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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 17th August, 2021

Decided on: 24th August, 2021

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BAIL APPLN. 4111/2020

NADIR@SHAH ALAM

..... Petitioner

Represented by: Mr.Samrat Nigam, Advocate.

versus

STATE OF NCT OF DELHI

..... Respondent

Represented by: Mr.Amit Gupta, APP for State with
SI Santosh Kumar, PS Mandawali.
Mr.V.S.Dubey, Advocate for the
complainant.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition, petitioner seeks regular bail in case FIR No.247/2020 under Sections 302/392/397/120B/34 IPC and Sections 25/27 Arms Act registered at PS Mandawali, Delhi.
2. Learned counsel for the petitioner states that the petitioner was arrested in the above-noted FIR on 14th June, 2020 and from that day he is in custody. There is no legally admissible evidence against the petitioner with the prosecution in the charge-sheet filed against the petitioner. No recovery has been made from the petitioner except for his own mobile phone which has no connection with the commission of the alleged offence. In the entire charge-sheet no motive has been attributed to the petitioner and the petitioner is in no manner connected with the commission of the alleged offence. The allegation that the petitioner did recce of the area where subsequently the other accused committed the alleged offence is based on

the disclosure statement leading to no recovery and hence is not admissible in evidence. Despite the fact in the entire area there may be CCTV cameras which could capture the petitioner doing the recce on the date of incident however, no CCTV footages have been relied upon. Location of the petitioner's mobile phone around the area of alleged offence is inconsequential for the reason the petitioner is a resident of Joshi Colony which is around three kilometres away from the place of incident and his location would be at that place. There is no material with the prosecution to even prima facie show that the petitioner was a part of the conspiracy. It is further stated that the prosecution wrongly relies upon the two involvements of the petitioner for the reason in one of the cases the petitioner has already been acquitted. Petitioner is the sole bread earner of the family consisting of his wife and one girl child aged two years old and undertakes to abide by any condition imposed by this Court while granting bail.

3. Learned APP for the State on the other hand contends that the petitioner is a co-conspirator in the above-mentioned FIR which resulted in the cold blooded murder of one Rahul Singh with gunshots fired on him. The deceased had previous enmity with the co-conspirator Kartar Bhati and the mobile phone of the petitioner shows his connection with the other accused, who committed the offence of murder of Rahul Singh and was thus a part of the conspiracy. Since material witnesses are yet to be examined, the petitioner be not granted bail. Further petitioner has two other involvements.

4. The above-noted FIR was registered pursuant to a PCR call received at PS Mandawali on 3rd June, 2020 and recorded vide DD No.12A. On reaching the spot, the Investigating Officer found one Rahul Singh lying in a

pool of blood with bullet injuries and empty cartridges in the Aditi Apartment.

5. Statement of Kartar Singh brother of Rahul Singh was recorded on 3rd June, 2020 itself who stated that on receiving the information he immediately reached the place where his brother was lying on the floor with blood oozing out. In the meantime, a police vehicle came and he took his brother to Max Hospital in the PCR van. According to Kartar Singh, his brother Rahul Nagar was a social worker and his brother had number of times stopped Kartar Bhati who used to earlier stay near their place and was now staying in Noida, Uttar Pradesh due which there was an altercation between Rahul Nagar and Kartar Bhati in November, 2019 whereafter Kartar Bhati with Sumit had attempted to murder his brother but his brother was fortunately saved and in this regard a FIR was registered. He further stated that 15-20 days prior to the incident, his brother Rahul Singh @ Bhuru told him that Kartar Bhati's nephew Sachin had come to his house along with one more boy asking him to withdraw his case otherwise it would not be good. He expressed his apprehension on Kartar Bhati, his nephew Sachin Bhati and their associates for the murder of his brother while he was on morning walk.

6. Similar statement of Satish Singh, the other brother of Rahul Singh @ Bhuru was also recorded who also expressed his suspicion on Kartar Bhati, his nephew, Sumit Bhati and their associates in view of the earlier attempt to murder in November, 2019 and the threat extended to his brother for withdrawing the case.

7. On technical surveillance being kept two accused namely Abhishek and Rinku were arrested who disclosed that they were residents of Uttar

Pradesh and along with other accused namely Sachin Bhati, Sumit, Vipin Nagar, Kartar Bhati had planned to kill Rahul @ Bhuru. It was their case that on the directions of Kartar Bhati and Sachin Bhati they met the present petitioner, that is, Nadir @ Shah Alam and Nafees who were financed and thus they provided local support. As per the status report Kartar Bhati is previously involved in number of cases and he along with co-accused Sumit were previously involved in a case of attempt to murder of Rahul Singh @ Bhuru for which FIR No.384/2019 was registered. Kartar Bhati was arrested in FIR No.384/2019 however, Sumit could not be arrested in the said FIR and was evading his arrest. Sachin Bhati is the nephew of Kartar Bhati.

8. Statements of the eye witnesses at the time of incident have also been recorded including Puran Chand who was a guard at Aditi Apartment who stated that he was on duty from 2nd June, 2020 at 8.00 PM to 8.00 AM on 3rd June, 2020 along with Prem Singh. At about 7.15 to 7.30 AM he opened the gate for a car to enter the apartment. One person entered the apartment and after him four other boys also came who had pistols in their hands. All the four boys went towards the parking and fired at a person who fell down and the four boys firing in the air left the apartment. According to him all of this happened so hurriedly that he could not realise what to do. In the meantime, people from the apartment gathered and they called 100 number. Similar statement of Prem Singh Negi, the other guard was also recorded.

9. Statement of one Satish Sharma was also recorded who stated that he along with Arun Tiwari, Rahul Kashyap, Rahul Nagar @ Bhuru who reside in one colony used to go for morning walk at DDA park near Aditi Apartment, Mandawali. On the day of incident he called up Rahul Kashyap,

who stated that he would not come for the morning walk as he was unwell and when he called Rahul Nagar @ Bhuru he stated that he would just come. Rahul was walking slightly faster than Satish Sharma and was thus ahead of him. At that time two boys came near Rahul and fired at him. Rahul @ Bhuru ran towards the gate of the park where the two other boys also fired at Rahul and Rahul came out of the park. Satish Sharma also came out and heard firings from Aditi Apartment and saw that four boys firing came out of Aditi Apartment and snatched motorcycle of one boy and all four of them sat on the said motorbike and ran away.

10. The role assigned to the petitioner is that at the instance of the main accused, petitioner along with Nafees Ahmed provided the funds to execute the murder of Rahul Singh @ Bhuru and conducted recce of the area in the morning where Rahul Singh @ Bhuru was present as also identified Rahul Singh on the day of incident. According to the evidence collected, the petitioner is a neighbour of co-accused Nafeesh Ahmed and Nafees Ahmed is an associate of accused Kartar Bhati since 2004 who is involved in number of cases and is on the list of gangsters of Uttar Pradesh Police. The version in the disclosure statement was confirmed from the CDR analysis of the petitioner which showed that the petitioner had spoken to Sachin Bhati two months prior to the incident and one of his locations also reveals that he had gone to village of Sachin Bhati and Sumit.

11. Murder of Rahul Singh @ Bhuru took place at about 7.30 AM on 3rd June, 2020. This Court had called for a report of the analysis of mobile phone location of the petitioner which reveals that the petitioner had gone to the hometown of Sachin Bhati and Sumit on 24th April, 2020 and 25th April, 2020 on which date he had also made a phone call to Sachin Bhati. Further

on 1st June, 2020 from 9.00 AM to 12.00 Noon the petitioner was in the vicinity of the house of the deceased. Even on the day of incident at about 9.00 AM the petitioner was near the place of incident. Even though the place where the petitioner resides is at a distance of three kilometres, the analysis of the phone call record reveals that the cell tower of the petitioner's residence and that of the deceased were different so as to pinpoint his location near the place of incident at 9.00 AM on 3rd June, 2020. There are number of calls between the petitioner and Nafees who is an associate of Kartar Bhati.

12. During the investigation the two boys who fired at the gate were identified as Abhishek and Vipin and Sachin and Sumit fired inside the park. Sachin being one of the assailants and from the mobile phone records it is evident that the petitioner made a phone call to Sachin and also visited his place prior to the incident. In a case of conspiracy, every accused may not be present at the spot however, if there is prima facie material to show meeting of mind and that pursuant thereto, an offence is committed, the petitioner would also be liable for the offence punishable under Section 302 IPC read with 120B IPC.

13. Sachin Bhati having been identified as one of the assailants who committed the murder and who also threatened the deceased of dire consequences around 15-20 days prior to the incident, in case he did not withdraw the earlier FIR lodged by him and the fact that the petitioner was in touch with Sachin Bhati both on phone and also by physically going to his village, at this stage when the material witnesses are yet to be examined, considering the seriousness of the offence this Court is not inclined to grant bail to the petitioner.

14. Petition is dismissed.
15. Order be uploaded on the website of the Court.

(MUKTA GUPTA)
JUDGE

AUGUST 24, 2021
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