

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

Date of decision: 10th DECEMBER, 2021

IN THE MATTER OF:

+ **BAIL APPLN. 2992/2021**

AJAY @ NATHU @ SUNNY

..... Petitioner

Through: **Mr. G. Siva Bala Murugan and Mr.
Deepak Sharma, Advocates**

versus

STATE OF NCT OF DELHI

..... Respondent

Through: **Ms. Meenakshi Dahiya, APP for the
State with SI Lokendra, Crime
Branch.**

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This application under Section 439 Cr.P.C has been filed for grant of bail to the petitioner in FIR No. 48/2015 dated 31.01.2015, registered at Police Station Nabi Karim for offences under Sections 186/353/333/307/201/75/34 IPC.

2. The facts, in brief, leading to the filing of the instant petition are as follows:

- i. It was during the investigation of Case No.63/2015, Constable Ravi Kant, Constable Balram and Constable Jitender reached at Singhara Chowk, Sadar Bazar. After reaching the spot, the Constable Ravi Kant apprehended a person - Ajay @ Nathu @ Sunny (petitioner herein) as he had the reputation of a repeated

offender. On apprehension, the petitioner - Ajay @ Nathu@ Sunny tried to flee from the spot by wielding a knife. A chase to nab Ajay @ Nathu@ Sunny followed which was being led by SI Nisar Ahmed. It is stated that Ajay @ Nathu@ Sunny ran from the police and alerted his associates that the police was out to nab all of them thereby hinting them to run and hide. During the chase, the petitioner gave a knife blow to SI Nisar Ahmed. The police team which was being headed by SI Nisar Ahmed opened fire on the petitioner in self-defence. Both SI Nisar Ahmed and the present petitioner Ajay @ Nathu@ Sunny were injured and were sent to the hospital for treatment.

- ii. The petitioner was arrested on 31.01.2015 and has been in judicial custody since 01.02.2015. The Chargesheet in the present case stands filed. It is stated that there are about 44 witnesses which are being examined in the trial. During investigation, the scene of crime was seized- 9 bullets head, 9 mm empty cartridges, one live cartridge 9 mm, three empty cartridge 7.65 mm and one misfired 7.65 mm were found on the spot and were sent for forensic examination. A site plan of the entire scene of crime was prepared, exhibits of found items were made, sampled and seizure memos were prepared accordingly. It is stated that the knife with which the blows were inflicted was sent for examination. The co-accused - Dharmender @ Montu was also injured and was admitted to Lady Hardinge Hospital. The blood soaked clothes of Dharmender @ Montu were taken into police possession and

were sampled and sent for forensic examination. During the course of the investigation, the Section 161 Cr.P.C statements were recorded of many of the constables and police officers who were present at the spot where the firing took place. It was found during investigation that the petitioner was an infamous pick pocket of the locality and had many cases of theft pending against him. Further, investigation revealed that the other co-accused persons were similarly involved in petty thievery and were used to snatch the belongings of people while riding a bike. Further investigation revealed that the victims of theft allegedly came forward and informed the police that persons of the description of the accused were goons in the vicinity and would regularly steal from the people.

- iii. The accused persons have refused to participate in Test Identification Parade (TIP). The co-accused Dharmender @ Montu had allegedly made disclosure statements to the police and similarly other accused persons also allegedly made disclosure statements.
- iv. Investigation is complete. The chargesheet and supplementary chargesheet have been filed. There are a total of 44 witnesses who are to be examined during the trial and presently about 21/22 witnesses have been examined so far.
- v. The petitioner approached the learned Trial Court for grant of bail and his prayer was dismissed *vide* order dated 31.07.2021, whereby the learned Trial Court held that the role of the petitioner was distinct from the role of the other co-accused

persons who had been enlarged on bail and further laid stress on the point that the petitioner actually opened fire on a uniformed Police Officer who was discharging his official duties and during the cross-fire a 13 year old child was brutally injured and later succumbed to the injuries.

3. Heard learned counsel for the petitioner, Ms. Meenakshi Dahiya, learned APP for the State and perused the material on record.

4. Mr. G. Siva Bala Murugan, learned counsel for the petitioner, submits that the petitioner has been in judicial custody since 01.06.2015. He submits that the chargesheet and the supplementary chargesheet have been filed and trial is in session and has reached just half-way before it concludes. He submits that there are 44 witnesses out of which only 21-22 witnesses have been examined so far. He submits that all the co-accused persons, in this case, have been enlarged on bail. He further contends that the co-accused Dharmender @ Montu has had more cases pending trial against him and he has been released on bail by order dated 03.11.2020 passed by this Court in bail application No.2474/2020. He, lastly, contends that the punishments for the offence which the petitioner has been charged with, barring Section 307 IPC, stipulates upto 5 years of imprisonment and the fact that the petitioner has been charged with Section 307 IPC is a matter of trial and his liberty cannot be curtailed indefinitely. He places reliance on the depositions of the injured victim and the chargesheet.

5. Per Contra, Ms. Meenakshi Dahiya, learned APP for the State, vehemently opposes the bail application of the petitioner by contending that this is a very serious offence where the petitioner has opened fire, where he escaped from being frisked and then alerted his associates. Whereafter, the

petitioner opened fire and wielded a dagger and gave a knife blow to the SI Nisar Ahmed and thereafter wielded a weapon which caused havoc as the police also had to assert the right of self-defence, thereby affecting the surroundings and the people inhabiting those surroundings where the incident took place and also endangering the life of innocent people. She states that during the firing from both sides, a 13 year old child's life was taken away by bullet injuries. She further submits that the petitioner is a habitual offender and has utter disregard for the law. She submits, by referring to the status report filed by the State, that there are about 16 cases pending against him and that if the petitioner is enlarged on bail, he would indulge in further crimes and be a menace to society.

6. In the present circumstances, the FIR was lodged on 31.01.2015. The petitioner has been in judicial custody since 01.02.2015 which is almost seven years. The chargesheet in the present case was filed in 2015 itself. The learned Trial Court is presently examining witnesses and it is brought to the notice of this Court that about 21-22 witnesses have been examined so far out of total 44 witnesses. The co-accused persons, namely, Krishan and Dharmender @ Montu have already been granted regular bail by this Court vide order dated 27.07.2020 and 03.11.2020 respectively. The other co-accused persons, namely, Beena and Sunil @ vikas have also been previously enlarged on bail by the learned Trial Court. The petitioner has taken this Court through the chargesheet and has advanced arguments on merits of the case.

7. The Hon'ble Supreme Court in Gurcharan Singh and Others vs. State (Delhi Administration), (1978) 1 SCC 118 has observed as under:

"24. Section 439(1) CrPC of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike under Section 437(1) there is no ban imposed under Section 439(1), CrPC against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1) CrPC of the new Code. The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) CrPC of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out.

8. The petitioner is in custody for almost seven years. All public witnesses stand examined. All the co-accused persons have been granted bail. At this juncture, there is no possibility of the petitioner threatening witnesses or tampering with the evidence. The petitioner has also been discharged/acquitted in most of the cases registered against him and is on

bail in cases where trial is proceeding.

9. Considering the facts and circumstances of the case and keeping in mind these principles, this Court is inclined to grant bail to the petitioner on the following conditions:

- a) The petitioner shall furnish a personal bond in the sum of Rs.25,000/- with two sureties, one of them should be the relative of the petitioner, in the like amount to the satisfaction of the Trial Court;
- b) The Memo of Parties shows that the petitioner is residing at R/O H-5927, Gali Sikli Garan, Nabi Karim, Delhi. The petitioner is directed to reside at the same address. In case of any change of address, he shall inform the same to the Investigating Officer;
- c) The petitioner shall report to the concerned Police Station every day at 10:30 AM and the police is directed to release him by 11:00 AM after recording his presence and completion of all the necessary formalities;
- d) The petitioner shall not leave NCT of Delhi without the prior permission of this Court;
- e) The petitioner is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times;
- f) The petitioner shall not, directly or indirectly, tamper with evidence or try to influence the witnesses in any manner;
- g) In case it is established that the petitioner has indulged in similar kind of offences or tried to tamper with the evidence, the bail granted to the petitioner shall stand cancelled

forthwith.

10. Be it noted that the observations made in this order are only for grant of bail and not on the merits of the case.

11. The application stands disposed of along with all the pending application(s), if any.

12. Let a copy of this order be communicated to the concerned Jail Superintendent.

SUBRAMONIUM PRASAD, J

DECEMBER 10, 2021

S. Zakir