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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 03.05.2021

Pronounced on: 11.05.2021

+ **BAIL APPLN. 1262/2021**

JOGENDER

..... Petitioner

Through: Mr. Rakesh Khanna, Senior Advocate
with Mr. Varun Tyagi & Mr. Vishesh
Chauhan, Advocates

Versus

STATE

..... Respondent

Through: Mr. Amit Chadha, Additional Public
Prosecutor for State with SI Naresh
Ahlawat

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT

1. Petitioner in this petition, along with three other persons, namely, Rahul @ Jat, Dharmender Dubey and Aatur Tyagi is accused in FIR No. 448/2020 under Section 307/34 of Indian Penal Code, 1860 (IPC) and Sections 27/54/59 of Arms Act, 1959, registered at police station Moti Nagar, Delhi. He was taken into custody on 23.06.2020 and since then he is behind the bars. By the present petition, he is seeking his release on bail.
2. Charge sheet and supplementary charge sheet in this case have

already been filed against the petitioner and other accused persons.

3. As per the charge sheet, case of the prosecution is that on 13.06.2020 on receipt of DD No.4A, Investigating Officer reached ABG Hospital and collected MLC No. 3289/2020 of injured- Dhurender Singh and came to know about referral of injured to the RML Hospital. On the MLC, doctor had opined "A/ H/O assault followed by gunshot injury at Basai Darapur. Entry wound approx. 1.5-2 cm present over (R) Gluteal region (approx. 4-5 cm Deep) and patient was conscious and oriented". Nature of injury on the MLC has been mentioned as "OR". Thereafter, Investigating Officer recorded statement of the injured.

4. In his statement, the injured/complainant stated that on 13.06.2020 at about 11.45 P.M. when he was going from Basai Darapur to his house at Ramgarh Colony and reached in front of Super Medicos near Union Bank, Ramgarh Colony near channel, Joginder, Rahul @ Jat, who lives in Basai Darapur and Aatur Tyagi, who lives in Ramgarh Colony, met him there. These three persons were known to him and a few days ago, a quarrel had taken place between them. Further stated that these persons started beating him and then Dharmender, real brother of Joginder also came there and started beating him. Thereafter, Dharmender, Rahul @ Jat and Aatur Tyagi

caught hold of him and said “Joginder, he will not mend his ways in this manner, let’ s eliminate his life today.” On hearing this, Joginder took out a pistol and fired a shot upon him and when he tried to escape, the shot hit his right hip portion. All the afore-noted four persons fled from the spot leaving behind him in a pool of blood. Someone informed his brother Deepak, who picked him in unconscious state and took to the Acharya Bhikshu Hospital, Moti Nagar, New Delhi, where the Doctor referred him to another hospital and so, he was brought to the RML hospital for treatment.

5. Thereafter, crime team inspected the place of incident, picked up the blood on gauge with the help of one white strip, kept in a white colour transparent box and numbered it. Blood stains and earth control were also picked up with the help of chisel and hammer and kept in sealed cover.

6. On the basis of secret information, the investigating team apprehended Aatur Tyagi, who during interrogation revealed that he along with his friends Joginder, Rahul and Dharmender had committed the crime in question. During further investigation, petitioner -Joginder was also apprehended, who during interrogation revealed that he often had a quarrel with injured- Durender @ Bali on money matters. He disclosed that on the day of incident, he along with his friends Aatur Tyagi, Rahul @ Jat and his

brother Dharmender went in front of Super Medicos, near nala Basai, Darapur at around 11:30-45 P.M., Aatur Tyagi hold Dhurender's left arm, Rahul @ Jat hold his right arm by twisting it, Dharmender hold behind both his arms and he (petitioner) had shot pistol fire on him with an intention to kill him. Further disclosed that Dhurender tried to free himself from manual binding and it is then the pistol shot hit his hips, thereafter they ran away from the spot, leaving injured behind.

7. Petitioner- Joginder further disclosed that while escaping he had hidden the arm in the bushes near ESI hospital quarters, which was given to him by his brother Dharmender. During investigation accused Rahul @ Jat also disclosed that he had picked up the empty shell after the incident and hidden near vacant quarter of ESI hospital. At the instance of both the above accused persons, weapon of offence, i.e. a country made pistol in a broken condition was recovered from the bushes of the ESI hospital quarters and the Investigating Officer found three live cartridges in the magazine available in the pistol. Similarly, empty cartridges were also recovered from the bushes near ESI hospital quarters.

8. The Investigating officer also collected the packet containing blood-stained cloth and one sample seal, given by the doctor at Acharya Bhikshu

Hospital, Moti Nagar. All the other recovered exhibits were sent to FSL for opinion.

9. At the hearing learned senior counsel for petitioner submitted that complainant is a habitual offender and has earlier also been convicted in FIR No. 440/2007, under Sections 411/34 IPC, registered at Moti Nagar, Delhi. Petitioner had no prior intention to cause any bodily harm to the complainant, as the weapon of offence was not in his possession but in the possession of his brother Dharmender. Further submitted that if the petitioner had intention to kill complainant, he would have directly shot on any vital part and it is so apparent from the fact that the complainant was caught hold by Aatur Tyagi, who is a body builder and from whose capture, complainant would not have been able to move an inch and the pistol shot would have hit the target and not the hip portion of the complainant.

10. Learned senior counsel next submitted that the allegation of complainant that he was mercilessly beaten by the accused persons, is not borne out as no injuries of beating were there on the person of complainant and even the prosecution has not charged the accused persons for the said offence.

11. Learned senior counsel further submitted that complainant has neither

been inflicted with any life-threatening injury nor the injury was inflicted on any of his vital part and so, offence under Section 307 IPC is not made out. Moreover, MLC prepared by the doctor at Acharya Bhikshu Hospital opined the injury as 'OR' and not as grievous or dangerous. Further submitted that in the MLC doctor has also stated that injured was in stable and oriented state of mind, which falsify the assertion of complainant that he became unconscious due to the alleged incident.

12. Learned senior counsel also submitted that the two accused, namely, Aatur Tyagi and Rahul @ Jat have been granted bail by this Court and accused Dharmender has been granted bail by the court of Sessions. Further submitted that even on parity, the present petitioner deserves bail in this case.

13. Refuting the submissions advanced by learned senior counsel for petitioner, Mr. Amit Chadha, learned Additional Public Prosecutor for State submitted that the case of petitioner is not at par with other accused, as he is the one who had fired on the victim with an intention to kill him while the other accused persons caught hold of him. As per the FSL report, the bullet taken out from the thigh of the injured was fired from the pistol recovered at the instance of petitioner. He is a habitual offender and also accused in FIR

No. 421/2020, under Sections 188/269 IPC and a *kalandra* framed under Sections 107/51 Cr.P.C. Lastly, learned Additional Public Prosecutor submitted that petitioner has committed a heinous offence and if released on bail, he may harm the complainant and his family members, therefore, the present petition deserves to be dismissed.

14. The arguments advanced by both the sides were heard at length. Keeping in mind that the charge sheet and supplementary charge sheet in this case have already been filed and trial is in progress, a cursory look has been given to the material placed on record to arrive at a *prima facie* opinion whether petitioner deserves bail or not.

15. In the alleged incident, a grievous attack has been made upon the complainant which could have resulted fatal for him. While dismissing petitioner's first bail application vide order dated 16.09.2020, the learned trial court has observed that considering the facts and circumstances of the case and the gravity of offence and his involvements/role in the present crime, no ground is made out to release the petitioner on bail. Similarly, while dismissing petitioner's another bail application vide order dated 02.03.2021, the learned trial court has observed that because of the graver role played by the petitioner, no ground for parity is made out to release him

on bail. Pertinently, petitioner's first application for bail [BAIL APPLN. 2902/2020] was dismissed as withdrawn before this Court.

16. On perusal of FIR of this case, copy of charge sheet and status report placed on record, it is revealed that the role played by petitioner in the offence in question, is on different footing than of other co-accused. The allegations levelled against other accused persons are of catching hold complainant, whereas the complainant has specifically alleged that petitioner had fired a pistol shot on him with an intention to kill him and in this background, petitioner cannot claim parity with other accused for bail.

17. Furthermore, co-accused Aatur Tyagi in his disclosure statement has supported the allegations put-forth by the complainant and stated that the shot was fired by the petitioner. The weapon of offence i.e. a country made pistol has been recovered at the instance of petitioner only.

18. Moreover, in the MLC dated 14.06.2000 prepared by the doctor of Acharyashree Bhikshu Govt. Hospital, Moti Nagar, Delhi, the nature of injuries suffered by the complainant have been opined as "Dangerous". As per FSL report the bullet recovered from the thigh of injured was fired from the pistol recovered at the instance of petitioner herein.

19. Even if the factum of petitioner having been involved in other

criminal cases is not given weightage, the chain of events and scientific and medical evidence place on record in the present case, dissuades this Court to release petitioner on bail. The apprehension expressed by the prosecution of harming the complainant or his family, since they are living in neighbourhood, cannot be ruled out.

20. Finding no substance in the pleas taken by the petitioner, the present petition is accordingly dismissed at this stage, while making it clear that anything stated herein shall not be construed as an expression on the merits of the prosecution case.

21. A copy of this order be transmitted to the trial court concerned for information.

(SURESH KUMAR KAIT)
JUDGE

MAY 11, 2021
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