar, P.S. Gandhi
Nagar.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition under Section 439 Cr.P.C read with Section 482 Cr.P.C. has been filed for grant of regular bail in FIR No. 215/2019, dated 05.08.2019 registered at Police Station Gandhi Nagar, Delhi, for offences punishable under sections 324, 307, 452 and 324 IPC.

2. Brief facts of the present case are as under:

- a. On 05.08.2019, A PCR call was received at Police Station Gandhi Nagar, which was recorded vide DD No.02-A at 03:50 AM. It reads as under:

*"H.No. 9/4481, Gali No.06, Ajeet Nagar caller bol
raha hai ki mere bhai ko chaku mar diya"*

- b. The IO contacted the complainant who identified himself as one Sadiq Hussain. The IO went to the given address. The complainant told the IO that he is taking his brother Jakir and nephew Tahir to GTB Hospital.
- c. On investigation it was revealed that Jakir and Tahir were stabbed. A knife was recovered and was taken into custody.
- d. MLC of Tahir Hussain bearing No. A/8526/26/19 and of Jakir Hussain bearing MLC No. A8628/26/1 were collected by the IO. The MLC of Tahir revealed that he had received total 8 injuries on stomach, chest, forehead and thigh and the MLC of Jakir revealed that he received two injuries on shoulder and chest.
- e. The IO recorded the statement of Jakir under Section 161 Cr.P.C. In his statement, Jakir stated that he and his son Tahir Hussain reside at H.No. 9/4481, Gali No.06, Ajeet Nagar, Gandhi Nagar, Delhi for the last seven years and they run a factory on the first floor of the said premises. He stated that at about 03:30 AM, he woke up due to a noise and he saw an unknown person in the room. It is stated that on seeing the unknown person he and his son tried to grab the unknown person but the person took out a knife and stabbed both of them and escaped. It is stated that the brother of Jakir i.e. Sadiq called the Police and took both the injured/victims to the GTB Hospital.

- f. A case under Section 307 IPC was registered vide FIR No.215/2019. Material on record reveals that on 23.11.2019 in FIR No.361/19, registered at Police Station Gandhi Nagar, Delhi for offences under Sections 392/397 IPC, the accused/petitioner herein i.e. Mohd. Jahid was arrested. During interrogation he revealed that he committed the offence in the present case also.
- g. After the disclosure, the petitioner was arrested on 24.11.2019 in the present case and an application for Test Identification Parade (TIP) was filed, however, the petitioner refused to participate in TIP proceeding stating that his identity has already been revealed to the complainant.
- h. The final opinion on the MLCs was obtained and the injuries suffered by Tahir were shown as *Greivous*.
- i. Charge-sheet has been filed against the petitioner on 27.01.2020 for offences under Sections 307, 324, 452 and 324 IPC.
- j. The petitioner thereafter filed an application for grant of bail which was dismissed by the Additional Sessions Judge, (SFTC) East, Karkardooma Courts by an order dated 30.06.2020.
- k. Another application for bail was also filed by the petitioner which has also been dismissed by the learned Additional Sessions Judge vide order dated 15.01.2021.
- l. The petitioner approached this Court for grant of regular bail by filing the present petition.

3. Status Report has been filed. The status report states that the petitioner had previously been involved in many cases of theft, snatching and robbery and there are total 19 cases registered against him.

4. Mr. Firoz Iqbal Khan, learned counsel for the petitioner would state that when the petitioner was arrested in FIR No.361/19, at that point of time the report showed that the petitioner was involved only in two cases which were FIR No. 601/ 15 Police Station, Daryaganj where the petitioner was on bail and FIR No.45/2015 Police Station, Shastri Park Metro Station, Delhi where according to records the petitioner had already been discharged on 23.12.2017 even before the alleged arrest. He contends that after his arrest in FIR No.361/19 and before the petitioner moved his present bail application in the present case, the petitioner has been shown to have been involved in 19 cases out of which the petitioner has been shown to have been discharged in 12 cases. He would state that the petitioner has now been discharged in 14 out of 19 cases. The learned counsel for the petitioner vehemently contends that the petitioner has been falsely implicated by the Police only to show that the Police have successfully investigated 19 cases. He would contend that the fact that the petitioner has been discharged in 14 out of 19 cases shows the hollowness in the claim of the Police. The learned counsel for the petitioner vehemently contends that in FIR No.361/19 the petitioner was identified by the complainant in the corridor of the Karkardooma Courts and in the same manner the petitioner has been identified in this case also. He would further state that in FIR No.361/19 the complainant has turned hostile and had refused to identify the petitioner in the Court. He would state that

the Police have been implicating the petitioner in case after case by making the victims identify the petitioner. It is contended by the learned counsel for the petitioner that once the identity of the petitioner was revealed, no adverse influence could be drawn against the petitioner for refusing to participate in TIP. He also contends that self-incriminating statements made by the petitioner admitting to his guilt cannot be used against him at all. He would state that the petitioner is in judicial custody in the present case from 23.11.2019. He would therefore contend that the petitioner is entitled to bail.

5. The Status Report and a reply dated 15.03.2021 had been filed by the State. It is contended by Ms. Meenakshi Chauhan, the learned APP that the petitioner is accused of a grievous offence punishable under Section 307 IPC. She would contend that the petitioner had repeatedly stabbed the victims. She contends that in the present case after the petitioner was sent to the judicial custody he was brought only in muffled face. She states that he has been identified by the complainant and there is no reason for the complainant to falsely identify the petitioner herein. There is no enmity between the petitioner and the complainants and that it is inconceivable that the complainants would falsely identify the petitioner only to help the Police.

6. As rightly stated by Ms. Meenakshi Chauhan, the learned APP, there is no reason for the complainant to falsely identify the petitioner in Court and there is no previous enmity between the parties. A reading of the charge-sheet would show that there is sufficient material against the petitioner. The fact that the petitioner was identified in the Court by the

victim cannot be found fault with and it cannot be said that the petitioner is being falsely implicated in case after case. The fact that the complainant in FIR No.361/19 has turned hostile in trial is of no consequence in the present case.

7. Looking into the nature of the offence and that the petitioner is alleged of stabbing the victims multiple times, this Court is not inclined to grant bail to the petitioner at this juncture. The possibility of the petitioner coming out and threatening the complainants and tampering with evidence cannot be ruled out. This Court is not inclined to accept the version of the petitioner that he has been implicated by Police in case after case. The material shows that the petitioner's involvement is there in 19 cases and he had been enlarged in most of the cases because of lack of proper evidence.

8. The Trial Court is directed to proceed ahead with the matter and examine the complainant at the earliest preferably not later than six months from today.

9. Accordingly, the bail application is dismissed with the above observations.

SUBRAMONIUM PRASAD, J.

APRIL 28, 2021

Rahul