

(VIA VIDEO-CONFERENCING)

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

% Reserved on : 18.08.2021
Pronounced on : 02.09.2021

+ BAIL APPLN. 1047/2021

IRFAN @ CHHENU

.....Petitioner

**Through: Mr. Jitendra Sethi and Mr.
Hemant Gulati, Advocates.**

Versus

STATE, NCT OF DELHI

..... Respondent

**Through: Dr. M.P. Singh, APP for the
State with Inspector Shailendra
Kumar Singh, P.S. Jafrabad .**

**CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR**

ORDER

RAJNISH BHATNAGAR, J.

1. The present bail application has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case FIR No. 592/2017, under Sections 302/307/120B/34 IPC & 25/27 of Arms Act registered at P.S. Jafrabad, Delhi.

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2. Briefly stated, the facts of the present case are that on 22.10.2017 at about 9:15 PM, Md. Sajid S/o Jalil Ahmed & Sajid S/o Shadik were standing at Braham Puri Road Delhi. Then Wajid & Faiz came there on Scooty. In the meanwhile, Rashid @ Golu, Bada Imran, Mumtaz and their other three associates came there on two motorcycles and chased down Wajid & Faiz. On seeing them, Wajid & Faiz turned back their Scooty. In the meantime one of them fired at Wajid & Faiz and one bullet hit Fiaz as a result of which the Scooty got imbalanced and stopped. Faiz stood there and Wajid started running on Brahmampuri Road but above riders chased down Wajid on motorcycple, then Wajid entered into a house but they also entered in the same house. Rashid @ Golu along with others were present in front of the house with weapon. Then Wajid jumped from the balcony of the house. Meanwhile Rashid @ Golu, & his associates fired several bullets upon him with sophisticated automatic weapon. Thereafter, Faiz was taken to Jag Pravesh Chander Hospital, Shastri Park, Delhi & due to firing Wajid found dead at the spot.

3. Thereafter statement of Sajid S/o Jalil was recorded and on the basis of the statement given by the complainant (Sajid), MLC and circumstances of the events, a case vide FIR No. 592/17, Dt. 23/10/17, u/s 302/307/120B/34 IPC & 25/27 Arms Act was registered at PS Jafrabad Delhi and the investigation went underway.

4. As per the Status Report filed by the state the present petitioner Irfan @ Channu was formally arrested at Mandoli Jail in the present case on 19.12.2017 on the basis of the disclosure statements given by other accused persons namely Rashid @ Golu, Shahraukh Kureshi, Imran @ Bada Imran, Rashid @ Mumtaz, Rafiq Ali @ Fauzi @ Nashir @ Munna and Rizwan. It is further stated in the Status Report that present petitioner Irfan @ Chhanu played pivotal role in conspiracy with his brother Rizwan & other co-accused and selecting targets to revenge the murder of his gang members. During interrogation accused himself disclosed/confessed about the commission of offence in the present case.

5. I have heard Ld. counsel for the petitioner/accused, Ld. APP for the State, perused the records of this case and the Status Report filed by the State.

6. It is submitted by the Ld. counsel for the petitioner/accused that the accused/petitioner has been falsely implicated on the charges of conspiracy and the accused/petitioner was not present at the spot and was in custody in another case on 23.10.2017, the date of the incident. It is further submitted by the Ld. counsel for the petitioner that the petitioner has been implicated in the present case on the basis of the fact that he has many criminal cases pending against him. It is further submitted by the Ld. counsel for the petitioner that co-accused Rizwan

has been granted regular bail vide order dated 30.03.2019, co-accused Nadeem @ Imran has been granted bail vide order dated 06.11.2020, co-accused Mumtaz has been granted bail vide order dated 26.11.2020, co-accused Shahbaz and co-accused Rashid have been granted bail vide order dated 08.02.2021.

7. It is further submitted by the Ld. counsel for the petitioner that as per the charge sheet only allegation against the petitioner is that he was one of the conspirator who has hatched conspiracy in-conivance with other co-accused persons to commit the crime. It is further submitted by him that there is not even an iota of evidence to show that petitioner/accused in any manner connected with the alleged conspiracy. It is further submitted by him that all the material witnesses have been examined and they have not supported the case of the prosecution. It is further submitted by the Ld. counsel for the petitioner that co-accused persons from whom motorcycle involved in the crime is alleged to have been recovered besides the weapon of offence, they both have been granted bail by the Ld. Trial Court and there is no challenge from the side of the prosecution to any of the order of grant of bail to the co-accused persons.

8. It is further submitted by the Ld. counsel for the petitioner that the petitioner was falsely involved in another case bearing FIR No. 634/2017, U/s 302/34 IPC and Sections 25/27 of the Arms Act, 1959

P.S. Bhajanpura and in that case also the petitioner was involved on the basis of conspiracy with other co-accused persons but he was granted bail by this Court even after considering the fact that he was involved in number of cases as stated by the trial court in the order of dismissal of the bail application of the petitioner. It is further submitted by the Ld. counsel for the petitioner that pendency of number of cases against the petitioner/accused cannot be a ground for refusal of the bail to the petitioner. It is further submitted by him that the petitioner is in J.C. since 19.12.2017.

9. On the other hand, it is submitted by the Ld. APP for the State that the petitioner/accused is the leader of infamous Chhenu Gang. It is further submitted by the Ld. APP that the petitioner is involved in a number of criminal cases in different police stations in regard to heinous crimes which are pending trial. He further submitted that it was the petitioner who is the prime conspirator and got Wajid murdered in a well planned and premeditated manner and in the process grievous injuries were caused to Fiaz. It is further submitted by the Ld. APP that public witness Jafar Ali @ Sajid has supported the case of the prosecution and identified six accused persons.

10. It is further submitted by the Ld. APP for the State that the petitioner is such a terror that the witnesses in case FIR No. 0634/2017, U/s 302/34 IPC and Sections 25/27 of the Arms Act, 1959 P.S.

Bhajanpura, Delhi have also not supported the case of the prosecution like in the present case, so releasing the petitioner would be unfair and injustice would be caused to other remaining cases which are pending trial against him as then nobody will come forward and have the courage to depose against him.

11. The Ld. counsel for the petitioner has heavily relied on 4 aspects namely:-

- (a) That other co-accused persons have been released on bail.
- (b) That all the material witnesses have turned hostile and not supported the case of the prosecution.
- (c) That this Court has granted bail vide order dated 06.11.2020 to the petitioner in FIR No. 0634/2017, U/s 302/34 IPC and Sections 25/27 of the Arms Act, 1959 P.S. Bhajanpura, Delhi.
- (d) That the petitioner was in jail at the time when the crime was committed.

12. Ld. counsel for the petitioner has vehemently argued that there is not even an iota of evidence with the prosecution to show that the petitioner is a part of criminal conspiracy to kill Wajid. As far as question of conspiracy is concerned, there cannot be any direct evidence in this regard. The conspiracy is to be revealed from the facts and circumstances of each case and at this stage, giving any opinion

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with regard to the point raised by the Ld. counsel for the petitioner that the petitioner was not a part of the conspiracy might prejudice the case of either or the parties.

13. As far as the other argument goes that all the material witnesses have been examined and turned hostile, this also in my opinion does not come to the rescue of the petitioner. One of the witness Jafar Ali @ Sajid has supported the case of the prosecution and as far as the hostility of the other witnesses is concerned that also cannot come to the rescue of the petitioner as it is not always that the testimony of the hostile witnesses is to be discarded in toto. The testimonies of hostile witnesses are to be analyzed in the light of the other circumstances appearing in the case and in depth analysis of the testimony of hostile witnesses at the stage of bail will not be proper and in the present case, the testimony of public witness Jafar Ali @ Sajid and other witnesses who have turned hostile would be read simultaneously and it would be for the trial court to sift the chaff from grain and arrive at a conclusion either this way or that way which is not for this Court to do at this stage. One cannot lose sight of the fact that the petitioner is involved in 25 cases of heinous nature and he is claimed by the prosecution to be the leader of infamous Chhenu Gang. 14 cases against the petitioner are still pending trial and the release of the petitioner at this stage, may hamper the trial of those pending cases as one can see from the facts of this case that the witnesses have not supported the case of the

prosecution as also in case FIR No. 0634/2017 P.S. Bhajanpura. Though, in the present case, there are no complaints by the witnesses except Jafar Ali in regard to the threats but circumstances speak for themselves.

14. As far as the contention of the Ld. counsel for the petitioner that the petitioner was in jail at the time when the crime was committed, it is pertinent to note that it is not the case of the prosecution that the petitioner was physically present at the spot when the crime was being committed. The case of the prosecution is that the petitioner was the kingpin and it was he, who hatched the conspiracy due to inter gang rivalry and in these circumstances, the presence of the petitioner at the spot was not required as the conspiracy are hatched in secrecy and it is not for the conspirators to be actually and physically present at the spot and each conspirator plays the role assigned to him in the commission of the crime.

15. As stated by the Ld. APP that the witnesses in case FIR No. 0634/2017, U/s 302/34 IPC and Sections 25/27 of the Arms Act, 1959 P.S. Bhajanpura, Delhi have also not supported the case of the prosecution and have turned hostile like in the present case, in my opinion, in these circumstances and the discussions herein above, the release of the petitioner, at this stage, would be fatal to the other

pending cases as the witnesses are turning hostile one after the other in the cases.

16. As far as the contention of the Ld. counsel for the petitioner that all the other co-accused persons have been released on bail and the petitioner is also entitled to parity, I do not subscribe to this view of the Ld. counsel for the petitioner, looking into the allegations against him and his past antecedents which are very disturbing and dangerous and also looking into his propensity to commit crime. One also cannot lose sight of the fact that each criminal case revolves at his own facts and circumstances and no parallel can be drawn in any two cases. Even though, the petitioner has been granted bail by this Court in case FIR No. 0634/2017, U/s 302/34 IPC and Sections 25/27 of the Arms Act, 1959 P.S. Bhajanpura, but looking into the entire facts and circumstances of this case, conduct and antecedents of the petitioner and his propensity to commit crime, I am not inclined to admit the petitioner on bail. The bail application is, therefore, dismissed.

17. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

SEPTEMBER 02, 2021

Sumant