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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 1st June, 2021

Decided on: 6th July, 2021

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BAIL APPLN. 1506/2021

BANSI THAKUR alias BANSI BAIS Petitioner

Represented by: Mr. Ashwini Kumar, Advocate.

versus

STATE NCT OF DELHI

..... Respondent

Represented by: Mr. Tarang Srivastava, APP for State

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition the petitioner seeks regular bail in case FIR No. 499/2020 under Section 25 Arms Act registered at PS Kalyan Puri.
2. Learned counsel for the petitioner contends that the petitioner was arrested in the above-noted FIR on 30th November, 2020 since when he is in custody and charge-sheet has since been filed. All the witnesses to the alleged recovery are Police witnesses. Hence there is no apprehension of the petitioner tampering with the evidence. In any case the offence alleged is at best punishable up to three years imprisonment and the trial is likely to take some time to conclude, thus the petitioner be released on bail. The Trial Court is yet to take cognizance of the charge-sheet dated 25th January, 2021 for the reason the FSL report and the sanction has not been received as yet. Neither the arrest of the petitioner nor the alleged recovery was made in the presence of independent witnesses. The petitioner is not named in the FIR

and has been implicated only on the basis of disclosure statement of co-accused Santosh which is inadmissible in evidence and certainly a weaker type of evidence. The arms and ammunition allegedly recovered from the petitioner were deposited in malkhana on 30th November, 2020 vide the number bearing 2250/2020 whereas the alleged recovery from the main accused Santosh and Om Sharan @ Nanhe who were arrested on 28th November, 2020 were deposited vide the number 2256/2020 at Kalyan Puri; hence there is interpolation in the record. Reliance is placed on the decision reported as (2012) 1 SCC 40 Sanjay Chandra Vs. CBI. Even in the other cases pending in Uttar Pradesh where the petitioner has been falsely implicated, the petitioner has been released on bail. The petitioner is willing and ready to abide by all the conditions imposed by this Court. The prosecution case is highly improbable as the claim of the prosecution is that the petitioner has been arrested from Uttar Pradesh, however the vehicle apprehended bears the registration number of Haryana. Pursuant to the disclosure statement, the mobile phone of the petitioner was seized, however the same was not sent to FSL for forensic analysis. There are material contradictions in the case of the prosecution as in the charge-sheet it is stated that the petitioner was arrested from near Railway Road Tundla, however in the status report it is stated that the petitioner was arrested from Agra.

3. State has filed number of status report in response to the present petition and learned APP for the State has taken this Court to the Status reports. Learned APP for the State contends that in view of the large quantities of the arms and ammunitions recovered from the petitioner and the co-accused as also the earlier involvements of the petitioner, as the petitioner is a history-sheeter and if released on bail is likely to commit the

same offence again, bail be not granted to the petitioner. It is contended that the discrepancies pointed out are not material and have to be considered at the stage of trial after the witnesses are examined. Further, the case properties recovered were deposited in malkhana of Kalyan Puri and entries in this regard have been made in the register No.19. The recoveries from the three accused made on two different dates i.e. 28th November, 2020 and 30th November, 2020 have been reflected as separate entries. The recoveries made were sent to the FSL Rohini for ballistic examination on 9th December, 2020 vide the road certificate copies whereof have also been attached. The petitioner was arrested from Railway Road Tundla, U.P. on 30th November, 2020 which is situated in Agra region, that is why even though in the arrest memo it has been noted that the arrest is from Railway Road Tundla, U.P., however while preparing the status report it is noted Agra.

4. The above-noted FIR was registered on 28th November, 2020 when an information was received by H.C. Bakar Raza that one Santosh who hailed from Etah District would come from DND Flyover side via canal road and go towards Kalyan Puri side on a Tata Sumo Car No. HR55U3863. A raiding team was constituted and at around 3 PM the Tata Sumo car came from the DND Flyover side on a high speed which was intercepted. Two persons were present in the car and on being apprehended they revealed their names as Santosh and Om Sharan @ Nanhe both residents of District Etah, Uttar Pradesh. Two sophisticated revolvers and four cartridges loaded in both the revolvers were recovered from the possession of two accused. On search of the Tata Sumo Car, six more illegal weapons including two sophisticated revolvers, four single shot guns and 32 cartridges were recovered at the instance of Santosh. From interrogation it was revealed that

Santosh had been working for Aditya Thakur @ Adi Gang of Agra and was one of its key members. Santosh stated that he could get arrested Aditya Thakur @ Adi, Bansi Thakur and Somu who were the main heads of the gang.

5. On 30th November, 2020 at the instance of Santosh, the present petitioner was arrested from Tundla, U.P. and two illegal weapons i.e. one pistol and another country made pistol with two live cartridges were recovered from his possession. The petitioner disclosed that he had purchased these weapons from one Somu and Aditya Pratap Singh @ Adi Thakur who were running a factory of illegal weapons at Bihad of Chambal Valley near Amba M.P. Investigation revealed that the petitioner was an active member of illegal arms syndicate. The two co-accused Aditya Pratap Singh @ Adi Thakur and Somu are yet to be arrested. During the search conducted, 16 illegal revolvers and country made pistol besides 42 live cartridges were recovered from Santosh, Om Sharan and Bansi Thakur. As per the status report, the petitioner is involved in as many as 8 other cases in relation to offences under the Gangsters Act, 392/394/323/411 IPC and Arms Act with various Police Stations of Uttar Pradesh, majority of them being lodged at Police Station, Jasrana, Firozabad, U.P.

6. Contention of learned counsel for the petitioner that there is tampering in record is not substantiated and as per the malkhana register No. 19 entries were made at serial No. 6127/2020 dated 28th November, 2020 and 6134/2020 on 30th November, 2020. Copies of the malkhana register have also been placed on record. The mud number against the two entries dated 28th November, 2020 is 6127/2020 and entry relating to recovery from the petitioner dated 30th November, 2020 is 6134/2020. Further, the recovered

articles were sent to the FSL for Ballistic expert's opinion sent through road certificates, copies whereof have also been placed on record and on a perusal of the malkhana register and the road certificates, prima facie, no case of any tampering is made out which would warrant the release of the petitioner on bail.

7. Considering the fact that from the material collected, it is prima facie evident that the petitioner is a member of syndicate illegally dealing in arms and ammunition, this Court finds no ground to grant bail to the petitioner.

8. Petition is dismissed.

9. Copy of this order be uploaded on the website of this Court.

(MUKTA GUPTA)
JUDGE

JULY 06, 2021
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