



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

Date of decision: 07th MARCH, 2022

IN THE MATTER OF:

+ **BAIL APPLN. 616/2022**

AJAY SRIVASTAVA

..... Petitioner

Through Mr. Hari Shanker, Advocate

versus

STATE OF N C T OF DELHI

..... Respondent

Through Mr. Amit Chadha, APP for the State
with SI Prinsh PS Farsh Bazar

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The petitioner seeks bail in FIR No.830/2015 dated 02.10.2015 registered at Police Station Farsh Bazar (East) for offences under Section 302, 34 IPC.
2. The facts in brief leading to the present FIR are as follows:-
 - i. On 01.10.2015 information *vide* DD No.30 A was received wherein the caller informed that one person has been shot and two persons who were riding bike fled the spot.
 - ii. On receiving the phone call, the police reached the spot. They found the deceased lying unconscious and was bleeding heavily from his head. The injured was taken to Hedgewar Hospital wherein he was declared brought dead.
 - iii. The FIR was recorded on the statement of one Bharat Singh who had been despatched to the spot vide DD No.30 A for



offence.

- iv. Investigation commenced. Accused, namely, i) Azam S/o Karam Ali R/o 749/4, Rehman Building, West Rohtash Nagar, Shahdara, Delhi; ii) Ajay Srivastava S/o Jamuna Prasad R/o JB-6/62, Welcome, Seelampur, Delhi; iii) Munawar Ali S/o Maqsood Ali R/o Pili Mitti, Opposite Mazar, Janta Colony, Welcome, Delhi; iv) Danish S/o Muslim R/o 65-C, Second Floor, Chanakya Marg, Chhajju Gate, Valkem Delhi; v) Shivaji @ Chunnu S/o Late Rakesh R/o Balmiki Basti, Near Railway Line, Shahdara Mandi, Delhi were arrayed as accused on the statement of two eyewitnesses Sandeep @ Dheele and Anil Kumar @ Kale.
- v. The accused Azam, Ajay Srivastava i.e. the petitioner herein, Munawar Ali and Danish could not be arrested because they were evading arrest. The proceedings under Section 82 CrPC were initiated. The petitioner herein was arrested on 20.04.2016.
- vi. The petitioner has filed several bail applications. The petitioner approached this Court by filing BAIL APPLN 4020/2020 which was rejected by order dated 15.03.2021. This Court found that the wife of the deceased had stated that she and her husband were facing threats for their lives before the incident dated 01.10.2015 took place. This Court also found that the petitioner has been convicted in FIR No.138/2012 registered at Police Station Barakhamba Road for offences under Section 392, 34, 120B IPC and FIR No.25/2011 registered at Police Station Welcome for offences under Section 307, 34 IPC.



- vii. Material on record also indicates that the petitioner had been granted interim bail vide order dated 05.04.2021 by this Court in BAIL APPLN. 1015/2021 on the ground that the petitioner has to undergo an operation. The petitioner had also been granted bail on 20.07.2021 for a period of seven weeks for undergoing the surgery.
 - viii. On 17.12.2021, this Court granted interim bail to the petitioner on the ground that he is getting married on 20.12.2021. The petitioner did not get married.
 - ix. The petitioner approached the Sessions Court for grant of regular bail by filing an application bearing SC ID No.773/2016 and the same was rejected by an order dated 09.12.2021 passed by the learned Additional Sessions Judge.
 - x. The petitioner has approached this Court for grant of bail.
3. Mr. Hari Shanker, learned counsel for the petitioner states that the petitioner was taken into custody on 20.04.2016. It is stated that the petitioner has been granted bail by this Court on various occasions and he has never abused the liberty granted to him. He also contends that though the wife of the deceased Shyam Sundar stated that her husband had been threatened by accused Azam and few others but she did not take the name of the petitioner herein. He further states that one of the eyewitnesses has turned hostile. He states that the prosecution witnesses have been examined and no useful purpose would be served keeping the petitioner further in custody.
4. *Per contra*, Mr. Amit Chadha, learned APP contends that the petitioner is accused of a very serious offence. He states that the petitioner has already been convicted in FIR No.138/2012 registered at Police Station



Barakhamba Road for offences under Section 392, 34, 120B IPC and FIR No.25/2011 registered at Police Station Welcome for offences under Section 307, 34 IPC. He, therefore, states that looking at his antecedents, he can threaten witnesses and has to propensity to commit further crimes and bail ought not to be granted to the petitioner.

5. Heard Mr. Hari Shanker, learned counsel for the petitioner, Mr. Amit Chadha, learned APP for the State and perused the material on record.

6. The petitioner is accused of an offence of murder. The material on record shows that accused Azam was not in good terms with the deceased and on 01.10.2015 when the deceased and his wife had gone to the court to attend some proceedings, accused Azam and his associates had threatened the deceased with the dire consequences. Material on record also discloses that there are two eyewitnesses namely, Sandeep @ Dheele and Anil Kumar @ Kale. Sandeep @ Dheele was examined on 06.12.2018 and in his examination-in-chief, he had stated that on 01.10.2015 when the deceased and his wife and the witnesses had gone to Karkardooma Court to attend Court proceedings, accused Azam and his associates Chunnu, Shivaji, Danish, Munawar Ali and the petitioner herein had come to the court and they have threatened the deceased. He had stated that on the evening of the same day, he along with eyewitness Anil Kumar @ Kale and the deceased were in Bhopura to visit a property dealer, on receiving a call from one Durgesh, the deceased wanted to meet Durgesh. It is stated that when the deceased and the witnesses went near Jaat Dharamshala, Geeta Bhawan to meet the said Durgesh who had given the call, accused Azam came there along with Munawar, Danish, Chunnu, Ajji i.e. the petitioner herein. It is stated that the petitioner caught hold of the deceased and accused Chunnu handed over a pistol to accused Azam and he shot the deceased because of



which the deceased passed away.

7. This Court vide its order dated 15.03.2021 in BAIL APPLN.4020/2020 rejected the bail application of the petitioner on the ground that he has already been convicted in FIR No.138/2012 registered at Police Station Barakhamba Road for offences under Section 392/34/120B and FIR No.25/2011 registered at Police Station Welcome for offences under Section 307, 34 IPC.

8. The Apex Court in a number of judgments has laid down the factors which has to be taken into account for grant of bail (i) nature and gravity of offence, (ii) probability of influencing witnesses, (iii) tampering of evidence, (iv) evading the administration of justice, (v) role alleged against the accused (Refer Ram Govind Upadhyay V. Sudarshan Singh, (2002) 3 SCC 598).

9. Applying the said rationale of the Apex Court, the petitioner is alleged of serious offence of murder. Eyewitnesses, namely, Anil Kumar @ Kale has categorically stated the role of the petitioner in the murder of the deceased Shyam Sundar. The petitioner already stands convicted for offences under Section 392, 34, 120B, 307 IPC. Considering the facts and circumstances of this case, this Court is not inclined to grant bail to the petitioner at this juncture.

10. The petition is dismissed with the above observations along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

MARCH 07, 2022

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