

\$~4

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

Date of decision: 14.01.2021

+ BAIL APPLN. 3332/2020

PAHALWAN @ SUBEY

..... Petitioner

Through: Mr. Mohit Mathur, Senior Advocate
with Mr.S.P.Kaushal, Advocate

Versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Mr. Panna Lal Sharma, Additional
Public Prosecutor for State with SI
Naresh Kumar

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

The hearing has been conducted through video conferencing.

1. By this petition, petitioner is seeking bail in FIR No. 200/2015, under Sections 302/307/395/120B/34 IPC and Sections 25/27 of Arms Act, registered at police station Baba Haridas Nagar, Delhi.
2. The facts of the case are that on receipt of information through wireless that gun shots were fired, Inspector Sheelwant Singh along with constable Hari Om reached at the spot i.e. Abhinandan Vatika, where Sandeep, a Constable posted at Mundka Police Station, informed that on

29.03.2015, during *Kuan Poojan* ceremony of his son, around 200 guests, including Mr.Bharat Singh, Ex MLA were present. Constable Sandeep next stated that at around 07:30 p.m., sound of gun shots was heard, which resulted into stampede amongst the guests. He further stated that in the meanwhile, he was also hit by some unknown object and received injury on the left side of his forehead and nose and was taken to Swastik Hospital for treatment. Constable Sandeep stated that upon his return from the hospital, he came to know that some unknown persons had fired on Mr.Bharat Singh, Ex MLA. In the said incident, except Constable Sandeep, six other guests had sustained gunshot injuries. Resultantly, on the complaint of Constable Sandeep, FIR in question was registered against unknown accused persons.

3. Learned Additional Public Prosecutor for State has opposed this petition by stating that the role attributed to the petitioner in the alleged incident is that under an active criminal conspiracy, petitioner along with other co-accused persons, with a view to eliminate Mr.Bharat Singh, Ex MLA, committed murderous assault on him and Mr.Bharat Singh, Ex MLA succumbed to the grievous injuries sustained by him due to gunshot and six others also received injuries due to gunshot and stampede. Learned Additional Public Prosecutor for State further submits that petitioner was

one of the shooter in the alleged incident and one pistol has been recovered at his instance. Learned Additional Public Prosecutor for State next submits that the Scorpio vehicle used in the alleged incident has been recovered by the police, which is said to be registered in the name of one *Amit* and the said recovered Scorpio was inspected by the FSL expert and crime team and exhibits i.e. blood stains, one nokia mobile phone used by the petitioner, one live cartridge, one empty cartridge were recovered from it.

4. Learned Additional Public Prosecutor for State submits that the DVR of the video camera and memory card of still camera used for video graphing the *kuan ceremony function* was seized, wherein it is recorded that within three minutes of arrival of Mr.Bharat Singh, Ex MLA along with PSO HC Ram Jivan and his private security officer in Abhinandan Vatika, accused Nitin Sherawat while talking on mobile phone, with another accused Mohit @ Chand, had entered the crime scene. Learned Additional Public Prosecutor for State informs that during investigation it was revealed that accused Udaibir @ Kala along with other accused persons, with the motive to take revenge of death of his father –*Surajmal*, had conspired to kill Mr.Bharat Singh, Ex MLA in the year 2002 as well, but had failed and in this regard, FIR No. 123/2012, under Sections 307/120B/34 IPC and

Section 25 Arms Act, was registered at police station Baba Haridas Nagar. Learned Additional Public Prosecutor for State submits that accused Udaibir @ Kala had died on 15.11.2016 due to cardiac arrest.

5. Learned Additional Public Prosecutor for State next submits that accused Nitin Sehrawat in his disclosure statement has stated that he and accused Hemant studied in the same school and since accused Hemant wanted to take revenge of death of his *fufa* –*Rajesh Dahiya* at the hands of Bharat Singh, Ex MLA along with his associate on 29.03.2015, on his asking he had accompanied him in the alleged incident. The accused Hemant has committed murder of one witness-*Vipin* and in this regard, FIR No. 1558/2015, under Section 302/34 IPC and Sections 25/27 Arms Act, was registered at police station Prashant Vihar, Delhi.

6. Learned Additional Public Prosecutor for State submits that charge sheet in this case has been filed and trial is in progress and if at this stage petitioner is released on bail, he may influence the witnesses and flee from judicial process.

7. On the other hand, learned senior counsel appearing on behalf of the petitioner submits that petitioner is innocent and he has been falsely implicated in this case. He further submits that petitioner is in judicial

custody since 05.04.2015 and prosecution has arrayed 137 witnesses, out of which only two witnesses have been examined so far. Learned senior counsel further submits that the role attributed to the petitioner is far less than the role of co-accused Nitin Sehrawat, who has been granted bail by this Court on 18.09.2019 in Bail Appln. 1796/2019 and, therefore, petitioner deserves to be released on bail on parity.

8. I have heard learned senior counsel appearing on behalf of the petitioner as well as learned Additional Public Prosecutor appearing for State. Petitioner was the driver of accused *Udaibir*, who has expired during trial of the case. It is not in dispute that co-accused *Nitin Sehrawat* has already been granted bail by this Court. Besides, two other accused *Raman Gurung* and *Ajay* have also been granted bail. It is also not in dispute that a weapon was recovered from an open place after about 08 days of the alleged incident.

9. I am conscious of the fact that the petitioner had earlier also filed similar application for bail, which was dismissed as withdrawn on 20.11.2019 and thereafter, petitioner's bail application was dismissed by the learned trial court on 15.10.2020. It is a matter of record that when petitioner's bail application was dismissed as withdrawn before this Court

on 20.11.2019, by then only two witnesses had been examined on 18.01.2018 and 19.07.2018. Thereafter, not even a single witness has been examined by the prosecution out of 137 witnesses.

10. Keeping in view the above mentioned facts and that petitioner has been languishing in jail since 2015 and also that trial in this case will take substantial time, I am of the opinion that petitioner deserves bail. Accordingly, petitioner is directed to be released on bail forthwith on his furnishing personal bond in the sum of Rs.25,000/-, with one surety in the like amount to the satisfaction of the learned trial court.

11. Petitioner shall not directly or indirectly influence any witness or tamper with the evidence.

12. The trial court shall not get influenced by any observation made by this Court while passing this order.

13. The petition is disposed of accordingly.

14. A copy of this order be transmitted to the Jail Superintendent concerned and trial court for information and necessary compliance.

15. The order be uploaded on the website of this Court forthwith.

(SURESH KUMAR KAIT)
JUDGE

JANUARY 14, 2021/r